

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 333 Everglades Protection Area

SPONSOR(S): Aloupis

TIED BILLS: **IDEN./SIM. BILLS:** SB 722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	18 Y, 0 N	Gawin	Moore
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mathews	Jones
3) State Affairs Committee			

SUMMARY ANALYSIS

The Everglades/Florida Bay system covers approximately two million acres in South Florida and contains the largest subtropical wetland in the United States. The area consists of a vast sawgrass marsh dotted with tree islands and interspersed with wet prairies and aquatic sloughs. The Everglades/Florida Bay system plays an important role in providing water to the Biscayne Aquifer, the water supply for many South Floridians. Additionally, the Everglades/Florida Bay system is home to various flora and fauna, many of which are endangered or threatened.

Due to development within the Everglades system, it is less than half the size it was a century ago. In an effort to protect the Everglades ecosystem, the Legislature established the Everglades Protection Area, which is composed of the Water Conservation Areas (WCA 1, WCA 2A, WCA 2B, WCA 3A, and WCA 3B) and Everglades National Park, which also includes Florida Bay.

The Department of Environmental Protection's (DEP) Division of Water Resource Management (division) is charged with enforcing provisions related to oil and gas conservation, overseeing the permitting process, and monitoring oil and gas operations in the state. Drilling for oil and gas can have negative impacts on the environment and human health, such as groundwater contamination, oil spills, and disruption of wildlife corridors.

The bill prohibits DEP from granting a permit to drill for oil or gas within the Everglades Protection Area. The bill further prohibits, without exception, a structure intended for the drilling for, or production of, oil, gas, or other petroleum projects from being permitted or constructed within any portion of the Everglades Protection Area.

The bill does not appear to have a fiscal impact on the state or local governments, but may have an indeterminate negative fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Everglades/Florida Bay System

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

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 Everglades to the Florida Bay.² The present Everglades system has been subdivided by the construction of canals, levees, roads, and other facilities because of efforts to drain the wetland 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.³

To address these issues, the Legislature passed the Everglades Forever Act (EFA) in 1994.⁴ The EFA established long-term goals to restore and protect the Everglades ecosystem and created the Everglades Protection Area, depicted in the figure below,⁵ which is composed of the Water Conservation Areas⁶ (WCA 1,⁷ WCA 2A, WCA 2B, WCA 3A, and WCA 3B), and Everglades National Park, which also includes the Florida Bay.⁸

¹ South Florida Water Management District (SFWMD), *Everglades*, <https://www.sfwmd.gov/our-work/everglades> (last visited Mar. 30, 2021).

² *Id.*

³ *Id.*

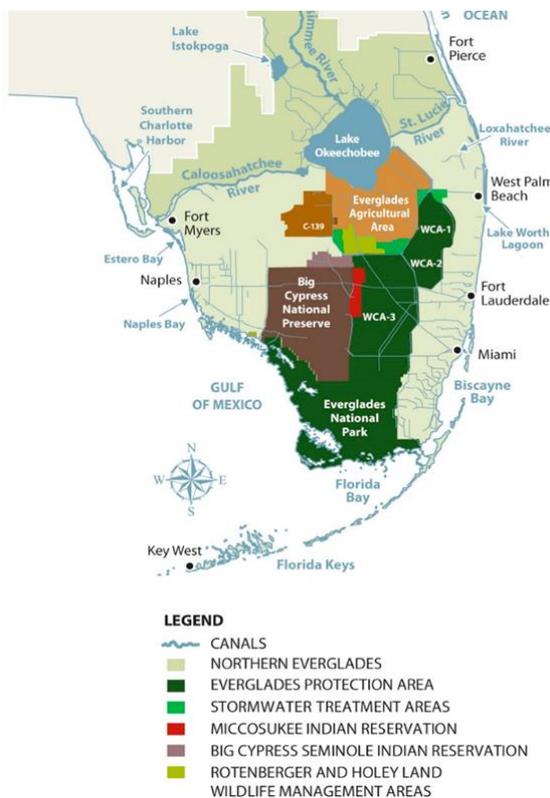
⁴ Chapter 94-115, Laws of Fla.

