

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1213 West Palm Beach Water Catchment Area, Palm Beach County

SPONSOR(S): Berman

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	13 Y, 0 N	Zaborske	Miller
2) Local & Federal Affairs Committee	16 Y, 0 N	Zaborske	Kiner

SUMMARY ANALYSIS

HB 1213 is a local bill amending a special act to alter the boundaries of the West Palm Beach Water Catchment area (Catchment Area). The Catchment Area is a Class I Potable Water Supply water body that serves as a natural surface water supply source for the municipalities of West Palm Beach, Palm Beach, and South Palm Beach. Ten parcels comprise the Catchment Area. Currently, Parcel One consists of the south 450-feet of a parcel abutting the M-Canal, a canal that was created in the 1950's to augment Palm Beach's drinking water supply. Palm Beach County and the City of West Palm Beach have agreed to a land-swap to facilitate the development of a Spring Training baseball complex for the Washington Nationals and Houston Astros, and approximately 24 acres of the land upon which the facilities are to be built are contained within Parcel One. The bill reduces Parcel One of the Catchment Area from the South 450-feet to the South 50-feet of the Southwest quarter of Section 1, Township 43 South, Range 42 East.

The Economic Impact Statement (EIS) for the bill projects a \$49 million increase in revenues in fiscal year 2015-2016 and \$109 million increase in revenues in fiscal year 2016-2017. Based on the estimated expenditures associated with the bill, the EIS projects \$40 million in estimated costs in fiscal year 2015-2016 and \$95 million in fiscal year 2016-2017. Additionally, the EIS anticipates the following funding sources: \$3 million in local funds and \$2 million in state funds in fiscal year 2015-2016, and the same for fiscal year 2016-2017. The EIS also estimates that the construction related to the bill will create an approximately 1,756 one-time construction jobs for the construction of two proposed parks and the proposed baseball complex.

The bill becomes effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

West Palm Beach Water Catchment Area

The West Palm Beach Water Catchment Area (Catchment Area) was created in 1967.¹ The Catchment Area is a Class I Potable Water Supply water body protected by State and Federal laws.² It serves as a natural surface water supply source for the municipalities of West Palm Beach, Palm Beach, and South Palm Beach.³ The surface water supply is “derived from annual rainfall captured and stored within the 27 square mile wetland system of Grassy Waters Preserve.”⁴ Current law:

- Requires that the City of West Palm Beach retain in perpetuity full ownership and control of the Catchment Area;
- Prohibits the City of West Palm Beach from leasing or granting any license for any part of the Catchment Area which is inconsistent with water supply, environmental, educational, or conservation purposes, including, but not limited to environmental mitigation; and
- Prohibits the City of West Palm Beach from using the Catchment Area in a manner inconsistent with water supply, environmental, educational, or conservation purposes, which purposes include, but are not limited to, environmental mitigation purposes.

Ten parcels comprise the Catchment Area.⁵ Parcel One consists of the south 450-feet of a parcel abutting the M-Canal.⁶ The M-Canal was created by the City West Palm Beach in the 1950’s to augment the city’s drinking water supply.⁷ The M-Canal passes through the Catchment Area.⁸ From the Catchment Area, water can flow into or out of the M-Canal, depending on relative water levels.⁹ The M-Canal provides drinking water to coastal communities and is classified as a Class I Potable Water Supply waterbody.¹⁰

Land-Swap for Baseball Complex

Palm Beach County and the City of West Palm Beach have agreed to a land-swap to facilitate the development of a Spring Training baseball complex for the Washington Nationals and Houston Astros.¹¹ The agreement authorizes the exchange of 1.8 acres of county-owned property downtown for 143 acres of city-owned property at 45th Street and Haverhill Road.¹² Approximately 24 acres of the

¹ Ch. 67-2169, Laws of Fla

² See r. 62-302.400, F.A.C. (designating the surface waters in the Catchment Area as Class I potable water supply); ch. 89-476, Laws of Fla. See also r. 62-302.530, F.A.C. (Table: Surface Water Quality Criteria, showing that Class I potable water has the most stringent water quality standards out of the Classes described in the chart).

