

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 Rules

BILL: CS/CS/SB 192

INTRODUCER: Environment and Natural Resources Committee; Community Affairs Committee; and Senator Avila and others

SUBJECT: Everglades Protection Area

DATE: March 29, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
3.	<u>Hunter</u>	<u>Twogood</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 192 requires any proposed comprehensive plan or plan amendment by a county as defined in s. 125.011(1), F.S., or any municipality located therein, applying to land within, or within 2 miles of, the Everglades Protection Area to be reviewed pursuant to the state coordinated review process.

The Department of Environmental Protection (DEP) is tasked with determining whether the plan or plan amendment will adversely impact the Everglades Protection Area or the Everglades restoration and protection objectives in state law. It has 30 days after receipt of the plan or plan amendment to issue a written determination identifying any adverse impacts.

Before adoption, DEP must coordinate with the Department of Economic Opportunity (DEO), the local government, and the Indian tribes to identify any planning strategies or measures that the local government could include in the proposed plan or plan amendment to eliminate or mitigate any adverse impacts. If any portion of the proposed plan or plan amendment will result in adverse impacts, then the local government must either include planning strategies or measures to eliminate or mitigate the adverse impacts, or not adopt that portion of the proposed plan or plan amendment.

The bill also provides that DEO's compliance determination must be limited to not only the objections raised in the objections, recommendations, and comments report (consistent with

existing law), but also a review of planning strategies or measures adopted pursuant to DEP's review and coordination.

The bill takes effect July 1, 2023.

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

¹ South Florida Water Management District (SFWMD), *Everglades*, <https://www.sfwmd.gov/our-work/everglades> (last visited March 1, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ SFWMD, *Everglades Restoration Progress*, 1 (2017), available at https://www.sfwmd.gov/sites/default/files/documents/spl_everglades_progress.pdf (last visited March 1, 2023).

⁶ Chapter 94-115, ss. 1-2, Laws of Fla.; Section 373.4592, F.S.

⁷ Section 373.4592, F.S.; University of Florida, Institute of Food and Agricultural Sciences (UF-IFAS), Michael T. Olexa et al., *2021 Handbook of Florida Water Regulation: Florida Everglades Forever Act*, 1-2 (2021), available at <https://edis.ifas.ufl.edu/pdf/FE/FE60900.pdf> (last visited March 1, 2023).

⁸ See SFWMD, *Long-Term Plan for Achieving Water Quality Goals*, <https://www.sfwmd.gov/our-work/wq-stas/long-term-plan> (last visited March 1, 2023); see SFWMD, *Restoration Strategies for Clean Water for the Everglades*, <https://www.sfwmd.gov/our-work/restoration-strategies> (last visited March 1, 2023).

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



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 create the

⁹ (UF-IFAS), Michael T. Olexa et. al., *2021 Handbook of Florida Water Regulation: Florida Everglades Forever Act*, 1 (2021), available at <https://edis.ifas.ufl.edu/pdf/files/FE/FE60900.pdf> (last visited March 1, 2023); 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 March 1, 2023); DEP, *Comprehensive Everglades Restoration Plan (CERP)*, <https://floridadep.gov/eco-pro/eco-pro/content/comprehensive-everglades-restoration-plan-cerp> (last visited March 1, 2023).

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. *Id.*

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 March 1, 2023).

¹² Florida Fish and Wildlife Conservation Commission, *Everglades Water Conservation Areas*, <https://myfwc.com/fishing/freshwater/sites-forecasts/s/everglades-water-conservation-areas/> (last visited March 1, 2023).

¹³ National Park Service, *Everglades National Park*, <https://www.nps.gov/ever/index.htm> (last visited March 1, 2023); SFWMD, *2016 South Florida Environmental Report*, 3 (2016), available at https://issuu.com/southfloridawatermanagement/docs/2016_sfer_highlights_final?e=4207603/33817547 (last visited Mar. 14, 2023). 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 March 1, 2023).

