HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1893 (PCB NR-03a) Everglades Restoration
SPONSOR(S): Committee on Natural Resources
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Natural Resources	16 Y, 1 N	Camechis	Lotspeich
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The 1994 Everglades Forever Act (EFA) set into motion an aggressive and comprehensive restoration program of construction projects, research, and regulation designed to ensure that all waters in the Everglades Protection Area (EPA) achieve and maintain compliance with phosphorus and other water quality standards by December 31, 2006. The PCB:

- Authorizes ad valorem tax proceeds not exceeding 0.1 mill originally levied within the Okeechobee Basin for the purpose of funding the design, construction, and acquisition of the Everglades Construction Project to be used to also fund design, construction, and implementation of enhancements to the project described in the SFWMD Long-Term Plan.
- Fixes the annual agricultural privilege tax applicable to property located in the C-139 Basin for tax years 2003-2013 ($654,656 ÷ number of acres on the C-139 agricultural privilege tax roll for November 2001).
- Fixes the Everglades Agricultural Privilege Tax and finds that payment of this tax satisfies the "polluter pays" requirement in the Florida Constitution.
- Determines that implementation of the Long-Term Plan must, to the maximum extent possible, achieve water quality standards relating to phosphorus criterion in the Everglades Protection Area.
- Requires implementation of the SFWMD Long-Term Plan from 2003 to 2026.
- Requires DEP water quality standard rules to include moderating provisions authorizing discharges based upon the Best Available Phosphorus Reduction Technology providing net improvement to impacted areas.
- Requires DEP to issue discharge permits based upon best available technology and prohibits inclusion of a numeric discharge limit on DEP permits.
- Requires SFWMD to require implementation of Best Management Practices for permitting purposes but prohibits inclusion of a numeric discharge limit on SFWMD permits.
- Requires discharges into unimpacted areas to be based upon a DEP determination that the environmental benefits of the discharge clearly outweigh the potential adverse impacts.
- Prohibits for 23 years involuntary takings to expand the Everglades Construction Project.
- Requires water discharged by the SFWMD into all parts of the EPA to achieve state water quality standards including phosphorus and moderating provisions to the maximum extent practicable.
- Eliminates requirement for the SFWMD to achieve state water quality standards, including phosphorus criterion, in all parts of the EPA by December 31, 2006.
- Requires SFWMD to submit an application for permit modification to incorporate changes designed to achieve compliance with state water quality standards, including phosphorus criterion and moderating provisions, to the maximum extent practicable.
- Eliminates requirement for the SFWMD to submit an application for permit modification designed to achieve compliance with the phosphorus criterion and other state water quality standards by December 6, 2006.
- Has a negative fiscal impact on state revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[x]	No[]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[x]	No[]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[x]

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

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

I. GENERAL BACKGROUND INFORMATION

Brief Introduction to the Everglades

Historic Everglades:	2.9 million acres consisting of a 60-mile-wide shallow river, seldom more than two feet deep, that flowed from Lake Okeechobee to Florida Bay.
Current Everglades:	Area reduced by 50%, flows to existing Everglades reduced by 70%.
Everglades Agricultural Area:	700,000 acres.
Endangered Species:	68

The Everglades is the largest subtropical wetland in the United States, occupying almost the entire southern end of the Florida peninsula.[1] In its natural state, essentially all of South Florida was submerged during the wet season, with most of it submerged in shallower water during the dry season.[2]

Throughout the later half of the twentieth century, the United States Army Corp of Engineers and the State of Florida constructed and operated a massive network of water management structures throughout southern Florida that included over a thousand miles of dikes, dams, levees, and water control structures that drained wetlands and diverted waters to provide flood control and water supply for the growing population of residents in southern Florida. The network became known as the "Central and Southern Florida Flood Control Project of 1948," ("1948 Project") and metamorphosed into the largest engineering project the world had ever seen.[3]

One significant change in the ecosystem resulting from the project and subsequent development involved levels of phosphorus contained in the watershed, which was historically

[1] William H. Green, Gary V. Perk, *Good Science or Myopia: Will The 1991 Everglades Settlement Lead To An Optimal Restoration Or Will Phosphorus Reductions Be Taken Too Far? 13 St. Thomas L. Rec. 697, 1 (2001).*
[2] David G. Guest, *"This time for sure"—A Political and Legal History of Water Control Projects in Lake Okeechobee and the Everglades*, 13 St. Thomas L. Rev. 645, 9 (2001).
[3] Id. at 7.

an oligotrophoic ecosystem—that is, a low-nutrient environment.[4] Utilizing more and larger canals improved drainage tremendously, enabling the 1948 Project to drain a 1,100 square mile portion of the Everglades immediately south of Lake Okeechobee. This area was ultimately converted into what is known today as the Everglades Agricultural Area (EAA). Once part of the Everglades, the EAA is a productive agricultural area whose runoff has historically contained high concentrations of phosphorus, which naturally flowed south into the Everglades. However, water from the EAA is not the only source of phosphorus enriched water flowing into the Everglades: modern urban lands west of Interstate Highway I-95 that were once part of the Everglades now include residential developments, roads, and golf courses which are additional sources of phosphorus rich waters flowing into the Everglades.[5] Further, development and water management in upstream portions of the historical Everglades have resulted in the predictable release of naturally accumulated phosphorus from drained peat soils into stormwater runoff subsequently pumped into the remnant Everglades marshes. Water supply releases from Lake Okeechobee through these marshes also contain relatively high levels of phosphorus.[6] The *2003 Everglades Consolidated Report* maintains that "[t]he quality of surface water inflows, particularly regarding the nutrient element, phosphorus, is a critical problem."[7]

The Everglades restoration efforts have been ongoing for decades, in one form or another, generally focusing on four major problems that have contributed to the decline of the Everglades ecosystem:

- Reduction in the spatial extent of wetlands;
- Degradation of water quality, particularly high levels of phosphorus and mercury;
- Disruption of natural hydropatterns, which means the timing, volume, and distribution of water throughout the Everglades; and
- Infestation by exotic plant species.[8]

Many organizations have a stake in the Everglades restoration effort, including agricultural interests concerned with economic impacts of potential increased taxes and regulatory burdens; conservation groups who are concerned with environmental protection issues; and urban organizations and local governments whose discharges of stormwater into the Everglades may also be affected by restoration efforts.[9]

The primary focus of PCB NR 03-01a is water quality, specifically phosphorus levels in, and discharges to, the Everglades Protection Area (EPA).

