

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1061 Aquatic Preserves

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Massullo

TIED BILLS: **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N, As CS	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Aquatic Preserve Act of 1975 was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves or sanctuaries for the benefit of future generations. Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.

The bill creates the Nature Coast Aquatic Preserve and specifies the boundaries of the preserve.

The bill has no fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Submerged Lands

The federal Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the U.S., acquires title to and ownership of the lands beneath navigable waters within the boundaries of the state¹ and the natural resources within such lands and waters. The state also acquires the right and power to manage, administer, lease, develop, and use such lands and natural resources.² Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs.³

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high-water line that are beneath navigable fresh water or beneath tidally-influenced waters.⁴ Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (BOT), which is comprised of the Governor and Cabinet.⁵ BOT is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶

Aquatic Preserves

The Florida Aquatic Preserve Act of 1975⁷ was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves⁸ or sanctuaries for the benefit of future generations.⁹ The Department of Environmental Protection's (DEP) Office of Resilience and Coastal Protection carries out the Aquatic Preserve Program on behalf of BOT.

Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres.¹⁰ All but four of these submerged lands are located along Florida's 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers.¹¹ Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.¹²

¹ 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).

² 43 U.S.C. §1301 and §1311(a).

³ 43 U.S.C. §1314(a).

⁴ Rule 18-21.003(65), F.A.C.

⁵ DEP, *Submerged Land Management*, available at <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan. 29, 2020).

⁶ Section 253.03, F.S.

⁷ Section 258.35, F.S.

⁸ Section 258.37(1), F.S., defines the term "aquatic preserve" to mean an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.

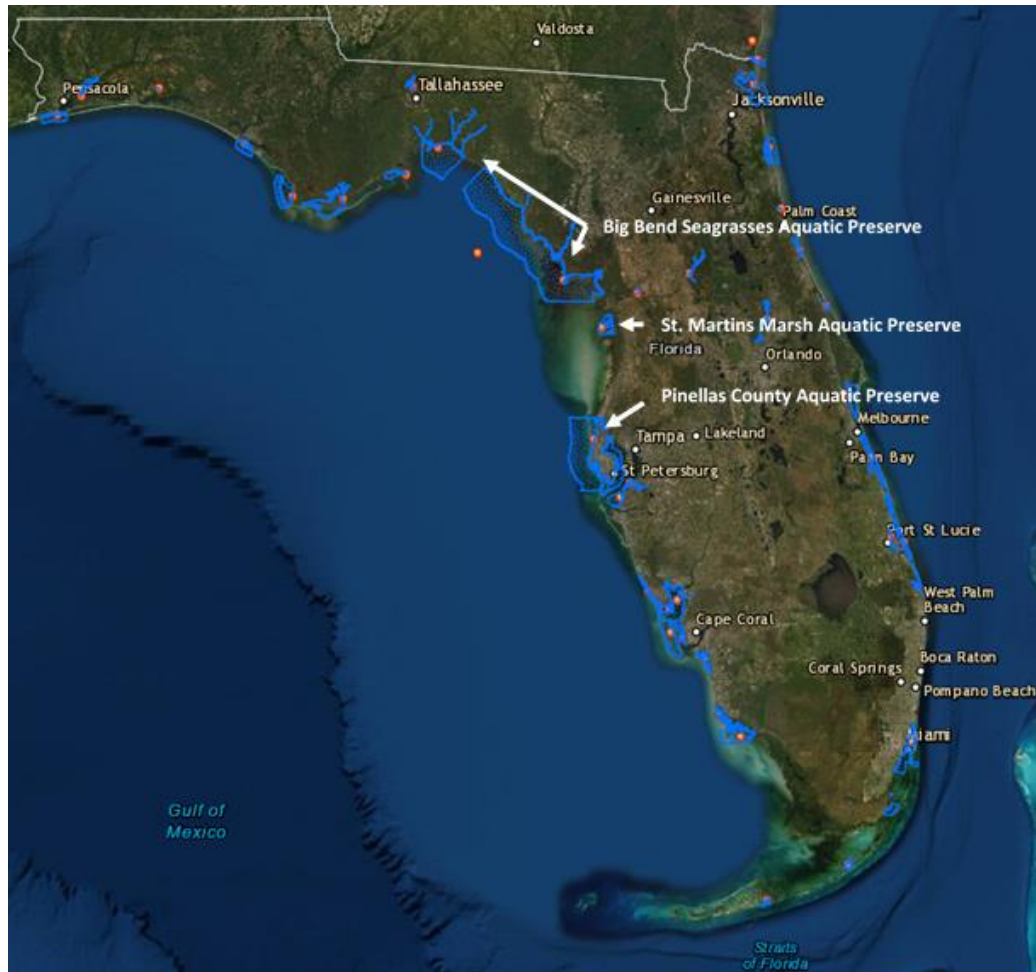
⁹ Section 258.36, F.S.

