

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 Appropriations

BILL: CS/SB 992

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources) and Senator Book

SUBJECT: C-51 Reservoir Project

DATE: March 2, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	Recommend: Fav/CS
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 992 revises provisions relating to the C-51 reservoir project, which is located in western Palm Beach County. Specifically, the bill:

- Adds the phrase “to the extent practicable” to the requirement that the South Florida Water Management District (SFWMD) operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries;
- Requires the operation of Phase I of the 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 of the reservoir project 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 use is in accordance with the SFWMD rules; and
- Authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and 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.
- If any or all of the loan is waived, the DEP will not receive repayment of up to \$30 million depending on what reasonable value the DEP deems appropriate.
- Clarifies that the SFWMD is not responsible for repaying any portion of a loan that is waived pursuant to this bill.

II. Present Situation:

Water Storage Reservoirs

It is the policy of the state that waters in the state are among its basic resources and the Legislature 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.¹ 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.²

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.³ 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.⁴

C-51 reservoir project

The C-51 reservoir project is located in western Palm Beach County on land owned by Palm Beach Aggregates, LLC (PBA). The project consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities. The project will also provide environmental benefits by reducing freshwater discharges to tide⁵ and making additional water available for natural systems.

Phase I of the project will provide 14,000 acre-feet of water storage and costs approximately \$161 million.⁶ The SFWMD has declared Phase I of the C-51 reservoir project as one of its alternative water supply pilot projects, as it is located in the Lower East Coast Regional Planning Area, which is a restricted allocation area.⁷ The water will be used to provide direct aquifer recharge to offset withdrawals from the Biscayne Aquifer. The Broward County Water and Wastewater Services, the City of Sunrise, the City of Lauderhill, and the City of Dania Beach have submitted letters of intent to utilize water made available by Phase I of the C-51 reservoir project.

¹ Section 373.016, F.S.

² Office of Water Policy, Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater, and Excess Surface Water (Senate Bill 536)*, 76 (Dec. 1, 2015), available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan 29, 2018).

³ *Id.* at 78.

⁴ *Id.*

⁵ The C-51 Canal contributes about 50 percent of the freshwater runoff to the Lake Worth Lagoon.

⁶ See Lenhart J. Lindahl, P.E., Assistant Executive Director, South Florida Water Management District (SFWMD), Governing Board Meeting, *C-51 Reservoir O&M Agreement*, slide 3 (Feb. 9, 2017), available at <http://my.sfwmd.gov/webapps/publicMeetings/viewFile/10427> (last visited Jan. 29, 2018).

⁷ Resolution No. 2017-0210, *Enter into an Operation & Maintenance Agreement with Palm Beach Aggregates, LLC for Phase I of the C-51 Reservoir Project*, available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10423> (last visited Jan. 29, 2018).

Phase I of the reservoir project is designed to hydraulically connect to the L-8 Flow Equalization Basin and is dependent upon the SFWMD's regional system. Because of the interconnectedness, the SFWMD agreed to operate, maintain, repair, replace, and rehabilitate Phase I of the project provided the PBA pays the SFWMD for such operation, maintenance, repair, replacement, and rehabilitation.⁸ On February 20, 2017, the SFWMD and the 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 the project upon completion.⁹

Phase II of the C-51 reservoir project is estimated to provide 46,000 acre-feet of water storage and cost approximately \$286 million.¹⁰ Phase II of the project is being considered under some of the alternatives that are being modeled for the Loxahatchee River Watershed Restoration project, which is a project component of the Comprehensive Everglades Restoration Program.¹¹

The SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project site for Phase II of the project or to enter into a public-private partnership.¹² 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.¹³ 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.¹⁴

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

- The SFWMD must 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.¹⁵

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.¹⁶ 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 C-

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See United States Army Corps of Engineers, *Read-Ahead and Reference Document for Loxahatchee River Watershed Restoration Project, Array of Alternative Plans to be Evaluated* (Dec. 13, 2017) available at <http://cdm16021.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/6006> (last visited Jan. 29, 2018).

¹² Section 373.4598, F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

51 reservoir project.¹⁷ 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.¹⁸

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.¹⁹

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 South Florida Water Management District, 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 the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8 of the Florida Administrative Code, to address lower lake management levels and storage under the U.S. Army Corps of Engineers’ Lake Okeechobee Regulation Schedule.²⁰

Another restricted allocation area within the SFWMD’s planning region is the Lower East Coast Regional Planning Area. 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 in implementing the objective of the SFWMD to ensure that water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.²¹

¹⁷ Chapter 2017-10, s. 12, Laws of Fla.

¹⁸ *Id.*

¹⁹ Section 373.4598, F.S.

²⁰ SFWMD, *Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District*, 63 (Sept. 7, 2015), available at https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf (last visited Jan. 30, 2018).

²¹ *Id.* at 55.

III. Effect of Proposed Changes:

The bill adds the phrase “to the 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. The bill requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by the SFWMD. An agreement between the SFWMD and Palm Beach Aggregates, LLC, was adopted in February of 2017.

The bill requires that the water made available by Phase I or Phase II of the reservoir project must be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply. The bill provides that water received from Lake Okeechobee may only be available to support consumptive use permits if such use is in accordance with the rules of the SFWMD.

The bill authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the DEP to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund pursuant to s. 373.475, F.S. The DEP may only authorize such waiver if, at its determination, it has received reasonable value for such waiver. The bill provides that the SFWMD is not responsible for repayment of any portion of a loan that is waived pursuant to this bill.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Depending on if the DEP approves of a waiver of any or all of the loan amount and what reasonable value the DEP deems appropriate, the loan recipient may receive a positive fiscal impact.

C. Government Sector Impact:

If any or all of the loan is waived, the DEP will not receive repayment of up to \$30 million depending on what reasonable value the DEP deems appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4598 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Appropriations on March 2, 2018:**

The committee substitute:

- Requires that the water made available by Phase I or Phase II of the reservoir project must 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 use is in accordance with the rules of the SFWMD, rather than in accordance with the rules for the applicable allocation area defined in s. 373.037(1), F.S.
- Clarifies that the SFWMD is not responsible for repayment of any portion of a loan which is waived pursuant to this bill.

B. Amendments:

None.