

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 95 C-51 Reservoir Project

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Jacobs, Kristin and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Melkun	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 0 N	White	Pigott
3) State Affairs Committee			

### SUMMARY ANALYSIS

Reservoirs can be used to store water for environmental enhancement, including maintaining minimum flows and levels within a waterbody, as well as reducing the rates and volumes of freshwater discharges into estuaries. The C-51 reservoir project is a water storage facility located in western Palm Beach County south of Lake Okeechobee consisting of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities and provide environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.

A restricted allocation area is defined as an area within a water supply planning region where the governing board of a water management district has determined existing sources of water are not adequate to supply water for all existing and future use and to sustain the water resources for a planned period of time. The South Florida Water Management District (SFWMD) has declared the Lake Okeechobee Basin a restricted allocation area, therefore additional restrictions apply when allocating surface water derived for consumptive use.

The bill revises provisions relating to the C-51 reservoir project and specifically

- Allows the South Florida Water Management District (SFWMD) to negotiate with the owners of any portion of the C-51 reservoir project (Phase I or II) not committed to utilities for alternative water supply purposes;
- Adds the phrase "to the maximum extent practicable" to the requirement that the SFWMD operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the estuaries and also requires maximizing the reduction of harmful discharges to the Lake Worth Lagoon;
- Requires the operation of Phase I of the C-51 reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD;
- Requires that water made available by Phase I or Phase II be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such is in accordance with the SFWMD rules;
- Provides that Phase II may be funded by appropriation;
- Authorizes the SFWMD to enter into a capacity allocation agreement with any water supply entity for a pro rata share of unreserved capacity in the C-51 reservoir project and may request the Department of Environmental Protection (DEP) to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund and authorizes DEP to waive repayment if DEP determines it has received reasonable value for such waiver; and
- Clarifies that the SFWMD is not responsible for repaying any portion of a loan that is waived.

If the loan is waived, the loan recipient may have an indeterminate positive fiscal impact and DEP may have an indeterminate negative fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Water Storage Reservoirs

It is the policy of the Legislature to promote the conservation, replenishment, capture, enhancement, development, and proper utilization of surface and groundwater; and develop and regulate dams, impoundments, reservoirs, and other works to provide water storage for beneficial purposes.<sup>1</sup> Storing water is a commonly used technique for optimizing the use of water supplies by collecting water during times of plenty for use during dry or peak use times.<sup>2</sup>

Water storage reservoirs are constructed to improve the quality, timing, and distribution of water within a system. Water storage reservoirs can be used to store raw water prior to treatment at municipal water treatment facilities, to store treated water prior to distribution and use, and to store water for power generation facilities and agricultural uses.<sup>3</sup> Reservoirs can also be used to store water for environmental enhancement, including maintaining minimum flows and levels within a waterbody, as well as reducing the rates and volumes of freshwater discharges into estuaries.<sup>4</sup>

Chapter 2017-10, Laws of Florida, created a program to expedite the development of water storage reservoirs to reduce high-volume discharges to the Caloosahatchee and St. Lucie estuaries. The law identified options to accelerate the Everglades Agricultural Area Reservoir and C-51 Reservoir projects. Elements of both reservoir projects are considered part of the South Florida Ecosystem Restoration Program jointly implemented by the South Florida Water Management District (SFWMD) and the United States Army Corps of Engineers (corps).<sup>5</sup>

##### C-51 Reservoir Project

The C-51 reservoir project is a water storage facility<sup>6</sup> located in western Palm Beach County south of Lake Okeechobee consisting of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities and provide environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.<sup>7</sup>

The C-51 reservoir project consists of Phase I and Phase II. Phase I is estimated to provide approximately 14,000 acre-feet of water storage and to cost \$161 million. It will hydrologically connect to the SFWMD's L-8 Flow Equalization Basin and the Central and Southern Florida Project<sup>8</sup> operated by the SFWMD.<sup>9</sup> Because of its interconnectedness, the SFWMD agreed to operate, maintain, repair, replace, and rehabilitate Phase I of the C-51 reservoir project if Palm Beach Aggregates, LLC (PBA), the landowner of the reservoir land, pays the SFWMD for such operation, maintenance, repair,

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<sup>1</sup> Section 373.016, F.S.