What are "water quality standards"?

The long-term water quality goal established by the Everglades Forever Act (EFA) requires that water delivered to the EPA meet state water quality standards by December 31, 2006. It is notable, however, that the *2003 Everglades Consolidated Report* cautions that "uncertainties remain in the administration, research, funding and optimization of restoration efforts that may prevent the SFWMD from achieving the mandate in the EFA to achieve compliance with all water quality standards by December 31, 2006.[10]

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[4] Keith W. Rizzardi, *Translating Science Into Law: Phosphorus Standards in the Everglades*, 17 J. Land Use & Envtl L. 149, 2 (2001).
[5] Id.
[6] Green & Perko, supra note 1, at 1.
[7] 2003 Everglades Consolidated Report, Executive Summary, 4.
[8] *Everglades Restoration-1994 Everglades Forever Act,* Presentation by Gary Goforth, Chief Consulting Engineer, Everglades Construction Project, SFWMD, January 2001.
[9] Rizzardi, supra note 1, at 9.
[10] 2003 Everglades Consolidated Report, Executive Summary, 4.

In general, water quality standards serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed management.[11] A water quality standard consists of four basic elements[12]:

- *Designated uses* of the waterbody, which are the goals set for the waterbody. The Class III designated uses for the Everglades include recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife.
- *Water quality criteria* to protect designated uses. These criteria are descriptions of the conditions in a waterbody necessary to support the designated uses. The criteria may be expressed as a numeric criterion or narrative statement. With respect to the Everglades, the water quality criteria must protect the designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife.
- *Antidegradation policies* to maintain and protect existing uses and high quality waters. These policies are a set of requirements that should be followed when addressing proposed activities that could lower the quality of high quality waters. The Everglades Forever Act requires the DEP to include antidegradation standards in its evaluation of water quality standards.[13]
- *General policies* addressing implementation issues such as low flows, variances, and mixing zones.

Florida law requires a rulemaking process to adopt state water quality standards, while the federal Clean Water Act requires approval of state water quality standards by the U.S. Environmental Protection Agency (USEPA).[14] The Clean Water Act establishes the basis for the federal water quality standards program and the process for USEPA review of new or revised State and Tribal water quality standards including, where necessary, the promulgation of a superseding Federal rule in cases where a State's or Tribe's standards are not consistent with applicable requirements of the Clean Water Act, or in situations where the USEPA determines that imposition of Federal standards are necessary to meet the requirements of the Clean Water Act.[15]

USEPA approval of a new or revised water quality standard is considered a federal action and may be subject to the Section 7 consultation requirements of the Endangered Species Act. Section 7 of the ESA requires federal agencies to protect endangered and threatened species and prohibits actions "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or modification of habitat of such species which is determined to be critical."[16]

Pursuant to the EFA, mixing zones, variances, and moderating provisions, or relief mechanisms for compliance with water quality standards are not permitted for discharges subject to s. 373.4592(4)(f), F.S., and subject to the EFA, "except that site specific alternative criteria may be allowed for non-phosphorus parameters if the applicant shows entitlement under applicable law." Section 373.4592(4)(f), F.S., applies to agricultural entities within the EAA that must implement best management practices.[17]

[11] http://www.epa.gov/waterscience/standards/about/history.htm
[12] http://www.epa.gov/waterscience/standards/about/
[13] s. 373.4792, (4)(e)4., F.S.
[14] Rizzardi, supra note 6, at 5.
[15] See 33 U.S.C. §§ 1313(a) & (b)(1) (1997)
[16] http://www.epa.gov/waterscience/standards/about/rev.htm
[17] s. 373.4592(11)(b), F.S.

Why are high levels of phosphorus a problem?

In addition to substantial atmospheric inputs, phosphorus is conveyed to the Everglades through surface water inflows regulated by water control structures. These inflows are from agricultural areas to the north and west, from Lake Okeechobee to the north, and from predominantly urbanized areas to the east. Surface water inflows and loads vary from year to year in response to water management operational decisions and hydrological conditions.[18]

The downstream sawgrass marshes and sloughs are naturally oligothrophic, i.e., the water and underlying soils are low in nutrients such as phosphorus.[19] Phosphorus enrichments of oligotrophic areas ordinarily stimulate growth of the natural vegetation and, in some cases, can favor the growth of certain types of vegetation, thereby changing the natural mix.[20] Phosphorus additions also have been observed to change the natural mixture of algal species in certain situations.[21] In the Everglades ecosystem, phosphorus is a critical water quality parameter, because phosphorus enrichment in the watershed can cause significant changes to the ecosystem.[22]

1988 Federal Litigation

In 1988, the U.S. Attorney for the Southern District of Florida sued the state of Florida and the South Florida Water Management District (SFWMD) alleging that state water quality standards were being violated in the Everglades National Park and Loxahatchee National Wildlife Refuge because discharges from agricultural and urban areas into the Everglades contained elevated levels of nutrients, particularly phosphorus. The litigation continued for two years without resolution when, in 1991, Governor Lawton Chiles announced the State's willingness to settle the case.

In 1992, the court adopted a Settlement Agreement between the United States, the SFWMD, and the Florida Department of Environmental Regulation (predecessor agency to the current Department of Environmental Protection). In part, the Settlement Agreement established interim and long-term phosphorus concentration limits, as well as specific remedial programs designed to help achieve those limits. The Settlement Agreement proposed specific projects including the construction of large flow-through marshes called Stormwater Treatment Areas ("STAs") and the adoption of special farming practices, or Best Management Practices ("BMPs") for balancing water quality with agricultural productivity.[23] Additionally, the parties were to achieve compliance with long-term phosphorus levels by July 1, 2002. Any deviation from the terms of the Settlement Agreement by the state required approval of the federal agencies, providing the federal agencies with the authority to influence the initial determination of the specific standards and measures affecting the environment, and also with continuing power to set different standards by consenting to such changes.[24]

While the Settlement Agreement may have been more specific than the state law in effect at the time, the parties were assured by the court that any provision of the Settlement Agreement that had to be implemented through state administrative proceedings would be done so, as required

