STORAGE NAME: h0991s1b.wrm
DATE: March 15, 2000

HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER AND RESOURCE MANAGEMENT
ANALYSIS

BILL #: CS/HB 991

RELATING TO: Lake Okeechobee

SPONSOR(S): 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
(3) AGRICULTURE
(4) GENERAL GOVERNMENT APPROPRIATIONS
(5)

I. SUMMARY:

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 within priority basins; 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 Watershed.

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, extends the deadline on the Department of Environmental Protection's report to Legislature on TMDL allocations until February 1, 2002 (1-year extension), and makes technical and clarifying changes to the process for implementing TMDL allocations.

The Department of Agriculture and Consumer Services (DACS) 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 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/HB 991 provides that the act will take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

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 have 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 considerable research will be 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 that 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 without a valid permit since 1988, when the permit in effect at that time expired. Although the structures continued to be subject to the conditions of the expired 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.

Total Maximum Daily Loads (TMDLs)

Chapter 99-223, Laws of Florida, the Florida Watershed Restoration Act, provided for the restoration of Florida's waters through the establishment and implementation of TMDLs. The Department is required to assess the 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 the establishment of the TMDL, the total load is to be allocated to the 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 approved a state established TMDL for phosphorus for Lake Okeechobee; otherwise, EPA was required to propose the TMDL. The Department did not meet the court-imposed deadline and EPA has proposed the TMDL, which is 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 the 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 the use of basin plans to implement TMDLs; and to what degree the Department has discretion regrading the development of basin plans.

C. EFFECT OF PROPOSED CHANGES:

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 the 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 the 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 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 the 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 the 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 the internal phosphorus loads.

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 requirement and to minimize any delays in the construction of detention/treatment facilities in the Lake Okeechobee Watershed.

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 that the overall project objectives are met and that Everglades restoration objectives are advanced.

Finally, the bill make 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 include:

- Clarification of the process for calculating and allocating TMDLs;

- Extending the deadline on the Department's report to Legislature on TMDL allocations until February 1, 2002 (1-year extension); and

- Technical and clarifying changes to the process 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 the 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 and extending a report deadline.

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

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 (DACS) 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. Ifurther, 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:

CS/HB 991 does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 991 does not reduce the authority that municipalities or counties have to raise revenues.

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

CS/HB 991 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

CS/HB 991 gives DACS authority to develop and adopt rules for the development of interim measures, BMPs or other tools for agricultural non-point source to assist in the reduction of phosphorus loads to Lake Okeechobee.

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.

VII. SIGNATURES:

COMMITTEE ON WATER AND RESOURCE MANAGEMENT:

Prepared by:	Staff Director:
W. Ray Scott	Joyce Pugh