⁵ SFWMD, *2016 South Florida Environmental Report*, p. 3, available at https://issuu.com/southfloridawatermanagement/docs/2016_sfer_highlights_final?e=4207603/33817547 (last visited Mar. 30, 2021).

⁶ The WCAs were designated primarily to receive flood waters from adjacent areas and store them for beneficial municipal, urban, and agricultural uses. Florida Fish and Wildlife Conservation Commission, *Everglades Water Conservation Areas*, <https://myfwc.com/fishing/freshwater/sites-forecasts/s/everglades-water-conservation-areas/#:~:targetText=Palm%20Beach%2C%20Broward%20and%20Miami,in%20effect%20for%20the%20area> (last visited Mar. 30, 2021).

⁷ WCA 1 is also known as the Arthur R. Marshall Loxahatchee National Wildlife Refuge.

⁸ Section 373.4592(2)(i), F.S.



Water from the Everglades flows to the Biscayne Aquifer⁹, which is a primary water source for many Southeast Floridians.¹⁰

Oil and Gas Production

Oil and gas extraction is the exploration and production of oil and gas from wells. The production process involves the taking of raw natural oil and gas from underground formations,¹¹ which first began in 1859 in northwestern Pennsylvania.¹² Conventional oil and gas resources are found in concentrated underground locations, referred to as reservoirs, located in permeable rock formations, including sandstone and carbonate.¹³ Wells have historically been drilled vertically, straight down into a rock formation to extract the conventional oil and gas resources. In 2019, there were 969,140 producing wells in the U.S. providing over 12.8 million barrels of oil per day.¹⁴

Florida has minor crude oil reserves and accounts for less than 0.1 percent of the nation's crude oil production.¹⁵ Northwest and South Florida are the primary oil and gas producing areas in the state. In 2020, there were 12 producer wells in South Florida and 45 in Northwest Florida.¹⁶ In total, wells in Florida produced approximately 607,444 barrels of oil and 841,268 million cubic feet of gas in 2020.¹⁷

Regulation of Oil and Gas

⁹ National Parks Service (NPS), *Water Water Everywhere*, <https://www.nps.gov/ever/learn/kidsyouth/water-water-everywhere.htm> (last visited Mar. 30, 2021).

¹⁰ SFWMD, *Groundwater Modeling*, <https://www.sfwmd.gov/science-data/gw-modeling> (last visited Mar. 30, 2021).

¹¹ United States Environmental Protection Agency, *Overview of the Natural Oil and Gas Industry*, <https://www.epa.gov/natural-gas-star-program/overview-oil-and-natural-gas-industry> (last visited Mar. 30, 2021).

¹² American Oil & Gas Historical Society, *First American Oil Well*, <https://aoghs.org/petroleum-pioneers/american-oil-history/> (last visited Mar. 30, 2021).

¹³ Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, 2 (Apr. 22, 2015), available at <https://fas.org/sqp/crs/misc/R43148.pdf> (last visited Mar. 30, 2021).

¹⁴ United States Energy Information Administration (EIA), *U.S. Oil and Natural Gas Wells by Production Rate* (Dec. 23, 2020), <https://www.eia.gov/petroleum/wells/> (last visited Mar. 30, 2021).

¹⁵ EIA, *Florida*, <https://www.eia.gov/state/analysis.php?sid=FL#66> (last visited Mar. 30, 2021).

¹⁶ DEP, *State Production Data 2000 to 2020*, available at <https://floridadep.gov/water/oil-gas/documents/state-production-data-2000-2020> (last visited Mar. 30, 2021).