[18] 2003 Everglades Consolidated Report, Executive Summary, 27
[19] Green & Perko, supra note 1, at 1.
[20] Id.
[21] Id.
[22] Letter from John H. Hankinson, Jr., Regional Administrator, Region IV, U.S. Environmental Protection Agency, to Billy Cypress, Chairman, Miccosukee Tribe of Indians of Florida (May 23, 1999)(approving tribal water quality standards).
[23] United States v. SFWMD, No. 88-1886, Omnibus Order at 2, (2001).
[24] United States v. SFWMD, No. 88-1886, Ordering Entering Settlement Agreement as Consent Decree (1992).

by state law, and that the administrative process would enable intervenors to challenge any provision that directly affected their rights.[25]

Efforts by the state to implement the Settlement Agreement encountered several legal challenges in state court. In 1993, the United States, the SFWMD, the DEP and certain agricultural industry representatives signed a Statement of Principles. In 1994, the Florida Legislature built upon the Statement of Principles by adopting the EFA as codified in s. 373.4592, F.S. Subsequently, the parties to the Settlement Agreement filed a joint motion seeking approval of modifications to the Settlement Agreement in order to conform the Settlement Agreement to the newly enacted EFA. Of particular import was that the EFA required compliance with long-term phosphorus levels by December 31, 2006, whereas the Settlement Agreement required compliance by July 1, 2002. The court agreed to retroactively extend the deadline for compliance to December 31, 2006, but noted, "[b]y endorsing this extended schedule, the Court fully expects that the parties will achieve compliance as mandated by the Modified Consent Degree and the EFA."[26]

Miccosukee Tribe Water Quality Standards

The Miccosukee Tribe of Indians of Florida is a Federally recognized Indian Tribe whose Tribal Reservation occupies an area within the Florida Everglades National Park, along the Tamiami Trail (US 41), approximately 40 miles west of Miami, Florida.

Pursuant to the Clean Water Act and corresponding federal regulations, the Miccosukee Tribe ("Tribe") established its own water quality standards, including a numeric phosphorus criterion of 10ppb.[27] The water quality standards adopted by the Tribe were approved by the USEPA on December 28, 1998. The USEPA specifically concluded that the phosphorus criterion was not overly protective, met Clean Water Act requirements, and was scientifically defensible.[28]

II. EVERGLADES FOREVER ACT

Introduction

The EFA set into motion an aggressive and comprehensive restoration program of construction, research, and regulation projects designed to ensure that all waters in and discharging to the EPA achieve and maintain compliance with phosphorus and other water quality standards by December 31, 2006.[29]

In addition to establishing the process by which much of the restoration will proceed, the EFA also sets forth general legislative findings and intent, including:

> The Legislature finds that the Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The system is unique in the world and one of Florida's great treasures. The Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected.
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> * * *

[25] Id. at 4.
[26] United States v. SFWMD, No. 88-1886, Omnibus Order at 24 (2001).
[27] Miccosukee Tribe of Indians of Florida, Water Quality Standards (Adopted December 19, 1997).
[28] Dan Scheidt, Memorandum to Robert McGhee entitled "Numeric phosphorus water quality criterion for the Everglades as adopted by the Miccosukee Tribe of Indians of Florida for Class III-A Waters." (May 20, 1999).
[29] 2003 Everglades Consolidated Report, Executive Summary, 12.

> The Legislature finds that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. A reduction in levels of phosphorus will benefit the ecology of the Everglades Protection Area.
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> The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected in a manner that is long-term and comprehensive. The Legislature further recognizes that the EAA and adjacent areas provide a base for an agricultural industry, which in turn provides important products, jobs, and income regionally and nationally. It is the intent of the Legislature to preserve natural values in the Everglades while also maintaining the quality of life for all residents of South Florida, including those in agriculture, and to minimize the impact on South Florida jobs, including agricultural, tourism, and natural resource-related jobs, all of which contribute to a robust regional economy.
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> * * *
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> The Legislature finds that the Statement of Principles of July 1993, the Everglades Construction Project, and the regulatory requirements of this section provide a sound basis for the state's long-term cleanup and restoration objectives for the Everglades. It is the intent of the Legislature to provide a sufficient period of time for construction, testing, and research, so that the benefits of the Everglades Construction Project will be determined and maximized prior to requiring additional measures. The Legislature finds that STAs and BMPs are currently the best available technology for achieving the interim water quality goals of the Everglades Program. A combined program of agricultural BMPs, STAs, and requirements of this section is a reasonable method of achieving interim total phosphorus discharge reductions. The Everglades Program is an appropriate foundation on which to build a long-term program to ultimately achieve restoration and protection of the Everglades Protection Area.
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> * * *
>
> The Everglades Construction Project represents by far the largest environmental cleanup and restoration program of this type ever undertaken, and the returns from substantial public and private investment must be maximized so that available resources are managed responsibly. To that end, the Legislature directs that the Everglades Construction Project and regulatory requirements associated with the Statement of Principles of July 1993 be pursued expeditiously, but with flexibility, so that superior technology may be utilized when available. Consistent with the implementation of the Everglades Construction Project, landowners shall be provided the maximum opportunity to provide treatment on their land.[30]

In recognition of the fact that restoration will take time, the EFA codified a twelve-year implementation schedule. In Phase I, which began in 1999 and lasts through 2003, the SFWMD is required to construct six stormwater treatment areas ("STAs") and implement a Best Management Practices regulatory program. In Phase II, additional advanced treatment technologies may be utilized as necessary to achieve all water quality standards by December 31, 2006. The EFA implementation schedule accounted for scientific uncertainty, research needs, and the practicalities of spreading the costs of the restoration over time.[31]

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[30] s. 373.4592(1), F.S.

[31] Keith Rizzardi, *Regulating Watershed Restoration: Why The Perfect Permit Is The Enemy Of The Good Project*, 27 Nova L. Rev. 51, 7 (2002).

What is the phosphorus criterion for the Everglades?

As previously stated, the water quality criterion for phosphorus is designed to protect designated uses and is expressed as numeric pollutant concentrations or narrative requirements.[32] The EFA codifies the Class III narrative nutrient criterion by specifying that, "[i]n no case shall such phosphorus criterion allow waters in the Everglades Protection Area (EPA) to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna."[33] However, there is considerable debate regarding the point at which phosphorus concentrations create an imbalance. According to the U.S. Environmental Protection Agency (USEPA), the chronic criterion for a pollutant is always more stringent than the acute criterion because of the well-known fact that long-term exposure to lower concentrations of contaminants can cause exactly the same negative effects as short-term exposure to much higher pollutant levels.[34]

Pursuant to the EFA, a numeric phosphorus criterion for the EPA will take effect on December 31, 2003. The numeric criterion will be established either by the Environmental Regulation Commission on behalf of the State or, if the State fails to adopt a numeric criterion, the EFA adopts a default phosphorus criterion of 10 parts per billion ("ppb"). In either event, the EFA requires the SFWMD to meet the numeric criterion for all discharges to the EPA by December 31, 2006.

The DEP is also developing a measurement methodology for the phosphorus criterion that will track maintenance of a long-term average phosphorus concentration to protect against imbalances in the natural flora and fauna, and will have an annual concentration upper limit that allows for natural temporal and spatial variation.[35]

In 2001, the DEP filed a notice of rulemaking recommending a phosphorus criterion of 10ppb for approval by the Environmental Regulation Commission. The DEP asserts that a phosphorus criterion of 10ppb is protective of the natural flora and fauna without being overly protective or below the natural background levels of phosphorus. According to the *2003 Everglades Consolidated Report*, adoption of a 10ppb phosphorus criterion is further supported by the comprehensive literature review conducted by the USEPA during its evaluation of the Miccosukee Tribe's proposed 10ppb criterion, which the USEPA ultimately approved.[36]

What are Stormwater Treatment Areas?

In short, Stormwater Treatment Areas (STAs) are artificial marshes designed to filter water before it reaches the Everglades and achieve interim improvements in water quality standards. STAs use plants to remove nutrients from the water and other methods to slowly cleanse water flowing from the EAA before it enters the EPA. Mandated by the EFA, the Everglades Construction Project includes six STAs totaling approximately 40,000 acres. The STAs will treat more than a million acre-feet of water per year from the EAA and other sources to improve the quality of water entering the EPA.[37]

The EFA requires optimization of the nutrient removal performance of the STAs. As a result, the SFWMD continues to conduct research and monitoring programs to sustain or enhance the nutrient removal performance of the STAs.

In 2002, four of the STAs were operational while the remaining two STAs are scheduled for completion by October 2003. The STAs are proving to be consistently efficient in treating

[32] http://www.epa.gov/waterscience/standards/about/
[33] ss. 373.4592 and 373.4592(4), F.S.; Fla. Admin. Code Ann. r. 62-302.530 (2002).
[34] http://www.epa.gov/watertrain/cwa/right13.htm
[35] 2003 Everglades Consolidated Report, Executive Summary, 19.
[36] 2003 Everglades Consolidated Report, Executive Summary, 19
[37] Id. at 4.

stormwater (removing 71% of inflowing phosphorus) thereby releasing water into the EPA at an average concentration of approximately 40ppb, well below the long-term design target of 50ppb.[38]

What are Best Management Practices?

Nutrient-rich discharges from the EAA have been identified as contributors to the enrichment of the Everglades and are the primary focus of the Everglades Regulatory Program and the Everglades Construction Project.[39] Best Management Practices (BMPs) are on-farm practices such as water retention, fertilizer practices, and sediment controls used to lower the amount of phosphorus leaving the farms. The BMP Regulatory Program administered by the SFWMD works in close cooperation with the agricultural industry to reduce the load of phosphorus moving southward from the EAA and into STAs before flowing into the EPA.[40]

The overall effectiveness of BMPs is measured by annual phosphorus load reductions from the EAA basin since BMPs were implemented compared to a 10-year, pre-BMP base period.[41] The goal of the BMP regulatory program is to achieve a 25-percent reduction in phosphorus load from the EAA basin. This goal has been achieved since 1996, the first full year of BMP implementation.[42]

In 2003, BMPs continued to reduce phosphorus loads from the EAA to a greater extent (55 percent) than required by the EFA (25 percent).[43]

What are the deadlines for meeting water quality standards?

As part of the Everglades Program, the EFA required the DEP and the SFWMD to complete research necessary to establish a numeric phosphorus criterion by December 31, 2001. The EFA also requires the DEP to file a notice of rulemaking to establish such a criterion by that date. If the DEP does not adopt the phosphorus criterion by December 31, 2003, the EFA establishes a default criterion of 10ppb. The EFA requires that the phosphorus criterion must not be lower than the natural conditions of the EPA and must take spatial and temporal variability into account. The EFA further requires compliance with the phosphorus criterion to be based on a long-term geometric mean of concentration levels to be measured at sampling stations reasonably representative of receiving waters in the EPA.[44]

By December 31, 2003, the SFWMD is required to submit to the DEP a permit modification to incorporate proposed changes to the Everglades Construction Project and interim permits previously issued. The changes must be designed to achieve compliance with the phosphorus criterion and all other water quality standards by December 31, 2006.[45] The EFA further requires the DEP and the SFWMD to take such action as may be necessary, by December 31, 2006, so that water delivered into the EPA achieves state water quality standards, including the phosphorus criterion, in all parts of the EPA.[46]

[38] Id. at 3, 12.
[39] Id. at 10.
[40] Id. at 4.
[41] Id. at 10.
[42] Id. at 10.
[43] Id. at 2.
[44] Id.
[45] s. 373.4592(10)(a), F.S.
[46] s. 373.4592(10), F.S.

Discharge Permits and Moderating Provisions

The EFA requires the SFWMD to obtain a special set of permits for the Everglades Construction Project in lieu of other environmental permits that would normally apply.[47] Instead of requiring strict compliance with the narrative phosphorus criterion, the EFA permits require the STAs to achieve reasonable performance and "design objectives." The EFA permits require the quality of waters discharged from the STAs to be "of equal or better quality than the inflows," rather than requiring strict compliance with the narrative water quality criterion.[48]

The EFA requires the DEP to use the best available information to define relationships between waters discharged to, and the resulting water quality in, the EPA. The EFA further requires the DEP or the SFWMD to use these relationships to establish discharge limits in permits for discharges into the EAA canals and the EPA necessary to prevent an imbalance in the natural populations of aquatic flora or fauna in the EPA, and to provide a net improvement in the areas already impacted. Compliance with the phosphorus criterion is based upon a long-term geometric mean of concentration levels to be measured at sampling stations recognized from the research to be reasonably representative of receiving waters in the EPA.