¹⁰ DEP, *Aquatic Preserve Program*, available at <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 29, 2020).

¹¹ *Id.*

¹² *Id.*

The following figure depicts a map of Florida's aquatic preserves, noting the locations of the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins Marsh Aquatic Preserve.¹³



Current law restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs BOT to maintain aquatic preserves by prohibiting:

- Further sale, lease, or transfer of sovereign submerged lands unless such sale, lease, or transfer is in the public interest;
- Approval of the waterward relocation or setting of bulkhead lines waterward of the mean high-water line within the preserve unless public road and bridge construction projects have no reasonable alternative and it is shown to not be contrary to the public interest; and
- Further dredging or filling of submerged lands except for certain activities, such as public navigation projects, the creation or maintenance of marinas, or public utility expansion.

The drilling of gas or oil wells and the excavation of minerals are expressly prohibited in aquatic preserves.¹⁴ However, the state is not prohibited from leasing the oil and gas rights of the preserve and permitting drilling from outside the preserve to explore for oil and gas if approved by BOT.

Commercial and residential docking facilities and structures for shore protection are also restricted as to size and location, and waste and effluents may not be discharged into the preserve if they substantially inhibit the accomplishment of the purposes of the Florida Aquatic Preserve Act.¹⁵

¹³ DEP, *Aquatic Preserves of Florida StoryMap Component*, available at <https://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0> (last visited Jan. 29, 2020).

¹⁴ Section 258.42, F.S. The dredging of dead oyster shells is permitted if approved by DEP.

¹⁵ Section 258.42, F.S.

Fees for leases of sovereign submerged lands are significantly higher for leases within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁶

Nature Coast

“The Nature Coast” is located along Florida’s Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and the City of Dunnellon.¹⁷ This area is a sanctuary to 19 endangered species¹⁸ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.

Effect of the Bill

The bill creates the Nature Coast Aquatic Preserve and specifies that the preserve consists of the state-owned submerged lands lying west of a meandering line following the westernmost shoreline of Citrus, Hernando, and Pasco Counties, and lying westward of a line extending north from Latitude 28.91° and Longitude -82.75° to the eastern shoreline of the southern boundary of the Big Bend Seagrasses Aquatic Preserve, and continuous with the eastern shoreline of the northern boundary of the Pinellas County Aquatic Preserve.

B. SECTION DIRECTORY:

Section 1. Creates s. 258.3991, F.S., to establish the Nature Coast Aquatic Preserve.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve would become more expensive.

¹⁶ Rule 18-21.011(1)(b)5., F.A.C.

¹⁷ Nature Coast Coalition, *History & Area Information*, available at <http://www.naturecoastcoalition.com/nchistory.htm> (last visited Jan. 29, 2020).

¹⁸ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2020, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed all provisions of the bill except for the designation of the Nature Coast Aquatic Preserve and the boundaries of the preserve, which were further defined.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.