<sup>2</sup> Department of Environmental Protection (DEP) Office of Water Policy, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater, and Excess Surface Water*, Dec. 1, 2015, available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan. 14, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Corps, *US Army Corps of Engineers Ecosystem Restoration*, available at <https://www.saj.usace.army.mil/Missions/Environmental/Ecosystem-Restoration/> (last visited Jan. 16, 2019)

<sup>6</sup> Section 373.475(2)(b), F.S., defines water storage facility.

<sup>7</sup> Section 373.4598(9)(a), F.S.

<sup>8</sup> SFWMD, *History*, available at <https://www.sfwmd.gov/who-we-are/history> (last visited Jan. 16, 2019)

<sup>9</sup> SFWMD Governing Board Meeting, *C-51 Reservoir O&M Agreement* (Feb. 9, 2017), available at <http://sfwmd.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1722&Format=Agenda> (last visited Jan. 14, 2019).

replacement, and rehabilitation.<sup>10</sup> On February 20, 2017, the SFWMD and PBA entered into an Operation and Maintenance Agreement, which details the rights and responsibilities of each party and requires the SFWMD to operate and maintain Phase I of the C-51 reservoir project upon completion.<sup>11</sup>

Phase II of the C-51 reservoir project is estimated to provide 46,000 acre-feet of water storage and cost approximately \$286 million.<sup>12</sup> Phase II of the project is being considered under some of the alternatives being evaluated for the Comprehensive Everglades Restoration Plan - Loxahatchee River Watershed Restoration Project.<sup>13</sup>

The SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project site or to enter into a public-private partnership for Phase II.<sup>14</sup> The SFWMD is authorized to acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the SFWMD or the state as necessary to implement Phase II of the project.<sup>15</sup> The state and the SFWMD are authorized to consider potential swaps of land that is owned by the state or the SFWMD to achieve the optimal combination of water quality and water storage. The SFWMD is prohibited from exercising eminent domain for the purpose of implementing the C-51 reservoir project.<sup>16</sup>

If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project, state law requires

- The SFWMD to operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries in addition to providing relief to the Lake Worth Lagoon;
- Water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and
- Any water received from Lake Okeechobee may not be made available to support consumptive use permits.<sup>17</sup>

Phase I of the C-51 reservoir project is authorized to be funded through specific appropriation or through the water storage facility revolving loan fund, as provided in s. 373.475, F.S.<sup>18</sup> For the 2017-2018 fiscal year, the sum of \$30 million was appropriated to the Water Resource Protection and Sustainability Trust Fund for the purpose of providing a loan to implement Phase I of the C51 reservoir project.<sup>19</sup> The loan is required to have a 30-year term, may be prepaid at any time, and accrues interest until repayment. The loan is required to be repaid from the proceeds of the sale of unreserved capacity in the water storage facility, or other appropriate payment, at the time of receipt less reasonable expenses. The loan is secured by a first mortgage lien on the water storage facility and a collateral assignment of unreserved capacity as adequate security for the loan. The loan does not reserve for use by the state or the SFWMD any capacity authorized pursuant to the consumptive use permit for Phase I of the C-51 reservoir project.<sup>20</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Corps, *Read-Ahead and Reference Document for Loxahatchee River Watershed Restoration Protect, Array of Alternative Plans to be Evaluated*, Dec. 13, 2017, available at <http://cdm16021.contentdm.oclc.org/utills/getfile/collection/p16021coll7/id/6006> (last visited Jan. 14, 2019); Corps, *US Army Corps of Engineers Ecosystem Restoration*, available at <https://www.saj.usace.army.mil/Missions/Environmental/Ecosystem-Restoration/> (last visited Jan. 16, 2019).

<sup>14</sup> Section 373.4598, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Chapter 2017-10, Laws of Fla.