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

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, residential 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 (last visited March 1, 2023).

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 March 1, 2023).

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. *Id.*

²⁰ *Id.*

²¹ Chapter 85-55, Laws of Fla.

²² Section 163.3177, F.S.

All development, both public and private, and all development orders²³ approved by local governments must be consistent with the local government's comprehensive plan.²⁴ 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.²⁵ Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.²⁶

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.²⁷ Plan amendments are now placed into either the "Expedited State Review Process" or the "State Coordinated Review Process."²⁸ 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;²⁹
- 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;³⁰
- 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;³¹
- Updates to comprehensive plans based on periodic evaluations of compliance with current state requirements;³²
- 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;³³ or
- New plans for newly incorporated municipalities.³⁴

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.³⁵ Then, the local governing

²³ "Development order" means any order granting, denying, or granting with conditions an application for a development permit. See s. 163.3164(15), F.S. "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. See s. 163.3164(16), F.S.

²⁴ Section 163.3194(3), F.S.

²⁵ Section 163.3177(6)(a), F.S.

²⁶ *Id.*

²⁷ Chapter 2011-139, s. 17, Laws of Fla.

²⁸ Section 163.3184(3) and (4), F.S.

²⁹ See s. 380.05, F.S.

³⁰ See s. 163.3248, F.S.

³¹ See s. 163.3245, F.S.

³² See s. 163.3191, F.S.

³³ See s. 380.06, F.S.

³⁴ Section 163.3184(2)(c), F.S.; see s. 163.3167, F.S.

³⁵ Sections 163.3174(4)(a), F.S.

body must hold a public hearing to consider transmittal of the proposed plan or plan amendment.³⁶ 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”:

- DEO, designated as the “state land planning agency”;³⁷
- 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.³⁸

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.³⁹ 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.⁴⁰ 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.⁴¹ Alternatively, the state coordinated review requires agencies to provide comments to DEO.⁴² 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.⁴³

In both processes, comments from each governmental entity must be limited to their statutory purview.⁴⁴ 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.⁴⁵

³⁶ Sections 163.3184(11), F.S.

³⁷ Section 163.3164(44), F.S.

³⁸ Section 163.3184(1)(c) and (3)(b)1., F.S.

³⁹ 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.

⁴⁰ *Id.*

⁴¹ Section 163.3184(3)(b)2.

⁴² Section 163.3184(4)(c)-(d), F.S.

⁴³ Section 163.3184(4)(d), F.S.; see DEO, *State Coordinated Review Amendment Process*, http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/comp-plan/statecoordinatedreviewprocessflowchart.pdf?sfvrsn=d6a766b0_2 (last visited March 1, 2023).

⁴⁴ Section 163.3184(3)(b)3.-4. and (4)(c), F.S.

⁴⁵ Section 163.3184(3)(b)4.a., F.S.

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.⁴⁶ The second 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.⁴⁷

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.⁴⁸ 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.⁴⁹

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.⁵⁰ 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.⁵¹ 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.⁵²

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 163.3184, F.S., to require any proposed plan or plan amendment by a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County)⁵³ or any municipality located therein, applying to land within, or within two miles of, the Everglades Protection Area

⁴⁶ Section 163.3184(1), F.S.

⁴⁷ 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.

⁴⁸ Section 163.3184(3)(c) and (4)(e), F.S.

⁴⁹ *Id.*

⁵⁰ Section 163.3184(4)(e)4., F.S.

⁵¹ Section 163.3184(4)(e)4.-5., F.S.

⁵² Section 163.3184(3)(c)4., F.S.