In some cases, discharge limits are included in permits, but are accompanied by moderating provisions, such as variances, when supported by specific data.[49] Moderating provisions can be based upon economic factors, site specific information, or mixing zones, which allow discharges to be below certain water quality requirements within a limited, defined region downstream of a discharge point.[50] However, the EFA prohibits mixing zones from certain agricultural discharges regulated by BMPs. Mixing zones are otherwise allowed by law, even in Outstanding Florida Waters such as the Everglades, provided that the discharges are necessary and approved for water management purposes.[51]

III. FUNDING THE EVERGLADES CONSTRUCTION PROJECT

Introduction

Anticipated funding sources for the Everglades Construction Project include the following[52]:

• Ad valorem taxes	$281.9 million
• Agricultural Privilege Tax	$239.0 million
• Federal Funding	$231.7 million
• State/Other	$110.5 million
Total	$863.1 million

In 2002, the total cost of the Everglade Construction Project was estimated to be $861.1 million.

Ad valorem taxes[53]

The EFA authorizes the SFWMD to levy ad valorem taxes up to 0.1 mill within the Okeechobee basin for land acquisition, design, and construction of the Everglades Construction Project. As required by the EFA, this will be the sole direct contribution of ad valorem taxes for the

[47] s. 373.4592(9), F.S.
[48] s. 373.4592(9)(h)(2), F.S.
[49] Rizzardi, supra note 1, at 6.
[50] Fla. Admin. Code R. 62.4.244(1)(a); Rizzardi, supra note 1, at 6.
[51] Fla. Admin. Code R. 62.4.244(1)(a); s. 403.061(11)(b), F.S.; Rizzardi, supra note 1, at 6.

[52] 2003 Everglades Consolidated Report, 8D-6.
[53] Id. at 8D-2

construction project. For Fiscal Year 2002 (FY2002), net ad valorem tax revenues were approximately $34.9 million (unaudited) through September 30, 2002.

Agricultural Privilege Tax[54]

To fund the first phase of the Everglades Restoration Program, the EFA imposes an annual tax for the privilege of conducting an agricultural trade or business within the EAA and C-139 basin. The EFA specifies that the annual per acre tax is collected through the normal county tax collection process.

The EAA agricultural privilege tax rate ranges from a minimum of $24.89 per acre from 1994 to 1997 to a potential maximum of $35 per acre from 2006 to 2013. Actual net EAA agricultural privilege taxes collected in FY2002 were approximately $11.7 million (unaudited) through September 30, 2002. After 2013 the tax rate will decrease to $10 per acre to fund operations and maintenance of the STAs. The amount of taxes collected each year is reduced by early payment discounts provided by each county.

The EFA encourages optimal performance of BMPs to maximize the reduction of total phosphorus (TP) loads at points of discharge from the EAA by providing an incentive credit against the Everglades agricultural privilege tax. Each percentage point by which phosphorus loads are reduced beyond the 25 percent EAA Basin requirement will result in incentive credits against the EAA agricultural privilege tax as follows: $0.61 per acre for tax notices mailed from November 2002 through November 2005; and $0.65 per acre for tax notices mailed in November 2006 through November 2013. Incentive credits will not reduce the agricultural privilege tax rate to less than the $24.89 per acre minimum ("minimum tax"). The EFA also provides incentive credits to individual growers for meeting TP load or TP concentration reduction targets. Individual parcels of property shall be subject to the minimum tax if they have achieved the following annual TP load reduction standards: 40 percent or more for tax notices mailed from November 2002 through November 2005; and 45 percent or more for tax notices mailed from November 2006 through November 2013. In addition, any parcel of property that achieves a TP concentration of 50 parts per billion (ppb) is subject to the minimum tax in the next calendar year.

C-139 Basin Agricultural Privilege Tax[55]

To fund the first phase of the Everglades Restoration Program, the EFA imposes an annual tax for the privilege of conducting an agricultural trade or business within the C-139 basin. The EFA specifies that the annual per acre tax is collected through the normal county tax collection process.

As specified in the EFA, for the 20-year period between 1994 and 2013, the total amount of tax to be assessed annually will not exceed $654,656. During this period, the amount owed by individual property owners is determined by dividing $654,656 by the number of acres on the C-139 tax roll for the year. The amount paid by an individual property owner may change from year to year depending on the number of acres within the C-139 basin that are classified as agricultural. Therefore, if lands within the C-139 basin are acquired by the SFWMD for purposes of constructing STAs or other facilities, the annual tax assessed against individual property owners will increase due to a decrease in the number of acres on the tax roll.

Beginning in 2014 the tax will be assessed at the rate of $1.80 per acre.

[54] Id.
[55] Id. at 8D-3.

In FY2002, the net C-139 basin agricultural privilege taxes collected were $617,505 (unaudited) through September 30, 2002.

"Polluter Pays" Constitutional Provision

In 1995, after passage of the EFA and establishment of Agricultural Privilege Taxes, Floridians voted to approve two Everglades-related constitutional amendments placed on the ballot for referendum. The "polluter pays" provision found in Art. II, § 7 of the Florida Constitution provides as follows: "Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution." The second amendment created the Everglades Trust Fund for purposes of making funds available to assist in conservation, protection of natural resources, and abatement of water pollution in the EPA and EAA.[56]

Subsequent to adoption of the "polluter pays" amendment, the Florida Supreme Court concluded, in part, that

- The provision was not self-executing and required implementing legislation;
- Existing legislation remains in effect until repealed by the legislature, i.e., the EFA, including provisions imposing ad valorem taxes to support Everglades restoration;[57]
- The phrase "primarily responsible" should be given its common meaning, and no one person in the EAA is responsible for 100 percent of the pollution from the EAA; rather, those in the EAA who are determined to be responsible must pay a share of the costs to abate that pollution.[58]

In holding that the amendment requires implementing legislation, the court states, "we believe the voters adopted Amendment 5 to effect a change, and construing the Everglades Forever Act as Amendment 5's implementing legislation would effect no change, nullify the Amendment, and frustrate the will of the people."[59] To date, the Legislature has not adopted statutes implementing the "polluter pays" provision.