³ Ch. 89-476, Laws of Fla.

⁴ West Palm Beach Public Utilities, Watershed Management/Grassy Waters Preserve, available at <http://wpb.org/utilities/watershed-management/grassy-waters/> (last visited 03/22/2015).

⁵ Ch. 2006-359, Laws of Fla.

⁶ Ch. 2006-359, s. 1, Laws of Fla.

⁷ Florida Department of Environmental Protection, Southeast District, Assessment & Monitoring Program, Ecosummary, M-Canal, Palm Beach County (August 1999), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.dep.state.fl.us%2Fsoutheast%2Fecosum%2Fecosums%2Fm-canal.pdf&ei=rQUPVaW8Hli4ggT1y4O4DA&usq=AFQjCjNHXE1NNnoWHLnM7I5H8obMBb_i2Qw&bvm=bv.89060397.d.eXY (last visited 03/22/2015).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Palm Beach County, BCC Briefs (February 3, 2015), available at <http://www.co.palm-beach.fl.us/newsroom/0215/02-03-15-bcc-briefs.htm> (last visited 03/23/2015).

¹² *Id.*

land upon which the facilities are to be built is contained within Parcel One of the Catchment Area along the M-Canal.¹³

Miller Legg Special Act Area Recommendations (March 2015)

The City of West Palm Beach recently retained the Miller Legg consulting firm to prepare recommendations for Parcel One, which is located between Haverhill Road and Military Trail, south of 45th Street and north of the M-Canal in the City of West Palm Beach (Section 1, Township 43 South, Range 42 East).¹⁴ Miller Legg issued its recommendations in March 2015.¹⁵

According to the Report, the site reviewed by Miller Legg is formerly known as the “Haverhill Yard Trash Facility,” an historic landfill which had three distinct trash piles encompassing approximately 57.06 acres of the 167.3 acre site.¹⁶ The facility was used as a yard trash facility since around 1955, but was not permitted with the South Florida Water Management District (SFWMD) until 1982.¹⁷ In 1991, the landfill was permitted for closure.¹⁸ The landfill closure was constructed in several phases between 1991 and 2001. First a perimeter berm was constructed around the property to prevent any off-site runoff. Then, the trash piles were re-shaped and the tops of the piles were flattened to better accommodate future development. Finally, a 14-acre pond/lake was excavated, the trash piles were capped, swales were created to divert stormwater away from the piles to the pond, and non-trash areas were filled to final development grade.¹⁹ The landfill cells have been capped and even though the landfill is listed as a yard waste landfill, tests have revealed debris other than yard waste.²⁰

The Report addresses concerns related to reducing the 450-foot buffer between the M-Canal and the site to only a 50-foot buffer. The Report in summary notes the following:

- Chlorobenzene and dichlorobenzene have been encountered in groundwater on-site, and there may be more buried contaminants.
- Even if contaminants have been removed from the site, “disturbing the closed landfill cells creates the potential for unearthing unknown contaminants which may then leach into the groundwater.”²¹
- The entire site should be brought up to the same elevation or, if that is not feasible, and the landfill cells are excavated or the landfill cell caps are compromised, then there must be a plan in place to effectively monitor all excavation activities and during construction stormwater should be directed around the cells to prevent contaminants from leaching of into the groundwater.²²
- A groundwater monitoring plan must be established prior to starting any construction.²³
- Because stormwater discharges are generated by runoff from land and impervious areas during rainfall events, they often contain pollutants that could adversely affect water quality; therefore, the proposed project be designed to retain all of the stormwater on-site, including constructing a perimeter berm surrounding the property to contain the 25-day, 2-day storm event.²⁴
- If dewatering is required, then dewatering discharge should be directed to the lake and remain on-site.²⁵
- A surface water pollution prevention erosion and sediment control plan must be permitted and implemented in accordant with legal requirements because runoff during excavation,

¹³ Economic Impact Statement (EIS) for HB 1213.

