

STORAGE NAME: h0991s2a.ag

DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
AGRICULTURE
ANALYSIS**

BILL #: CS/CS/HB 991

RELATING TO: Lake Okeechobee

SPONSOR(S): Committee on Environmental Protection, Committee on Water and Resource Management, Rep. Pruitt and others

TIED BILL(S): HB 1189

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

- (1) WATER and RESOURCE MANAGEMENT YEAS 10 NAYS 0
 - (2) ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (3) AGRICULTURE YEAS 9 NAYS 0
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

CS/CS/HB 991 provides for management of the Lake Okeechobee watershed through phased implementation of phosphorus load reductions; construction of stormwater treatment areas, reservoir-assisted stormwater treatment areas, and other detention/treatment facilities; comprehensive evaluation and monitoring of the water quality in the Lake Okeechobee watershed; development of "best management practices" (or BMPs) for non-point agricultural and non-agricultural sources within the watershed; identification of invasive exotic species and implementation of measures to protect the native flora and fauna; and an internal phosphorus load removal feasibility study and subsequent implementation of measures to reduce the internal phosphorus loads. It also provides for permitting of both structures discharging to Lake Okeechobee, as well as for water quality treatment/detention facilities included in the Lake Okeechobee Construction Project.

The bill creates an exemption from regulation under Part IV, Chapter 373, Florida Statutes, for environmental restoration or water quality improvement measures on agricultural lands if such measures have minimal or insignificant individual or cumulative adverse impacts on the water resources of the state. The same exemption is created for interim measures or BMPs adopted pursuant to ss. 403.067, F.S., that are by rule designated as having minimal individual or cumulative adverse impacts on the water resources of the state.

The bill also clarifies how total maximum daily loads (TMDLs) will be calculated and allocated, and makes technical and clarifying changes to the process for implementing TMDL allocations.

The Department of Agriculture and Consumer Services estimates that it will need \$440,262 in FY 2000-01 and \$345,396 in subsequent years to implement provisions of CS/CS/HB 991. There is no appropriation in the bill for this purpose because the necessary funding is included in a \$38.5 million Lake Okeechobee surface water restoration funding request by the South Florida Water Management District (District). The District estimates that it will need 30 positions and \$4.25 million in non-recurring funds in the District's FY 2001 budget to meet its responsibilities under the bill.

CS/CS/HB 991 provides that the act will take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Overview

The *Lake Okeechobee Action Plan* (published December 6, 1999), developed by the Lake Okeechobee Issue Team of the South Florida Ecosystem Restoration Working Group, provides an overview of the problems facing Lake Okeechobee, as well as strategies and specific recommendations for addressing each of the major problems identified in the report. Current conditions within the lake are attributed to three major issues:

- Watershed phosphorus loading;
- Internal phosphorus loading; and
- Littoral vegetation and high water levels.

Despite past and continuing efforts to reduce phosphorus loading in the watershed, the current loading to the lake is considered in excess of the amount of phosphorus that even a healthy, functioning Lake Okeechobee could be expected to assimilate without adverse impacts. Although the relative contributions of individual sources have not been allocated, agricultural activities are believed to be the major contributor of phosphorus to the lake. In 1987, the Department of Environmental Protection (Department) adopted the "Dairy Rule" in order to reduce the discharge of phosphorus from dairy farms and, in 1989, the District adopted the "Works of the District Rule" to regulate phosphorus discharges from all land uses except dairies. Implementation of these rules, as well as the "Dairy Buy-Out Program," resulted in a period of declining phosphorus loads. However, in recent years this trend has reversed and loads increased through most of the 1990's.

The problem of excessive watershed phosphorus loading is compounded by excessive amounts of phosphorus within the lake itself. As a result, it is generally acknowledged that controlling external phosphorus loading alone will not result in the recovery of the lake unless steps are taken to reduce the lake's internal load. One potential means of addressing the internal load is by sediment dredging, though research is needed to determine if such dredging is even feasible.