SFWMD Power of Eminent Domain.

The EFA declares that certain lands may be needed for the treatment or storage of water prior to its release into the Everglades Protection Area. The EFA empowered the governing board of the SFWMD to acquire fee title or easements by eminent domain for the limited purpose of implementing stormwater management systems identified in the Everglades Construction Project or determined to be necessary to meet water quality requirements established by rule or permit.[60] However, the SFWMD is required to optimize the design and operation of the STAs described in the Everglades Construction Project prior to expanding the size of the STAs.[61]

The Comprehensive Everglades Restoration Plan

- Estimated Cost: In excess of $8 billion (1999 dollars)
  $182 million annually for maintenance and operation
- Cost Sharing: 50% state funding, 50% federal funding
- Implementation Time: Over 30 years

[56] Art. X, § 17, Florida Constitution.
[57] Advisory Opinion to the Governor-1996 Amendment 5 (Everglades), 706 So.2d 278 (Fla. 1997).
[58] Id.
[59] Advisory Opinion to the Governor-1996 Amendment 5 (Everglades), 706 So.2d 278 (Fla. 1997).
60 s. 373.4592(5)(b), F.S.
61 s. 373.4592((4)(d)7, F.S.

On November 3, 2000, Congress overwhelmingly approved the Water Resources Development Act of 2000, authorizing the federal portion of the Comprehensive Everglades Restoration Plan ("CERP" or "Restudy"). The intent of CERP is to restore and preserve South Florida's natural ecosystems, including the Everglades and Lake Okeechobee, while protecting and enhancing water supplies and flood control. CERP is an unprecedented federal-state partnership involving technical and policy representatives from federal, state, tribal, and regional governments working to develop a conceptual road map for restoration.[62] The SFWMD and the U.S. Army Corps of Engineers will jointly implement the CERP project.

CERP involves over 50 complex and long-term projects being implemented in close partnership with the U.S. Army Corps of Engineers to restore the quantity, quality, timing and distribution of water in South Florida. Implementation of CERP is progressing through acquiring lands, conducting pilot projects and feasibility studies, and developing essential project management plans and implementation reports.[63]

The original estimate (1998) indicated that implementation of the Plan will cost $7.8 billion; and that an additional $182 million will be needed annually to operate, maintain and monitor the plan. In general, the Federal government will pay half the cost and the State of Florida will pay the other half. More specific arrangements concerning which agencies will pay the state costs, and when payments will be made, have yet to be determined.[64]

SFWMD Long-Term Plan

In March 2003, the SFWMD Governing Board endorsed the *Final Report on the Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals* ("Long-Term Plan" or "Plan"). According to the Long-Term Plan, the long-term Everglades water quality objective is to implement the optimal combination of source controls, STAs, Advanced Treatment Technologies (ATTs), and/or regulatory programs to ensure that all waters discharged to the EPA achieve water quality standards by December 31, 2006, consistent with the requirements of the EFA. The Plan sets forth a recommended plan and strategy for achieving that objective and permitting the SFWMD to proceed to fulfillment of their obligations under both the EFA and the federal Everglades Settlement Agreement (Case No. 88-1886-CIV-HOEVELER).

The Governing Board overwhelmingly endorsed the draft plan, with modifications, and the ultimate goal of achieving the proposed Everglades phosphorus criterion of 10ppb consistent with its associated natural variability. The Governing Board made the following two modifications to the Plan:

> 1. The Governing Board acknowledged the known limits of phosphorus reduction technologies, the natural variability of phosphorus levels in the Everglades (as expressed by the authors and reviewers of the 2003 Everglades Consolidated Report) and the need for flexibility in achieving the water quality goals of the Everglades. Therefore, the Governing Board changed the plan objective to: "to obtain through optimization, to the maximum extent practicable, a predicted long term geometric mean phosphorus concentration in discharges to the Everglades Protection Area that is within the upper annual concentration limit of the criterion as calculated by the Department in the 2003 Everglades Consolidated Report."

62 John J. Fumero, Everglades Ecosystem Restoration: A Watershed Approach By The Legislature, 75-Oct FLBJ 58, 2 (Oct. 2000).
63 2003 Everglades Consolidated Report, Executive Summary, 2
64 http://www.evergladesplan.org/resources/faqs.cfm

> 2. In recognition of the long periods of time required for advancements in large-scale biological treatment systems, the Governing Board defined a more realistic pace towards achieving the phosphorus criterion in discharges to the Everglades. The Governing Board directed staff to implement a second 10-yr phase (2017-2026) of continuous improvement in phosphorus reduction as necessary to achieve the plan objective, after the 2016 planning horizon identified in the draft plan. In order to fulfill this mandate, it is anticipated that no later than December 2013, updated project scopes, cost estimates and implementation schedules, will be developed to cover this second 10-year phase, as necessary to achieve the plan objective.
>
> The Board was clear in its direction to staff that the identified capital project components of the draft plan are to be implemented. Upon initial review, it appears that the revised plan objective does not substantively modify the capital improvements or scientific investigations recommended in the draft plan, only the schedule for ultimately achieving the phosphorus criterion and its associated natural variability in discharges to the Everglades.[65]

The Long-Term Plan also discusses a consensus approach to achieving the long-term water quality goals of the EFA, and describes three components of the approach. One component is composed of Pre-2006 Projects, which are structural and operational modifications that can be supported by the current scientific and engineering knowledge base, to be implemented wherever practicable by December 31, 2006, as well as operation, maintenance and monitoring of the STAs. The pre-2006 recommended improvements and strategies are considered to be the maximum scientifically defensible steps that have been identified at this time. The Long-Term Plan notes that there is a possibility that these steps will meet a planning target of a long-term geometric mean total phosphorus concentration of 10ppb in discharges from the various basins. However, it is also notes the possibility that these improvements and strategies will not, in and of themselves, provide adequate assurance of an ability to consistently meet that objective on a long-term basis. Therefore, the Post-2006 Strategy is included in the Plan, requiring identification and adaptive implementation of additional water quality improvement measures that may be considered necessary to comply with water quality standards following completion of the pre-2006 activities. The Strategy also includes implementation of steps identified that are capable of accelerating the recovery of previously impacted areas in the EPA, including final implementation of the hydropattern restoration activities directed by the EFA once water quality standards are achieved.

The Long-Term report intends that adoption and implementation of the strategies recommended in the Conceptual Plan result in the earliest practicable achievement of compliance with water quality standards and the improvement goals of the EFA. Nonetheless, the Long-Term Plan recognizes that it remains possible that other, more extensive measures might eventually be required if the strategies recommended in the Plan eventually prove inadequate, or if the intended full integration with CERP is not realized.

EFFECT OF PROPOSED CHANGES

Issue: Phosphorus Criterion

The PCB amends s. 373.4592(3), F.S., to set forth a legislative finding that the Long-Term Plan adopted by the SFWMD in March 2003 provides the best available phosphorus reduction technology based upon a combination of BMPs and STAs described in the Plan, provided that the Plan "seeks to achieve the phosphorus criterion at the earliest practicable date." The PCB

[65] *Final Report on the Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goal*, ES-5-6, March 17, 2003.

requires revisions of the Plan to be incorporated through an adaptive management approach including a Process Development and Engineering component to identify and implement incremental optimization measures for further phosphorus reductions at the earliest practicable date.

The PCB also requires implementation of the Long-Term Plan in two phases: Phase I is a thirteen year phase commencing in 2003 and ending in 2016, and Phase II is a 10 year phase commencing in 2017 and ending in 2026. The DEP is required to review and approve projects in the 10-year phase of the Long-Term Plan for consistency with this section. Additionally, the DEP must review and approve by December 31, 2008 and each 5 years thereafter, incremental phosphorus reduction measures to be implemented at the earliest practicable date.

The PCB also requires the Long-Term Plan to be implemented at the earliest practicable date, and, to the maximum extent practicable, requires achievement of water quality standards relating to the phosphorus criterion in the Everglades. Monitoring must be conducted through a series of monitoring stations used for this purpose.

Issue: Moderating Provisions

The PCB amends s. 373.4592, (4)(e)2., F.S., to require the DEP to incorporate moderating provisions in the rule adopting a phosphorus criterion during implementation of the Long-Term Plan. The moderating provisions will authorize discharges based upon Best Available Phosphorus Reduction Technologies that provide net improvement to impacted areas. The phrase "Best Available Phosphorus Reduction Technologies" is defined in s. 373.4592(2)(o), F.S., of the PCB as "a combination of BMPs and STAs which includes a continuing research and monitoring program to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area at the earliest practicable date." Although water quality standards typically include some variation of moderating provisions, the EFA does not provide specific guidance to the DEP as to the form of acceptable moderating provisions. The PCB also provides that discharges into unimpacted areas that are authorized by moderating provisions must be based upon a determination of the DEP that environmental benefits of the discharge clearly outweigh potential adverse impacts.

Moderating provisions are included in the rule proposed by DEP to establish the numeric phosphorus criterion.

Issue: Federal Lawsuit and Oversight

The PCB also includes legislative findings in s. 373.4592(3)(b), F.S., specifically stating that the rulemaking process and Plan are a good-faith effort to meet the provisions of 40 CFR 131.10(g) and to maintain consistency with the Settlement Agreement referenced in Section 373.4592(4)(e), F.S. It is uncertain whether a legislative finding of good faith will impact whether the USEPA considers the revisions proposed by the PCB to be an effort to meet the provisions of the Code of Federal Regulations, or whether Judge Hoeveler, the presiding Judge in the 1988 Federal Lawsuit in which the Settlement Agreement was entered, will be satisfied that the revisions are consistent with the original Settlement Agreement and the subsequent Modified Settlement Agreement.

Issue: SFWMD Powers of Eminent Domain.

The PCB amends s. 373.4592, (3)(c), F.S., to prohibit expansion of STAs by acquiring additional privately owned land in the EAA involuntarily.

Issue: Use of ad valorem tax proceeds.

The PCB amends s. 373.4592(4)(a), F.S., to expand the purposes for which ad valorem taxes assessed by the SFWMD may be used with respect to the Everglades Construction Project. Pursuant to the PCB, tax proceeds may also be used to fund "design, construction and implementation, including operations and maintenance, of the enhancements to the Everglades Construction Project described in the Long-Term Plan" in addition to the current purposes of design, construction, and acquisition of the Everglades Construction Project.

Issue: "Polluter Pays" Constitutional Provision

The "polluter pays" provision found in Art. II, § 7 of the Florida Constitution provides as follows: "Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution." The PCB amends s. 373.4572(6)(h), F.S., to provide that payment of the Agricultural Privilege tax constitutes compliance with the "polluter pays" provision in Art. II, Section 7 of the Florida Constitution.

Issue: The Comprehensive Everglades Restoration Plan

The PCB amends s. 373.4572 (3), F.S., to express the legislative intent that implementation of the Long-Term Plan should be "integrated and consistent with the implementation of the congressionally authorized components of CERP in order to avoid duplicative costs."

Issue: Deadlines for compliance

The PCB amends s. 373.4592, (4)(a), to require the SFWMD to complete construction of enhancements to the Everglades Construction Project recommended in the Long-Term Plan and initiate other Pre-2006 strategies in the Plan by December 31, 2006.

Issue: C-139 Agricultural Privilege Tax

The PCB amends s. 373.4592(7)(c)2., F.S., to revise the calculation method for determining the C-139 Agricultural Privilege Tax. Currently, the tax is calculated by dividing $654,656 by the number of acres included on the C-139 agricultural privilege tax roll for each year. The PCB revises the formula for determining taxes applicable to private property in the C-139 basin as follows: $654,656 ÷ the number of acres included on the C-139 tax roll for November 2002.

Issue: Compliance Permits

Discharge Permits

Pursuant to s. 373.4592(4)(e)3, F.S., the DEP and the SFWMD must establish discharge limits in permits for discharges into the EAA canals and the EPA as necessary to prevent an imbalance in the natural populations of aquatic flora and fauna in the EPA, and to provide a net improvement in areas already impacted. The PCB provides that, during implementation of the Long-Term Plan (2003-2026), discharge permits issued by the DEP for discharges into the EPA must be based on Best Available Phosphorus Reduction Technology and may not include a numeric discharge limit. Additionally, the PCB states that permits issued by the SFWMD for discharges into the EAA must require implementation of BMPs but may not include numeric discharge limits.