¹⁷ *Id.*

States are the principal regulators of oil and gas production activities on state and private lands.¹⁸ The federal government, through the Department of the Interior's Bureau of Land Management (BLM), has responsibility for overseeing oil and gas development on federally managed lands; however, some states require operators on federal public lands within state boundaries to comply with the state's oil and gas rules.¹⁹

Oil and Gas Regulation in Florida

The Department of Environmental Protection's (DEP) Division of Water Resource Management (division) is charged with enforcing provisions related to oil and gas conservation,²⁰ overseeing the permitting process, and monitoring oil and gas operations in Florida.²¹

While cities and counties do not operate oil and gas permitting programs in Florida, some cities and counties, through their land use regulations or zoning ordinances, require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.²² When authorizing oil and gas activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.²³

Permitting Process

DEP's Oil and Gas Program²⁴ processes applications for oil and gas permits for the drilling of new wells, geophysical exploration, and operational permits.²⁵ The Legislature has established areas where no permits for drilling for oil or gas may be granted.²⁶ When issuing permits for oil and gas exploration or extraction, the division must consider the nature, character, and location of the lands involved; the nature, type, and extent of ownership of the applicant; and the proven or indicated likelihood of the presence of oil, gas, or related minerals on a commercially viable basis.²⁷ DEP also must ensure that all precautions are taken to prevent the spillage of oil or other pollutants in all phases of drilling for and extracting oil, gas, or other petroleum products.²⁸ Additionally, DEP is required to adopt rules to require the wells to be drilled, cased, and plugged in a manner that prevents the escape of oil or other petroleum products from one stratum to another.²⁹

Before any person begins work other than environmental assessments or surveying at the site of a proposed drilling operation, a permit to drill is required and a preliminary site inspection must be conducted by DEP.³⁰ In addition to the drilling permit, a permit to operate the well must be obtained before the well is used for its intended purpose.³¹ Operating permits are valid for the life of the well, although each operating well and permit must be recertified every five years from the permit date.³² Each application and subsequent recertification must include: the appropriate fee; bond or security coverage; a spill prevention and cleanup plan; flowline specifications and an installation plan;

¹⁸ Michael Ratner & Mary Tiemann, Cong. Research Serv., R 43148, *An Overview of Unconventional Oil and Natural Gas: Resources and Federal Actions*, 2 (Apr. 22, 2015), available at <https://fas.org/sgp/crs/misc/R43148.pdf> (last visited Mar. 30, 2021).

¹⁹ *Id.*

²⁰ Section 377.21, F.S.

²¹ Section 377.22, F.S. See Rules 62C-25 - 62C-30, F.A.C., for oil and gas permitting and operating regulations.

²² See, e.g., LEE COUNTY, FLA., LAND DEV. CODE §§ 34-1651 and 34-145(c) (2021),

https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH34ZO (last visited Mar 30, 2021).

²³ *Id.*

²⁴ The permitting authority for oil and gas activity is within DEP. Primary responsibilities of the program include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

²⁵ DEP, *DEP 101: Oil and Gas Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-oil-and-gas-permitting> (last visited Mar. 30, 2021); DEP, *Oil and Gas Program*, <https://floridadep.gov/water/oil-gas> (last visited Mar. 30, 2021).

²⁶ Section 377.24(5)-(9), F.S., specifies that oil and gas drilling and exploration are not authorized or are subject to local governmental approval in tidal waters, near improved beaches, and within municipal boundaries.

²⁷ Section 377.241, F.S.

²⁸ Section 377.22, F.S.

²⁹ *Id.*

³⁰ Rule 62C-26.003, F.A.C.

³¹ Rule 62C-26.008, F.A.C.