Due to both expansion of exotic and nuisance vegetation, as well as water level changes, the native littoral vegetation community of Lake Okeechobee has been adversely impacted. District scientists believe the water quality and water level problems serve to compound the

adverse effects that either would cause in the absence of the other. Thus, an overall strategy for restoring and protecting the littoral vegetation community should include eradication and control of exotic and nuisance species, as well as water level and water quality changes.

Lake Okeechobee Discharge Structure Permits

In May 1999, it became widely known that a number of District structures discharging to Lake Okeechobee had been operating under an incomplete application for renewal of a permit which had been due to expire in 1988. Although the structures continued to be subject to conditions of the permit, there was some concern that they were "unpermitted." The Department and District have been attempting to resolve this permitting issue, but to date the status of the permit remains largely unchanged.

The Everglades Forever Act (s. 373.4592, F.S.) imposes specific duties and responsibilities upon landowners within the Everglades Agricultural Area. Pursuant to s. 373.4592(4)(a)8, F.S., East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agriculture lease number 3420 are directed to divert their discharges to the appropriate stormwater treatment area upon its completion. Each of these entities is currently discharging to Lake Okeechobee under particular conditions (primarily rainfall and water levels) as specified in an operating schedule that each of these entities is subject to as part of a consent agreement between them and the Department.

Total Maximum Daily Loads (TMDLs)

Chapter 99-223, Laws of Florida, the Florida Watershed Restoration Act, provided for restoration of Florida's waters through establishment and implementation of TMDLs. The Department is required to assess water quality of surface waters; identify surface waters or segments that do not meet water quality standards; and establish TMDLs for these "impaired" surface waters or segments. Subsequent to establishment of the TMDL, the total load is to be allocated to various point and non-point sources within the applicable watershed.

Pursuant to the settlement of a lawsuit regarding TMDLs (Florida Wildlife Federation et al v. Carol Browner et al., Case No. 98-356-CIV-Stafford), the Environmental Protection Agency (EPA) was required by December 31, 1999, to approve a state established TMDL for phosphorus for Lake Okeechobee; otherwise, EPA was required to propose the TMDL itself. The Department did not meet the court-imposed deadline, and EPA has proposed the TMDL, currently subject to a public comment period. Meanwhile, the Department has initiated its own process for establishing the TMDL. As these developments have occurred, several issues regarding establishment and implementation of TMDLs have arisen, including the definition of "assimilate;" the Department's authority to allocate loads to broad categories of point and non-point sources; the role of the water management districts; authorization for use of basin plans to implement TMDLs; and to what degree the Department has discretion regarding development of basin plans.

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 991 provides for immediate implementation of the Lake Okeechobee Protection Program, whose purpose is twofold. First, the program will serve to coordinate and expedite existing programs and projects to achieve initial phosphorus load reductions. Second, the program provides for planning, research, and monitoring that will serve to create a long-term framework for achieving subsequent phosphorus load reductions.

The Lake Okeechobee Protection Program includes the following components:

- The Lake Okeechobee Protection Plan is required to be completed by January 1, 2004, and will provide an implementation plan for subsequent phosphorus load reductions beyond those achieved through initial implementation of the program. The plan is to be based upon relevant information resulting from other components of the program and completed in accordance with ss. 373.451-373.459, Florida Statutes (Surface Water Improvement and Management, or SWIM, provisions).
- The Lake Okeechobee Construction Program shall consist of stormwater treatment areas, reservoir-assisted stormwater treatment areas, and other detention/treatment facilities within the Lake Okeechobee watershed. Phase I will consist of projects within priority basins identified in the *Lake Okeechobee Action Plan*. By January 1, 2004, a plan will be completed for Phase II of the construction program. Based upon an evaluation of any further phosphorus load reductions necessary to achieve the program's objectives, additional facilities would potentially be constructed within both the priority basins and other basins.
- The Lake Okeechobee Watershed Phosphorus Control Program will provide a comprehensive approach to reducing phosphorus loads. BMPs shall be developed for agricultural non-point sources and non-agricultural non-point sources of phosphorus within the watershed. The BMPs are to be implemented in accordance s. 403.067, F.S., (the total maximum daily load, or TMDL, provisions), on an expedited basis. The program will also address domestic wastewater disposal, land application of domestic waste residuals, and alternative nutrient reduction technologies.
- The Lake Okeechobee Research and Water Quality Monitoring Program will comprehensively evaluate water quality in the Lake Okeechobee Watershed and provide ongoing monitoring.
- The Lake Okeechobee Exotic Species Control Program will identify invasive exotic species and implement measures to protect native flora and fauna.
- The Lake Okeechobee Internal Phosphorus Management Program will conduct an internal phosphorus load removal feasibility study and subsequently implement measures to reduce internal phosphorus loads.

CS/CS/HB 991 also provides for permitting of both structures discharging to Lake Okeechobee, as well as for facilities included in the Lake Okeechobee Construction Project. Such permits are to be required in lieu of all other permits under Chapters 373 and 403, F.S., except for National Pollutant Discharge Elimination System (NPDES) permits. The intent is to streamline and consolidate permit requirements and to minimize any delays in construction of detention/treatment facilities in the Lake Okeechobee Watershed. By September 1, 2000, owners or operators of existing structures discharging into or from Lake Okeechobee are required to apply for permits. East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agriculture lease number 3420 are required to apply for permits within 90 days of the completion of their respective plans to divert their discharges to the appropriate stormwater treatment area.

The bill creates an exemption from regulation under Part IV, Chapter 373, F.S., for environmental restoration or water quality improvement measures on agricultural lands if such measures have minimal or insignificant individual or cumulative adverse impacts on

the water resources of the state. The same exemption is created for interim measures or BMPs adopted pursuant to s. 403.067, F.S., that are by rule designated as having minimal individual or cumulative adverse impacts on the water resources of the state.

In addition, the bill authorizes the District to manage lands it acquires for the Kissimmee River Headwaters Revitalization Project in a manner consistent with surrounding parks and preserves owned by the state. In addition, the District is encouraged to acquire less-than-fee title for such lands, provided the overall project objectives are met and Everglades restoration objectives are advanced. It also authorizes the District to consider income from the use of property for permanent plantings in appraising the value of such lands to be acquired from willing sellers.

The bill provides the following "assurances:"

- No existing water quality standard is modified.
- Authority otherwise granted to agencies pursuant to Chs. 373 and 403, F.S., is not restricted.
- No provision of the Everglades Forever Act (s. 373.4592, F.S.) is modified.
- The authority and powers of the Seminole Tribe of Florida and its existing legal rights are not affected.

Finally, the bill makes a number of technical and clarifying changes to s. 403.067, F.S., that are consistent with the process the Department has implemented for establishing the TMDL for Lake Okeechobee. These provisions clarify the process for calculating and allocating TMDLs and for implementing TMDL allocations.

The bill provides that the act shall take effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Substantially amends s. 373.4595, F.S., providing legislative findings and intent; providing definitions; providing for creation and implementation of the Lake Okeechobee Protection Program, consisting of the Lake Okeechobee Protection Plan, the Lake Okeechobee Construction Project, the Lake Okeechobee Watershed Phosphorus Control Program, the Lake Okeechobee Research and Water Quality Monitoring Program, the Lake Okeechobee Exotic Species Control Program, and the Lake Okeechobee Internal Phosphorus Management Program; requiring an annual report; and providing for Lake Okeechobee Protection Permits.

Section 2: Amends s. 373.406, F.S., providing exemptions from Part IV, chapter 373, F.S., permits for specified activities that have minimal individual or cumulative adverse impacts to the state's water resources.

