

STORAGE NAME: h4071s1z.tr
DATE: June 8, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 4071
RELATING TO: Environmental Protection
SPONSOR(S): Committee on Transportation and Rep. Betancourt
COMPANION BILL(S): CS/SB 986 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 11 NAYS 0
- (2) ENVIRONMENTAL PROTECTION YEAS 9 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 9 NAYS 0
- (4)
- (5)

I. FINAL ACTION STATUS:

On May 28, 1998, CS/HB 4071 was vetoed by the Governor. See part VII. Amendments or Committee Substitute Changes, (page 8) for a summary of committee amendments to the bill and a brief description of issues contained in the bill that passed the Legislature.

II. SUMMARY:

This bill changes a number of provisions related to environmental protection. Primarily, the bill modifies the program that allows the Department of Transportation (DOT) and the Department of Environmental Protection (DEP) to mitigate the impacts to wetlands and other habitats from DOT projects. The bill contains provisions which:

- ▶ Authorize DOT to include additional work program projects in the inventory of habitats beyond the first three years of the work program.
- ▶ Authorize water management districts (WMDs) to use a portion of the mitigation funding received from the DOT to fund development of mitigation plans.
- ▶ Provide that preliminary approval of the mitigation plan by WMDs is not a decision affecting substantial interests that allows a Chapter 120 hearing challenging the approval.
- ▶ Provide that the \$12 million transferred in 1996 from the DOT to DEP for surface water and wetland management purposes will remain available for mitigation credit through FY 2004-05.
- ▶ Allow DEP and WMDs to modify mitigation plans throughout the year to accommodate changes in project schedules or minor projects.
- ▶ Require mitigation plans to address reasons for using or not using mitigation banks.
- ▶ Delete references to using DOT wetland mitigation funds for aquatic and exotic plant programs.

- ▶ Provide criteria and requirements for use of global positioning systems in surveying wetlands.
- ▶ Clarify the process for determining the environmental feasibility of turnpike projects for which DOT is acquiring rights-of-way under its advanced acquisition program.

The bill has no fiscal impact to the state or to local governments. The bill will allow WMDs to pay for the development of mitigation plans, including design, engineering, production and staff support, from mitigation funds received from the DOT. If the bill increases the use of private mitigation banks, operators of private mitigation banks may benefit from the increase.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Currently, DOT submits annually to DEP and WMDs a copy of the adopted work program and an inventory of wetlands and habitats which may be impacted by transportation projects in the first three years of the adopted work program. DOT transfers into the Ecosystem Management and Restoration Trust Fund within DEP \$75,000 for each acre within the WMDs where an impact upon wetlands has been projected. The funds are used by the WMDs for use in mitigation development and implementation activities. WMDs are not currently authorized to use these funds for support and development of mitigation plans, including staff support, design, engineering, and production.

In 1996, DOT transferred \$12 million from the State Transportation Trust Fund to DEP for the surface water improvement management program and to address statewide aquatic and exotic plant problems within wetlands and other surface waters. This was considered an advance upon funds which DOT would have to pay for statewide wetland mitigation until the year 2000. DEP expended a portion of the funds on exotic plant eradication and surface water improvement projects which were not credited toward mitigation of DOT's work program projects. As a result, DEP is indebted to DOT for a portion of those funds, or mitigation credits, and is not able to replace those funds by the year 2000 as required by current law.

Currently, mitigation plans prepared by the WMDs are updated annually to reflect changes in the DOT's work program, and preliminarily approved by the WMD governing board. The plans are then submitted to the Secretary of DEP for final approval.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 373.4137, F.S., to authorize DOT to include additional projects identified in the adopted work program in the inventory of affected wetland habitats submitted to DEP and the WMDs beyond the first 3 years of the 5-year work program. The bill authorizes WMDs to use a portion of the \$75,000 per acre mitigation funds paid by DOT for support and development of mitigation plans, including staff support, design, engineering, and production. The bill deletes a requirement that the mitigation plans address aquatic and exotic plant problems. The bill also requires that mitigation banks operators be consulted during development of annual mitigation plans. Each mitigation plan must also include an explanation of why mitigation banks were or were not used as a mitigation option in the plan.

The bill also provides that preliminary approval of a mitigation plan by the WMD governing board does not constitute a decision that affects substantial interests as provided by Chapter 120, F.S., the Administrative Procedures Act. This clarifies that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval from the Secretary of DEP.

The bill extends the time period that DEP has to use DOT's \$12 million in wetlands mitigation funds to the year 2005 to allow DEP enough time to supplant the funds that were not credited toward the mitigation of DOT projects. The bill eliminates a

requirement that funds not used for wetland mitigation be used for aquatic and exotic plant control programs.

The bill authorizes DEP and the WMDs staff to amend mitigation plans throughout the year, instead of once a year, to anticipate schedule changes or minor projects.

The bill amends s. 373.421, F.S., to provide that surveys of wetland boundaries may be by conventional survey methods or by use of global positioning systems (GPS). The bill requires the use of GPS equipment which is accurate within one meter or better. The GPS operator must either work under the supervision of a registered land surveyor, or be trained in GPS equipment use. The bill further provides that a GPS survey is not to be considered an approximate wetland boundary as provided in DEP rules.