¹⁴ Special Act Area Recommendations, M-Canal Buffer Reduction Evaluation, West Palm Beach, Florida, by Miller Legg (March 2015) (Report). A copy of the Report is on file with the Local Government Affairs Subcommittee, Florida House of Representatives.

¹⁵ Report at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.*

construction, and landscaping leads to the potential for off-site discharges of sediment and other pollutants and these must be managed.²⁶

- The existing lake should be protected using silt fences and turbidity barriers²⁷.
- Swales and a perimeter berm should be implemented to protect the southern property boundary adjacent to the M-Canal.²⁸
- Because athletic fields require a significant amount of irrigation waters, irrigation runoff should be contained on-site to prevent surface water impacts to the adjacent canal.²⁹
- Substantial irrigation groundwater withdrawals may impact M-Canal levels and surface water use for irrigation may change the direction of groundwater flow or impact surrounding wells and the M-Canal.³⁰
- Irrigation wells are not recommended.³¹
- Any proposed irrigation systems must be designed to comply with applicable SFWMD Consumptive Use regulatory criteria.³²
- If the on-site lake will be used as the irrigation source, then the lake must be maintained at a minimum level that will not lower the level of the M-Canal or lower the water table in the cone of influence of the surrounding wells.³³
- The lake must have a maximum level that will not cause the groundwater flow to change direction – as groundwater currently flows to the northeast away from the M-Canal.³⁴
- Groundwater modeling must be performed to establish the minimum and maximum lake water levels to avoid potential impacts.³⁵
- There are no on-site wetland issues relevant to the reduction of the buffer size or protection of the M-Canal water sources.³⁶

The Report concludes that even though the closed and capped “landfill is an existing condition in close proximity to the buffer and the M-Canal, land use changes or development on the landfill that does not compromise the containment cover system should not introduce any risk that currently doesn’t exist.”³⁷

Effect of Proposed Changes

The bill reduces Parcel One of the West Palm Beach Water Catchment Area from the South 450-feet to the South 50-feet of the Southwest quarter of Section one in Township 43 South, Range 42 East, except the right-of-way of Military Trail and Haverhill Road.

B. SECTION DIRECTORY:

Section 1: Amends ch. 67-2169, s. 1, Laws of Fla., as amended, to reduce Parcel One of the West Palm Beach Water Catchment Area from the South 450-feet to the South 50-feet of the Southwest quarter of Section one in Township 43 South, Range 42 East, except the right-of-way of Military Trail and Haverhill Road.

Section 2: Provides an effective date upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

²⁶ *Id.* at 6.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 7.

³⁷ *Id.* at 8.

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 30, 2015

WHERE? Palm Beach Daily News

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 9-11:

The bill provides: "Section 1 of chapter 67-2169, Laws of Florida, as amended by chapter 2006-359, Laws of Florida, is amended to read." Chapter 67-2169, Laws of Florida, has been amended several times prior to 2006. To avoid any confusion regarding the various amendments, it would be clearer to list each amendment since 1967 or to use more general language such as, "as amended."

Report

It appears from the Report that a 50-foot buffer, in-and-of-itself, does not provide adequate protection to the water supply that comes from the M-Canal. It appears that protecting the water supply depends on other contingencies not accounted for in this bill. If the buffer were removed, without a final plan for construction, then it is uncertain what impact unspecified development could have on the Catchment Area, including the M-Canal. Reducing the Parcel One buffer could create precedent to reduce the M-Canal buffer for other parcels in the Catchment Area. If a 450-foot buffer is not necessary for Parcel One, then it could be construed that the Catchment Area unnecessarily infringes on the property rights of surrounding parcels.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES