

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 1390

INTRODUCER: Senator Simmons

SUBJECT: Everglades Protection Area

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1390 requires comprehensive plans or plan amendments adopted by a local government whose boundaries include any portion of the Everglades Protection Area to follow the state coordinated review process and not the expedited state review process. The Department of Environmental Protection (DEP) must determine whether such plans or plan amendments impede Everglades restoration and protection objectives. DEP must provide notice to the local government of its determination and work in coordination with local governments to identify measures the local government may take to eliminate, reduce, or mitigate adverse impacts. Such a plan or plan amendment may only be deemed complete if it contains a written notice from DEP stating it does not impede Everglades protection and restoration.

II. Present Situation:

The Everglades/Florida Bay Ecosystem

The Everglades/Florida Bay system covers approximately two million acres in South Florida and contains the largest subtropical wetland in the United States.¹ The area is generally described as a vast sawgrass marsh dotted with tree islands and interspersed with wet prairies and aquatic sloughs.²

Historically, the Everglades covered over seven million acres of South Florida, and water flowed down the Kissimmee River into Lake Okeechobee, then south through the vast Everglades to Florida Bay.³ The present Everglades system has been subdivided by the construction of canals, levees, roads, and other facilities as part of efforts to drain the system for agriculture, development, and flood control. As a result, the Everglades is less than half the size it was a century ago, and connections between the central Everglades and adjacent transitional wetlands have been lost. This separation and isolation can impair the Everglades' wildlife communities and the sustainability of the ecosystem.⁴ Over time, the construction of canals and water control structures along with urban and agricultural expansion contributed to unintended consequences.⁵

In 1994, to address these issues, the Legislature passed the Everglades Forever Act (Act).⁶ The Act established numerous long-term goals and environmental standards to restore and protect the Everglades ecosystem, addressing issues including water quantity, water quality, and excessive levels of phosphorus. The Act contains measures for constructing stormwater treatment areas for water entering the Everglades, sets standards for best management practices to address phosphorous pollution loading, and establishes numeric criteria for water quality in the Everglades.⁷ Generally, the Act outlines Florida's commitment to restoring the Everglades ecosystem, and it authorizes programs for achieving this restoration.⁸ These programs work in cooperation with the multi-billion-dollar, multi-decade Comprehensive Everglades Restoration Plan that is a 50-50 partnership between the state and federal government.⁹

¹ SFWMD, *Everglades*, <https://www.sfwmd.gov/our-work/everglades> (last visited Jan. 18, 2020).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ SFWMD, *Everglades Restoration Progress*, 1 (2017), https://www.sfwmd.gov/sites/default/files/documents/spl_everglades_progress.pdf.

⁶ Chapter 94-115, Laws of Fla.; s. 373.4592, F.S.

⁷ Section 373.4592, F.S.; UF-IFAS, Michael T. Olexa et. al., *Handbook of Florida Water Regulation: Florida Everglades Forever Act*, 1-2 (2017), available at <https://edis.ifas.ufl.edu/pdf/FE/FE60900.pdf>.

⁸ See SFWMD, *Long-Term Plan for Achieving Water Quality Goals*, <https://www.sfwmd.gov/our-work/wq-stas/long-term-plan> (last visited Jan. 18, 2020); see SFWMD, *Regulatory Source Control Programs*, <https://www.sfwmd.gov/our-work/source-control-bmps> (last visited Jan. 19, 2020); see SFWMD, *Water Quality Improvement - Stormwater Treatment Areas (STAs)*, <https://www.sfwmd.gov/our-work/wq-stas> (last visited Jan. 19, 2002).

⁹ UF-IFAS, Michael T. Olexa et. al., *Handbook of Florida Water Regulation: Florida Everglades Forever Act*, 1 (2017); The Water Resources Development Act of 2000 (P.L. 106-541, Dec. 11, 2000); SFWMD, *CERP Project Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (last visited Jan. 18, 2020); DEP, *Comprehensive Everglades Restoration Plan (CERP)*, <https://floridadep.gov/eco-pro/eco-pro/content/comprehensive-everglades-restoration-plan-cerp> (last visited Jan. 18, 2020).

The Act establishes monitoring and protection for the “Everglades Protection Area,” defined as



“Water Conservation Areas (WCAs) 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.”¹⁰ WCA 1 is the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and it is managed by the U.S. Fish and Wildlife Service.¹¹ Water Conservation Areas 2 and 3 are managed by the Florida Fish and Wildlife Conservation Commission.¹² Everglades National Park is managed by the National Park Service.¹³

The WCAs are mainly large expanses of Everglades marsh habitat, which are closed off with control levees and canals.¹⁴ As part of the Central & Southern Florida Project first authorized by Congress in 1948, central portions of the Everglades were diked to

¹⁰ Section 373.4592(2)(i), F.S.; see also FLA. CON. art. II, s. 7(b). Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area are primarily responsible for the abatement costs.

¹¹ SFWMD, *Water Conservation Area 1 (Arthur R. Marshall Loxahatchee National Wildlife Refuge)*, <https://www.sfwmd.gov/recreation-site/water-conservation-area-1-arthur-r-marshall-loxahatchee-national-wildlife-refuge> (last visited Jan. 18, 2020).

¹² FWC, *Everglades Water Conservation Areas*, <https://myfwc.com/fishing/freshwater/sites-forecasts/s/everglades-water-conservation-areas/> (last visited Jan. 18, 2020).

¹³ NPS, *Everglades National Park*, <https://www.nps.gov/ever/index.htm> (last visited Jan. 18, 2020); SFWMD, *2016 South Florida Environmental Report*, 3 (2016), available at https://issuu.com/southfloridawatermanagement/docs/2016_sfer_highlights_final?e=4207603/33817547. This document contains the map found on this page.

¹⁴ SFWMD, *Water Conservation Areas 2 and 3 (Everglades & Francis S. Taylor Wildlife Management Area)*, <https://www.sfwmd.gov/recreation-site/water-conservation-areas-2-and-3-everglades-francis-s-taylor-wildlife-management-0> (last visited Jan. 18, 2020).

create the WCAs.¹⁵ The WCAs have provided numerous benefits for the Everglades and south Florida, including: providing a detention reservoir for excess water from the agricultural area and parts of the lower east coast region, and for flood discharge from Lake Okeechobee; providing levees to prevent Everglades floodwaters from inundating the lower east coast and provide water for agriculture and Everglades National Park; recharging the Biscayne Aquifer for east coast communities; retarding salt water intrusion in coastal well fields; and benefitting fish and wildlife in the Everglades.¹⁶

DEP explains that the long-term water quality objective for the Everglades is to implement the optimal combination of source controls, stormwater treatment areas, advanced treatment technologies, and regulatory programs to ensure that all waters discharged to the Everglades Protection Area achieve water quality standards consistent with the Act.¹⁷ DEP implements a range of responsibilities under the Act, including coordinating programs on research, monitoring, and permitting activities.¹⁸ The Act requires the state of Florida to pursue certain objectives, including all of the following:

- Restore and protect the Everglades ecological system.
- Authorize the South Florida Water Management District to proceed expeditiously with implementation of the Everglades program.¹⁹
- Reduce excessive levels of phosphorus.
- Pursue comprehensive and innovative solutions to the issues of water quality, water quantity, hydroperiod, and invasions of non-native species that affect the Everglades ecosystem.
- Expedite plans and programs for improving water quantity reaching the Everglades.
- Pursue the Everglades Construction Project, while maximizing its benefits and using superior technology when available.
- Achieve the water quality goals of the Everglades program through implementation of stormwater treatment areas and best management practices.²⁰

Comprehensive Plans and Plan Amendments

In 1985, the Legislature passed the Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.²¹ A local government's comprehensive plan outlines the needs and locations for future public facilities, including roads, water and wastewater infrastructure, neighborhoods, parks, schools, and commercial and industrial developments.²²

¹⁵ United States Army Corps of Engineers and SFWMD, *Central and Southern Florida Project Comprehensive Review Study, Final Feasibility Report and Programmatic Environmental Impact Statement*, 1-1 (Apr. 1999), available at https://www.sfwmd.gov/sites/default/files/documents/CENTRAL_AND_SOUTHERN_FLORIDA_PROJECT_COMPREHENSIVE_REVIEW_STUDY.pdf.

¹⁶ *Id.* at 1-15.

¹⁷ DEP, *Everglades Forever Act (EFA)*, <https://floridadep.gov/eco-pro/eco-pro/content/everglades-forever-act-efa> (last visited Jan. 21, 2020).

¹⁸ *Id.*

¹⁹ Section 373.4592(2)(h), F.S. The “Everglades Program” is defined as the program of projects, regulations, and research provided by the Act.

²⁰ *Id.*

²¹ Chapter 85-55, Laws of Fla.

²² Section 163.3177, F.S.

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. Among the many components of a comprehensive plan is a land use element designating proposed future general distribution, location, and extent of the uses of land.²³ Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.²⁴

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.²⁵ Plan amendments are now placed into either the “Expedited State Review Process” or the “State Coordinated Review Process.”²⁶ The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the Department of Economic Opportunity (DEO), rather than communicated directly to the permitting local government by each individual reviewing agency. Most plan amendments are required to follow the expedited process. Plan amendments in any of the following categories are required to follow the state coordinated process:

- Located in an area of critical state concern, which contains or has a significant impact on certain resources of regional or statewide importance;²⁷
- Propose a rural land stewardship area, which is designed to establish a long-term incentive-based strategy to balance and guide the allocation of land to accommodate future uses for environmental and economic purposes;²⁸
- Propose a sector plan or an amendment to an adopted sector plan, which emphasizes urban form and protection of regionally significant resources and public facilities;²⁹
- Updates to comprehensive plans based on periodic evaluations of compliance with current state requirements;³⁰
- Propose a development of regional impact, which would have a substantial effect upon the health, safety, or welfare of citizens of more than one county;³¹ or
- New plans for newly incorporated municipalities.³²

Under both processes, a proposed comprehensive plan or plan amendment must receive a public hearing by the local governing body before it may be transmitted to the state for review. First, the local planning board must hold a public hearing at which it makes a recommendation to the local governing body on adoption of the plan or plan amendment.³³ Then, the local governing body must hold a public hearing to consider transmittal of the proposed plan or plan amendment.³⁴ If a majority of the local governing body members present at the hearing approve such transmittal, the plan or amendment must be transmitted within 10 working days to the following state and local governmental entities, known as “reviewing agencies”:

²³ Section 163.3177(6)(a), F.S.

²⁴ *Id.*

²⁵ Chapter 2011-139, s. 17, Laws of Fla.

²⁶ Section 163.3184(3) and (4), F.S.

²⁷ *See* s. 380.05, F.S.

²⁸ *See* s. 163.3248, F.S.

²⁹ *See* s. 163.3245, F.S.

³⁰ *See* s. 163.3191, F.S.

³¹ *See* s. 380.06, F.S.

³² Section 163.3184(2)(c), F.S.; *see* s. 163.3167, F.S.

³³ Sections 163.3174(4)(a), F.S.

³⁴ Sections 163.3184(11), F.S.

- DEO, designated as the “state land planning agency”;³⁵
- The appropriate regional planning council;
- The appropriate water management district;
- DEP;
- The Department of State;
- The Department of Transportation;
- The Department of Education, if plan amendments relate to public schools;
- The commanding officer of an affected military installation;
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, in the case of county plans and plan amendments; and
- The county in which the municipality is located, in the case of municipal plans and plan amendments.³⁶

The reviewing agencies and certain other government entities may provide comments to the local government regarding a plan or plan amendment. State agencies may only comment on important state resources and facilities that will be adversely impacted by a plan amendment, if adopted.³⁷ Comments provided by state agencies must state with specificity how a plan amendment will adversely impact an important state resource or facility and must identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts.³⁸ Under the expedited process, these comments must be provided directly to the local government not later than 30 days after receipt of the plan amendment.³⁹ Alternatively, the state coordinated review requires agencies to provide comments to DEO.⁴⁰ DEO then has a total of 60 days from receipt to provide the local government with a report containing the state’s objections, recommendations, and comments.⁴¹

In both processes, comments from each governmental entity must be limited to their statutory purview.⁴² For example, DEP must limit its comments to the subjects of air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, and conservation easements; solid waste; water and wastewater treatment; and the Everglades ecosystem restoration.⁴³

After the local government receives the comments made by the reviewing agencies, whether directly from the agencies or through the report issued by DEO, the local governing body must hold a second public hearing to approve or deny the plan or plan amendment.⁴⁴ The second

³⁵ Section 163.3164(44), F.S.

³⁶ Section 163.3184(1)(c) and (3)(b)1., F.S.