The bill revises s. 338.223, F.S., to clarify that when DOT is acquiring rights-of-way for turnpike projects under its advanced acquisition program, environmental feasibility of the project will be determined prior to the right-of-way being acquired. The bill further provides that environmental feasibility determinations will not be required when right-of-way is acquired for hardship purchases or protective purchases; but DEP will be allowed to submit comments to DOT on such purchases.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

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(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 373.4137, 373.421, and 338.223, F.S.

E. SECTION-BY-SECTION RESEARCH

N/A

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The bill may increase the use of private mitigation banks, but the amount of this increase is indeterminate. To the extent that use of private mitigation banks increases the operators of the banks will benefit.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill provides accuracy requirements for global positioning system equipment used in conjunction with wetland boundary surveys. The number of manufacturers making equipment which meets the bill's requirements is unknown, therefore the effect of these requirements on competition among such companies is unknown.

D. **FISCAL COMMENTS:**

The bill has no fiscal impact to the state or to local governments. The bill will allow WMDs to pay for the development of mitigation plans, including design, engineering, production and staff support, from mitigation funds received from DOT.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities.

VI. COMMENTS:

None

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Transportation considered HB 4071 on April 2, 1998, and adopted a series of amendments which rewrote the bill and added provisions which:

- ▶ Provide criteria and requirements for use of global positioning systems in surveying wetlands.
- ▶ Require mitigation plans to address reasons for using or not using mitigation banks.
- ▶ Delete references to using DOT wetland mitigation funds for aquatic and exotic plant programs.
- ▶ Clarify the process for determining the environmental feasibility of turnpike projects for which DOT is acquiring rights-of-way under its advanced acquisition program.

The bill as amended was reported favorably as a committee substitute.

On April 4, 1998, the Committee on Environmental Protection adopted three amendments to CS/HB 4071:

- ▶ Amendment 1 clarifies and prioritizes the spending of DOT mitigation funds.
- ▶ Amendment 2 removes Section 2 of CS/HB 4071 which provides criteria and requirements for the use of global positioning systems in surveying wetlands.
- ▶ Amendment 3 imposes a mitigation fee on mining activities taking place in the Dade County Lake Belt; assigns the Department of Revenue responsibility for the administration, collection, and enforcement of the mitigation fee; and requires that all mitigation fee proceeds be used to conduct mitigation activities appropriate to offset the loss of the value and functions of the mined wetlands. The subject of Amendment 3 is substantially similar to HB 1667, which was considered and passed by the Committee during the 1997 session.

The Environmental Protection Committee then passed the bill as amended.

The Committee on General Government Appropriations adopted three amendments to CS/HB 4071:

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- ▶ Amendment 1 amends the Environmental Protection Committee amendment #3 to modify the Dade County Lake Belt provisions.
- ▶ Amendment 2 strikes the repayment provision in Chapter 93-213, Laws of Florida regarding the NPDES program.
- ▶ Amendment 3 provides for the use of a Global Positioning System for surveys of delineated wetland boundaries.

CS/HB 4071 as passed by the Legislature changes a number of provisions related to environmental protection. Primarily, the bill modifies the program that allows the Department of Transportation (DOT) and the Department of Environmental Protection (DEP) to mitigate the impacts of DOT projects to wetlands and other habitats. The bill contains provisions which:

- Clarifies and prioritizes the spending of DOT mitigation funds. Provides that the \$12 million transferred in 1996 from the DOT to DEP for surface water and wetland management purposes will remain available for mitigation credit through fiscal year 2004-05. Authorizes water management districts (WMDs) to use a portion of the mitigation funds to pay for development of mitigation plans.
- Allows DEP and WMDs to modify mitigation plans throughout the year to accommodate changes in project schedules or minor projects.
- Clarifies the process for determining the environmental feasibility of turnpike projects for which DOT is acquiring rights-of-way under its advanced acquisition program.
- Repeals the requirement that startup funding for the state NPDES (National Pollutant Discharge Elimination System) Program be repaid to the Pollution Recovery Trust Fund.
- Provides for a mitigation fee of 5 cents per ton to be imposed on limerock and sand mining in the Dade County Lake Belt. The fee is imposed effective October 1, 1998, and will be adjusted annually based on a cost-growth index. The Department of Revenue will be responsible for the administration and collection of the mitigation fee. All fee proceeds must be used by the South Florida Water Management District to conduct mitigation activities.
- Provides for certifying the location of wetland delineation determinations.
- Specifically authorizes the South Florida Water Management District to acquire lands by eminent domain for the Kissimmee River Project and the C-111 Project. It allows for the exercise of eminent domain pursuant to federal law so long as no right, privilege, or compensation an individual or entity would otherwise have under state law is diminished.
- Provides that suits against DOT may be brought on any claim under contract for work done based on an express provision or implied covenant of a written agreement, except that no claim may be based on oral modification of a written contract or agreement.

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VIII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

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Phillip B. Miller

John R. Johnston

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Prepared by:

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W. Ray Scott

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AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
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Prepared by:

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FINAL RESEARCH PREPARED BY COMMITTEE ON TRANSPORTATION:

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