Section 3: Amends s. 403.067(6) and (7), F.S., providing technical and clarifying changes.

Section 4: Provides that the South Florida Water Management District may manage certain lands in a manner consistent with surrounding state parks and preserves, that less-than-fee title be acquired for such lands under specified conditions, and that the District may consider certain factors in appraising such lands to be acquired from willing sellers.

Section 5: Provides that the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Agriculture and Consumer Services estimates that it will need \$440,262 in FY 2000-01 and \$345,396 in subsequent years to implement provisions of CS/HB 991. There is no appropriation in the bill for this purpose because the necessary funding is included in a \$38.5 million Lake Okeechobee surface water restoration funding request made by the District.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The District estimates that it will need 30 positions and \$4.25 million in non-recurring funds in the District's FY 2001 budget to meet its responsibilities under the bill. Further, the District estimates that in subsequent years it will require an additional 34 positions and \$19.9 million in non-recurring expenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Pursuant to s. 403.067(7)(d), F.S., the Department of Agriculture and Consumer Services (DACS) is authorized to develop and adopt rules for the development of interim measures, BMPs or other tools necessary to achieve levels of pollution reduction established by the Department of Environmental Protection pursuant to s. 403.067(6)(b), F.S., for agricultural non-point sources. CS/CS/HB 991 directs DACS to initiate rule development, as provided in s. 403.067(7)(d), F.S., for the Lake Okeechobee watershed. By July 1, 2001, DACS must initiate rulemaking requiring entities within the watershed which land-apply animal manure to develop conservation or nutrient management plans that limit application, based on phosphorus loading. The bill also requires that the rule contain thresholds for requiring conservation and nutrient management plans and criteria for the contents of those plans.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 14, 2000, the Committee on Water and Resource Management adopted a "strike- everything" amendment to HB 991, incorporating technical changes and the provisions related to TMDL establishment and implementation of TMDLs. The Committee then adopted HB 991 as a committee substitute.

On March 23, 2000, the Committee on Environmental Protection adopted 12 amendments to CS/HB 991. The amendments made the following changes to the bill:

Amendment #1 added clarifying language regarding thresholds and criteria for conservation and nutrient management plans.

Amendment #2 established a deadline for submission of permit applications for discharge structures that are subject to provisions of the Everglades Forever Act.

Amendment #3 restored existing language in s. 373.495, F.S., specifying that the District may not divert waters to the Indian River and Caloosahatchee that will harm those waters and extended such protection to the St Lucie River, and provided that the Everglades Forever Act will not be modified by any provision in the bill.

Amendment #4 authorized the district to consider income from the use of property for permanent plantings when appraising the value of lands in the Upper Kissimmee basin to be acquired from willing sellers.

Amendment #5 provided conforming language for TMDL provisions of the bill.

Amendment #6 provided conforming language for permitting provisions of the bill.

Amendment #7 specified permitting criteria for discharge structures that are subject to provisions of the Everglades Forever Act.

Amendment #8 preserved the power and authority of the Seminoles Tribe of Florida and its existing legal rights.

Amendment #9 reinstated the due date for a required DEP report on TMDL implementation.

Amendment #10 added a requirement for the identification of potential impacts to listed species in the implementation plan for Phase II of the Lake Okeechobee Construction Project.

Amendment #11 added a summary of habitat conditions to the required annual report.

Amendment #12 added a requirement that impacts to listed species resulting from the Lake Okeechobee Construction Project be minimized and mitigated, as appropriate

The Committee then adopted CS/HB 991 as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON WATER AND RESOURCE MANAGEMENT:

Prepared by:

W. Ray Scott

Staff Director:

Joyce Pugh

AS REVISED BY THE COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

W. Ray Scott

Staff Director:

Wayne S. Kiger

AS FURTHER REVISED BY THE COMMITTEE ON AGRICULTURE:

Prepared by:

Susan D. Reese

Staff Director:

Susan D. Reese