³⁷ Section 163.3184(3)(b)2. and (4)(c), F.S. DEO has special requirements for providing comments on plans or plan amendments following the state coordinated review process.

³⁸ *Id.*

³⁹ Section 163.3184(3)(b)2.

⁴⁰ Section 163.3184(4)(c)-(d), F.S.

⁴¹ Section 163.3184(4)(d), F.S.; see DEO, *State Coordinated Review Amendment Process*, available at http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/comp-plan/statecoordinatedreviewprocessflowchart.pdf?sfvrsn=d6a766b0_2.

⁴² Section 163.3184(3)(b)3.-4. and (4)(c), F.S.

⁴³ Section 163.3184(3)(b)4.a., F.S.

⁴⁴ Section 163.3184(11), F.S.

public hearing must be conducted within 180 days after the agency comments are received. Generally, if a local government fails to hold the second public hearing within 180 days after receipt of agency comments, the plan amendment is deemed withdrawn.⁴⁵

Following adoption, the local government must transmit the plan or plan amendment to DEO within 10 days of the second public hearing, and DEO must notify the local government of any deficiencies with the plan amendment within five working days.⁴⁶ DEO must determine that a plan or plan amendment is complete before it can go into effect. A plan or plan amendment must be deemed complete if it contains:

- A full, executed copy of the adoption ordinance or ordinances;
- In the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined and words deleted stricken with hyphens;
- In the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and
- A copy of any data and analyses the local government deems appropriate.⁴⁷

Under the State Coordinated Review Process, following the determination of completeness, DEO has 45 days to determine whether the plan or plan amendment is in compliance with applicable law.⁴⁸ DEO must issue a notice of intent to find that the plan or plan amendment is either in compliance or not in compliance, and the notice must be published on DEO's website. A plan or plan amendment adopted under the State Coordinated Review Process goes into effect pursuant to DEO's notice of intent.⁴⁹ Under the Expedited State Review Process, a plan amendment goes into effect 31 days after DEO notifies the local government that the plan amendment package is complete.⁵⁰

III. Effect of Proposed Changes:

Section 1 amends s. 163.3184, F.S., which establishes the required procedures for adopting and amending a local government's comprehensive plan.

The bill requires that comprehensive plans and plan amendments adopted by the governing body of a local government whose boundaries include any portion of the Everglades Protection Area⁵¹ must follow the state coordinated review process. The expedited state review process must not be followed for comprehensive plans and plan amendments under such circumstances.

The bill requires the Department of Environmental Protection (DEP) to determine whether a plan or plan amendment adopted by a local government whose boundaries include any portion of the

⁴⁵ Section 163.3184(3)(c)1. and (4)(e)1., F.S. This 180-day timeframe may be extended by agreement as long as notice is provided to DEO and any affected person that provided comments on the plan amendment. Also, an exception exists for developments of regional impact.

⁴⁶ Section 163.3184(3)(c) and (4)(e), F.S.

⁴⁷ *Id.*

⁴⁸ Section 163.3184(4)(e)4., F.S.

⁴⁹ Section 163.3184(4)(e)4.-5., F.S.

⁵⁰ Section 163.3184(3)(c)4., F.S.

⁵¹ Section 373.4592(2)(i), F.S. The bill uses the following definition when referring to the Everglades Protection Area: "Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park."

Everglades Protection Area impedes the Everglades restoration and protection objectives identified in s. 373.4592, F.S. DEP must provide written notice of its determination to the local government within 30 days after receipt of the plan or plan amendment. DEP must work in coordination with the local government to identify measures the local government may take to eliminate, reduce, or mitigate any adverse impacts to Everglades restoration and protection.

The bill requires comprehensive plan amendments adopted by a local government whose boundaries include any portion of the Everglades Protection Area to be submitted to DEP within 10 working days after the second public hearing. A plan or plan amendment adopted by a local government whose boundaries include any portion of the Everglades Protection Area may only be deemed complete if it contains a written notice from DEP stating the plan or plan amendment does not impede Everglades protection and restoration.

Section 2 amends s. 420.5095(9), F.S., to make a conforming change.

Section 3 states that the bill shall take effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill expands the amount of plans and plan amendments that must go through the state coordinated review process, which is coordinated through DEO. The bill also requires DEP to perform additional procedures as part of the review process. Therefore, the bill may cause DEP and DEO to incur additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184, 420.5095.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.