SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 626

SPONSOR: Natural Resources Committee, Senator Lawson and others

SUBJECT: Everglades Forever Act

DATE: April 15, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill proposes revisions to the Everglades Forever Act (EFA), created in s. 373.4592, Florida Statutes, relating to the reduction of phosphorus levels in water discharged through Stormwater Treatment Areas for delivery to the Everglades Protection Area (EPA). The bill establishes that the use of a long-term planning process is the best way to ensure that stormwater treatment areas will perform at the optimal levels to achieve the maximum phosphorus reduction practicable.

The bill establishes the Legislature's intent that implementation of a long-term plan will be integrated and consistent with the implementation of the Comprehensive Everglades Restoration Program (CERP) to avoid unnecessary and duplicative costs. Changes to the Okeechobee Basin ad valorem assessment are proposed, and the agricultural privilege tax in the Everglades Agricultural Area (EAA) is revised.

The bill proposes to implement the "Polluters Pay" provisions contained in s. 7(b), Art. II, of the State Constitution. The Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) are directed to ensure that discharges of water to the EPA will meet state water quality standards, including phosphorus criterion and moderating provisions, to the maximum extent practicable by December 31, 2006.

This bill substantially amends s. 373.4592, F.S.

II. Present Situation:

History of the Everglades

When Florida became a state in 1845, the Everglades covered approximately four million acres of the state. Massive sheets of fresh water moved from Orlando to the tip of the Keys. Now,

more than half of the Everglades has disappeared. Water which should have gone into the Everglades has been diverted and removed. The Everglades has been drained, diked, channeled, filled, farmed and homesteaded.[1] From Palm Beach County south through Miami, the once pristine "River of Grass" is now home to the largest portion of Florida's population. Immediately south of Lake Okeechobee is the Everglades Agricultural Area with more than 400,000 acres in production.

The EAA was created in 1948 by the Central & Southern Flood Control Project authorized to provide flood control for 700,000 acres of lands. The project, a system of more than 1,700 miles of canals and levees with sixteen major pumping stations, severely disrupted the flow of water into the Everglades.[2] The EAA is home to Florida's sugar industry and produces 40 percent of the winter vegetable crop for the entire country[3]. Historically, runoff from the EAA contained high concentrations of phosphorus, but rapid urban growth on the east and west coasts of the state are additional sources of pollution.

Case No. 88-1886 (United States v South Florida Water Management District)
In 1988, the U.S. Attorney for the Southern District of Florida sued the South Florida Water Management District, and the State of Florida, for violating state water quality standards in the Everglades National Park and the Loxahatchee National Wildlife Refuge because water discharges from agricultural and urban areas contained high levels of nutrients, especially phosphorus. In 1992, all parties to the lawsuit entered into a Settlement Agreement which was consented to by the Court.

The "Marjorie Stoneman Douglas Act" a/k/a Everglades Protection Act (1991)
The "Marjorie Stoneman Douglas Everglades Protection Act", Chapter 91-80, Laws of Florida, was enacted during the 1991 Regular Session. The purpose of the Act was to provide for an Everglades Surface Water Improvement and Management (SWIM) Plan, and to provide strategies, programs, and projects for the restoration and protection of water quality in the Everglades.

The SFWMD was required to adopt an Everglades SWIM Plan that included the following:
1. Strategies for developing programs and projects to bring facilities into compliance with applicable water quality standards.
2. Restore the Everglades hydroperiod.
3. Identify and acquire lands for the purpose of water treatment or the implementation of stormwater management systems.
4. Develop funding mechanisms.
5. Develop a water discharge permitting system.

The governing board of the SFWMD was given eminent domain authority to acquire lands or easements for the limited purpose of implementing stormwater management systems. The District was provided with the ability to adopt stormwater utility fees, and the authority to levy a per acre ad valorem assessment in the Everglades Agricultural Area. Both the District and DEP

[1] Final Bill Analysis & Economic Impact Statements for CS/CS/SB 1350, prepared by the Committee on Natural Resources, Florida House of Representatives, April 1994
[2] *"Who Drained the Everglades? The Same Folks Who Are Now Restoring Them"*, Landry, Clay J., March 2002
[3] "Everglades Agricultural Area", www.nova.edu/ocean/eglades/sum00/eaa2.html

were required to develop a permitting program, and the District was required to apply for 5-year interim permits for the construction, operation, and maintenance of stormwater management areas for district structures discharging into or within the Everglades Protection Area.