⁵³ Section 125.011(1), F.S., defines county as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VII of the Constitution of 1885, as preserved by Art. VIII, s. (6)(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred." Counties authorized to operate under a home rule charter pursuant to the constitutional provisions are Monroe County, Miami-Dade and Hillsborough Counties. Of these, only Miami-Dade County currently operates under a home-rule charter and meets the definition of "county" in s. 125.011(1), F.S.

as defined in state law, to be reviewed pursuant to the state coordinated review process. The review must be performed by the Department of Environmental Protection (DEP) in consultation with all federally recognized Indian tribes in the state.

Under the bill, DEP must determine whether the proposed plan or plan amendment by a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any municipality located therein, or any portion thereof, will adversely impact the Everglades Protection Area or the Everglades restoration and protection objectives identified in s. 373.4592, F.S. DEP must issue a written determination to the Department of Economic Opportunity (DEO), the local government, and all federally recognized Indian tribes in the state within 30 days after receipt of the proposed plan or plan amendment. The determination must identify any adverse impacts and may be provided as part of DEP's reviewing comments.

Additionally, before adoption of the proposed plan or plan amendment, DEP must coordinate with DEO, the local government, and all federally recognized Indian tribes in the state to identify any planning strategies or measures that the local government could include in the proposed plan or plan amendment to eliminate or mitigate any adverse impacts to the Everglades Protection Area or the Everglades restoration and protection objectives identified in s. 373.4592, F.S.

If DEP determines that any portion of the proposed plan or plan amendment will adversely impact the Everglades Protection Area or the Everglades restoration and protection objectives identified in s. 373.4592, F.S., the local government must modify that portion of the proposed plan or plan amendment to include planning strategies or measures to eliminate or mitigate such adverse impacts before adopting the proposed plan or plan amendment, or that portion of the proposed plan or plan amendment may not be adopted.

During the review process for a plan amendment by a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any municipality located therein, a local government may consider an application for a development permit or development order that is contingent upon adoption of the plan amendment.

The bill provides that comprehensive plan amendments by a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any municipality located therein that apply to any land within, or within 2 miles of, the Everglades Protection Area must be transmitted within 10 working days after the second public hearing to DEP.

The bill also provides that DEO's compliance determination must be limited not only to the objections raised in the objections, recommendations, and comments report (consistent with existing law), but also a review of planning strategies or measures adopted pursuant to the new provision.

Section 2 of the bill amends s. 163.3187, F.S., to:

- Clarify that site-specific text changes relating directly to, and adopted simultaneously with, a small scale future land use map amendment are permissible under that section.
- Provide that a small scale development amendment by a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any municipality located therein may not be adopted for a

property that is located in whole or in part within, or within two miles of, the Everglades Protection Area as defined under state law.

- Provide that within 10 days after the adoption of a small scale development amendment by a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any municipality located therein, a county whose boundaries include any portion of the Everglades Protection Area as defined under state law, and the municipalities within the county, must transmit a copy of the amendment to DEO for recordkeeping purposes.

Section 3 of the bill amends s. 420.615(5), F.S., to implement a conforming change.

Section 4 of the bill provides an effective date of July 1, 2023.

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:

Landowners and private interests seeking to develop land within two miles of the Everglades Protection Area may see an increase in the time to approve such developments.

C. **Government Sector Impact:**

The Department of Environmental Protection – and to a lesser degree local governments, reviewing agencies, and the Department of Economic Opportunity – may incur an indeterminate increase in costs associated with reviewing plans and plan amendments for potential impacts to the Everglades Protection Area.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.3184, 163.3187, and 420.615.

IX. **Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Environment and Natural Resources on March 20, 2023:

The committee substitute limits the scope of the bill to proposed plans and plan amendments located in Miami-Dade County and the municipalities therein. It also allows the time period for consideration of an application for a development permit or order to run concurrently with the review process for a plan amendment.

CS by Community Affairs on March 7, 2023:

The committee substitute limits proposed plans and plan amendments that must follow the state coordinated review process if land is within two miles of the Everglades Protection Area to a county as defined in s. 125.011(1), F.S., or any municipality located therein.

- B. **Amendments:**

None.