³² *Id.*

containment facility certification; and additional reporting and data submissions, such as driller's logs and monthly well reports.³³

Once an oil and gas application is received, DEP has up to 30 days to issue a Request for Additional Information or determine the application is complete.³⁴ As part of the initial application completeness review process, DEP sends copies of oil and gas applications to potentially interested governmental agencies for review and comment.³⁵ When the application is deemed complete, DEP then evaluates the application for compliance with oil and gas regulations and assesses whether the proposed operation is protective of the environment and human health and safety.³⁶ Upon receipt of a completed application, DEP must approve or deny the permit within 90 days.³⁷

Oil and Gas Drilling Concerns

There are various environmental and human impact concerns related to oil and gas drilling. The U.S. Geological Survey (USGS) has raised the following environmental concerns related to drilling for oil:

- Land surface disturbance;
- The amount of water initially required to hydraulically fracture a well;
- Disposal of the poor-quality water produced with the oil;
- Air pollution;
- Groundwater contamination;
- Oil spills; and
- Disruption of wildlife corridors.³⁸

Ground water contamination concerns are especially pertinent in the Everglades Protection Area due to the water flow from the Everglades to the Biscayne Aquifer, where any contamination in the water upstream could flow to the Biscayne Aquifer, impacting drinking water.³⁹ Additionally, the Everglades is home to more than 180 endangered and threatened species that could be impacted by habitat disruption.⁴⁰

Effect of the Bill

The bill prohibits DEP from granting a permit to drill for oil or gas within the Everglades Protection Area.

The bill prohibits, without exception, a structure intended for the drilling for, or production of, oil, gas, or other petroleum projects from being permitted or constructed within any portion of the Everglades Protection Area.

B. SECTION DIRECTORY:

Section 1. Amends s. 377.24, F.S., to prohibit DEP from granting certain permits within the Everglades Protection Area.

Section 2. Amends s. 377.242, F.S., to prohibit certain structures from being permitted or constructed within any portion of the Everglades Protection Area.

Section 3. Provides an effective date of July 1, 2021.

³³ *Id.*

³⁴ DEP, *DEP 101: Oil and Gas Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-oil-and-gas-permitting> (last visited Mar. 30, 2021).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ USGS, *What are the environmental considerations of drilling for oil?*, https://www.usgs.gov/faqs/what-are-environmental-considerations-drilling-oil?qt-news_science_products=0#qt-news_science_products (last visited Mar. 30, 2021).

³⁹ Rebecca Renner, *Why Planned Oil Drilling in the Everglades Has Florida Cities Worried*, Bloomberg CityLab (Feb. 20, 2019), <https://www.bloomberg.com/news/articles/2019-02-20/proposed-oil-drilling-in-everglades-worries-floridians> (last visited Mar. 30, 2021).

⁴⁰ NPS, *Everglades Threatened and Endangered Species*, <https://www.nps.gov/ever/learn/nature/techecklist.htm> (last visited Mar. 30, 2021).

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 it prohibits drilling for oil and gas within the Everglades Protection Area.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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 or municipalities.

2. Other:

Takings Clause

The U.S. Constitution provides that a taking occurs whenever private property is taken for public use without just compensation.⁴¹ Regulatory restrictions can be so burdensome that they rise to a taking; as such, Florida case law recognizes a cause of action for regulatory takings.⁴² The consideration of whether a taking has occurred typically involves an ad hoc, fact-specific analysis to determine whether economic injuries caused by government action must be compensated. In these cases, courts will apply a balancing test, balancing the public's interest against the private property owner's interest. The following factors are used in analyzing the interests of both the state and the private property owner: (1) the character of the governmental action; (2) the extent to which the regulation has interfered with reasonable and distinct investment-backed expectations; and (3) the economic impact of the regulation on the claimant.⁴³

⁴¹ *Penn. Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 123 (1978).

⁴² *See Coastal Petroleum Co. v. Florida Wildlife Federation, Inc.*, 766 So. 2d 226 (1999).

⁴³ *Penn. Cent. Transp. Co.*, 438 U.S. 104 at 123.

The bill may implicate the Takings Clause because it prohibits oil and gas drilling in the Everglades Protection Area. Protection of the Everglades may be considered a significant state interest, and this would likely be considered by a court when evaluating whether the prohibition rises to a taking.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.