<sup>20</sup> *Id.*

Phase II of the C-51 reservoir project is authorized to be funded using Florida Forever bonds, pursuant to the water storage revolving loan fund, or as a project component of the Comprehensive Everglades Restoration Program pursuant to s. 375.041(3)(b)4., F.S.<sup>21</sup>

### Restricted Allocation Areas

The term “restricted allocation area” is defined in s. 373.037, F.S., to mean an area within a water supply planning region of the Southwest Florida Water Management District, the SFWMD, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period pursuant to ss. 373.036 and 373.709, F.S., and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water.

Due to concerns regarding water availability, the SFWMD has declared the Lake Okeechobee Basin a restricted allocation area. Therefore, additional restrictions apply when allocating surface water derived from Lake Okeechobee for consumptive use. This rule is a component of the recovery strategy for the Lake Okeechobee minimum flows and levels, as set forth in Chapter 40E-8, F.A.C., to address lower lake management levels and storage under the corps’ Lake Okeechobee Regulation Schedule.<sup>22</sup>

The Lower East Coast Regional Planning Area is also designated as a restricted. As a component of the recovery strategy for the minimum flows and levels for the Everglades and the Northwest Fork of the Loxahatchee River additional restrictions have been adopted for the permitted allocations of water use withdrawals. These restrictions assist with ensuring that the water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.<sup>23</sup>

### **Effect of Proposed Changes**

The bill revises provisions relating to the C-51 reservoir project. Specifically, it

- Allows the SFWMD to negotiate with the owners of any portion of the C-51 reservoir project (Phase I or II) not committed to utilities for alternative water supply purposes, instead of just Phase II;
- Adds the phrase “to the maximum extent practicable” to the requirement that the SFWMD operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries and also requires maximizing the reduction of harmful discharges to the Lake Worth Lagoon;
- Requires the operation of Phase I of the C-51 reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD;
- Requires that water made available by Phase I or Phase II be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such is in accordance with the SFWMD rules;
- Provides that Phase II may be funded by appropriation; and
- Authorizes the SFWMD to enter into a capacity allocation agreement with any water supply entity for a pro rata share of unreserved capacity in the C-51 reservoir project and may request the DEP to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund; authorizes DEP to waive repayment if DEP determines it has

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<sup>21</sup> Section 373.4598, F.S.

<sup>22</sup> SFWMD, *Applicant’s Handbook for Water Use Permit Applications within the SFWMD*, Sept. 7, 2015, available at [https://www.sfwmd.gov/sites/default/files/documents/wu\\_applicants\\_handbook.pdf](https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf) (last visited Jan. 14, 2019).

<sup>23</sup> *Id.*

received reasonable value for such waiver; and clarifies that the SFWMD is not responsible for repaying any portion of a loan that is waived pursuant to this bill.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 373.4598, F.S., to revise water storage and use requirements and clarify appropriations.

Section 2. Provides an effective date of July 1, 2019.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Chapter 2017-10, L.O.F., provided \$30 million in nonrecurring funds from the General Revenue Fund to be deposited in the Water Resource Projection and Sustainability Trust Fund for the purpose of providing a loan to the water supply entity responsible for implementing Phase I of the C-51 reservoir project utilizing through the water storage facility revolving loan fund as provided in s. 373.475, F.S. The water supply entity has executed capacity allocation agreements with local governments to allow the local governments to utilize specific water allocations identified in the agreements. The bill allows the South Florida Water Management District to enter into a capacity allocation agreement with the water supply entity for an allocation of the unreserved water needed that will be for the natural system based on water needs identified in CERP or other restoration plans. The SFWMD may request that DEP waive repayment of all or a portion of the loan based on a pro rata share of the costs for providing the water storage capacity in the reservoir that will be used by the SFWMD. Waiving repayment of this loan would reduce the future funding available for other water storage reservoirs that qualify for loans under the water storage facility revolving loan fund. DEP would need to determine if it would receive reasonable value for the waiver from additional water storage capacity.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

If DEP approves of a waiver of any or all of the loan amount and depending on the reasonable value DEP deems appropriate, the loan recipient may receive an indeterminate positive fiscal impact.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

The CS by the Agriculture and Natural Resources Subcommittee removed the section of the bill that would expand allocation of funding from the Land Acquisition Trust Fund to include the entire C-51 reservoir project, instead of only Phase II of the project.