Long-Term Compliance Permits

Currently, the DEP and the SFWMD must take action as may be necessary so that water delivered to the EPA achieves state water quality standards, including the phosphorus criterion, in all parts of the EPA by December 31, 2006.[66]

The PCB amends s. 373.4592(10), F.S., to reduce the burden on the DEP and SFWMD and simply require that, "[b]y December 31, 2006, the department and the SFWMD shall take such action as may be necessary to implement the Pre-2006 Projects and Strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves, in all parts of the Everglades Protection Area, state water quality standards, including the phosphorus criterion and moderating provisions, to the maximum extent practicable. Under no circumstance shall the project or strategy cause or contribute to violation of state water quality standards by December 31, 2006."

Of significance is that the PCB requires compliance with state water quality standards, including the phosphorus criterion and moderating provisions, "to the maximum extent practicable" rather than requiring strict compliance by a date certain. The inclusion of a reference to "moderating provisions" appears to signify that as long as the permittee is utilizing the best available phosphorus reduction technologies in attempting to reduce phosphorus concentrations in discharges, the permittee is not required to meet the phosphorus criterion. Therefore, this revision appears to remove a permittee's obligation to achieve compliance with the phosphorus criterion by a date certain as long as the permittee is complying with moderating provisions established in the permit.

Currently, s. 373.4592(10)(a), F.S., requires the SFWMD, by December 31, 2003, to submit a permit modification to DEP to incorporate proposed changes to the Everglades Construction Project and interim permits previously issued. The changes to the Everglades Construction Project must be designed to achieve compliance with the phosphorus criterion and the other state water quality standards by December 31, 2006.

The PCB amends s. 373.4592(10)(a), F.S., to provide that by December 31, 2003, the SFWMD must submit to the DEP an application for permit modification to incorporate proposed changes to the Everglades Construction Project and other SFWMD works delivering water to the EPA as needed to implement the Pre-2006 projects and strategies of the Long-Term Plan in all permits issued by the DEP including the permits issued pursuant to subsection (9). These changes must be designed to achieve state water quality standards, including the phosphorus criterion and moderating provisions, to the maximum extent practicable. However, the section also provides that under no circumstances will the project or strategy cause or contribute to violation of state water quality standards.

The PCB also states that during the implementation of the Long-Term Plan (2003-2026), permits issued by the DEP must be technology-based and not include numeric discharge limits.

Issue: Technical Changes

The PCB makes several technical revisions to the EFA in order to delete obsolete provisions[67], correct an incorrect statutory cross-reference[68], correct an error that is otherwise correctly

[66] s. 373.4592(10), F.S.
[67] See amendments to ss. 373.4592(4)(a)2.,3.,4.,5.,6.,and 7.; s. 373.4592(4)(b)3.s. 373.4592(4)(d); s. 373.4592(4)(e) F.S.
[68] See amendment to s. 373.4592(4)(a), F.S., deleting the cross-reference to s. 373.59(11), F.S.

addressed by DEP rule[69], and incorporate provisions of Chapter Law into the statute for purposes of clarity[70].

C. SECTION DIRECTORY:

Section 1. Amending s. 373.4592, F.S., to:
- Revise and provide definitions;
- Provide for implementation of a Long-Term Plan
- Provide for use of ad valorem tax proceeds;
- Provide a schedule for Everglades Construction Project enhancements;
- Delete obsolete provisions;
- Provide for computation of the Everglades Agricultural Privilege Tax;
- Provide for computation of the C-139 Agricultural Privilege Tax;
- Provide for long-term compliance permits; and
- Provide an effective date.

Section 2. Repealing s. 373.4592(17), F.S.
Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Due to the reduction and capping of Agricultural Privilege Taxes by the PCB, state revenues will be negatively impacted to an indeterminate degree.

2. Expenditures: Expansion of the time-frame within which compliance with water quality standards must be achieved will spread the costs of restoration over a longer period of time. Additionally, integration of the EFA with the CERP may result in cost-savings and elimination of duplicative costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The PCB amends s. 373.4592(4)(a), F.S., to expand the purposes for which ad valorem taxes may be used with respect to the Everglades Construction Project. Pursuant to the PCB, tax proceeds may also be used to fund "design, construction and implementation, including operations and maintenance, of the enhancements to the Everglades Construction Project described in the Long-Term Plan" in addition to the current purposes of design, construction, and acquisition of the Everglades Construction Project.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The PCB positively impacts landowners in the Everglades Agricultural Area and the C-139 Basin by fixing and reducing the Agricultural Privilege Tax imposed by the Everglades Forever Act.

D. FISCAL COMMENTS: None.

[69] See amendment to s. 373.4592(f)(5), F.S.
[70] See amendment to ss. 373.4592(4)(a)2.; 373.4592, F.S.(16)(a), F.S.; and, Section 17 of the bill.

II. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: By expanding the permissible uses of the ad valorem taxes imposed on residents of the Okeechobee Basin, the PCB requires the county government to continue collecting the ad valorem taxes in the manner of collecting property taxes.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By letter dated April 4, 2003, Congressman Clay Shaw and Congressman Porter Goss expressed concern with the proposed PCB as originally filed. The concerns are summarized as follows:

a. If implemented, the legislation could jeopardize the fragile partnership between Washington and Tallahassee in dealing with restoration;

b. Neither the state nor the federal government should attempt any material change in the agreement without consultation with the other party; and

c. At this time, for the Legislature to offer changes to existing Everglades law could be a fatal error.

By letter to Governor Jeb Bush dated April 11, 2003, Congressman Charles Taylor, Chairman, Subcommittee on Interior and Related Agencies, and Congressman Norm Dicks, Ranking Minority Member, Subcommittee on Interior and Related Agencies, expressed concern with the PCB and noted that the legislation proposes to change the phosphorus standards and extend the timetable for compliance with the phosphorus standard from the current 2006 deadline to 2026. The correspondence also stated that "[c]ontinued funding from the Interior subcommittee will be forthcoming only to the extent that all parties live up to their responsibilities under the current restoration program agreements."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 9, 2003, the Committee on Natural Resources adopted a technical amendment to conform dates within s. 373.4592(7)(c)2., F.S.