Federal Settlement Agreement (1992)

The federal Settlement Agreement provided interim and long-term phosphorus concentration limits for the Everglades National Park and the Loxahatchee National Wildlife Refuge, and required that inflows to the Refuge must result in compliance with Class III water quality criteria, or long-term concentration levels, whichever were lower, by July 1, 2002. The Agreement required that research and monitoring must be performed to interpret what phosphorus concentration levels did comply with Class III water quality criteria. The Agreement provided that the Stormwater Treatment Areas and best management practices programs were to be designed to limit discharge concentration flow to the Refuge to a long-term average of 50 parts per billion.

If interim limits were not being met at the appropriate effective dates, the Florida Department of Environmental Regulation (now DEP) was directed to require compliance. If the long-term limits were not being met, the department was required to enforce more stringent discharge limits. The quantity, distribution, and timing of water flow to the Park and the Refuge had to be sufficient for maintaining and restoring the full abundance and diversity of the native flora and faunal communities throughout the park and Refuge.

The South Florida Water Management District committed to purchasing, designing, and constructing four Stormwater Treatment Areas on 32,600 treatment acres of lands with the primary strategy of removing nutrients from agricultural runoff. Primary agricultural drainage canals would flow directly to the Areas where large scale wetland treatment systems would process it for removal of nutrients.

The Regulatory Program created in the Settlement Agreement established a goal of reducing phosphorus loads from the EAA to each Stormwater Treatment Area by at least 25 percent by February 1996. An interim target goal of 10 percent had to be reached by February 1994. The SFWMD had to adopt rules to implement the Regulatory Program by April 1992, and the rules were scheduled to be effective in May 1992. In the Consent to the Settlement, the Judge determined that the Settlement Agreement was not self-executing but was subject to the state's Administrative Procedures Act, providing access for any person with interests that were or could be substantially affected by agency action.

Statement of Principles (1993)[4]

In July of 1993, the United States Department of the Interior; the SFWMD; US Sugar Corporation; South Bay Growers, Inc.; and Flo-Sun, Inc. executed a Statement of Principles in which all parties pledged to "inaugurate an unprecedented new partnership, joining the Federal and State governments with the agricultural industry of South Florida, to restore natural values to the Everglades while also maintaining agriculture as part of a robust regional economy."

[4] *Statement of Principles"*, July 1993 (http://exchange.law.miami.edu/everglades/litigation/state_agency/state_administrative/doc)

The parties agreed to the following **Management Principles**:

1. Continued discussions on a Technical Plan developed by experts to improve the quality of water reaching the Everglades, and to address sheet flow and hydroperiod restoration.
2. A commitment to implement the Technical Plan through the acquisition and establishment of flow-through filtration marshes, construction of works, and other activities to immediately reduce phosphorus entering the Refuge and portions of the Miccosukee Indians' tribal lands.
3. Reduced phosphorus outputs achieved through best management practices implemented over a 20-year period, and based on performance as well as the development of new technology to improve effectiveness.

The parties also agreed to the following **Financial Principles**:

1. All parties contemplated financial contributions, and committed to seeking legislative approval where necessary.
2. Agriculture in the EAA agreed to contribute $322 million over 20 years to fund the construction, research, monitoring, operation and maintenance, and other incidental costs. Credits against contributions were provided for reaching targeted phosphorus reduction goals with a 30 percent reduction in the first year, a 45 percent reduction in year 13 and thereafter. In any case, the financial contribution would not fall below $11.625 million in any year.
3. The State of Florida, through DEP, committed to pursuing state funding through P2000 ($33 million), the State Land Exchange proceeds ($30 million), and the FPL mitigation fund ($14 million).
4. The SFWMD agreed to vote on increasing the millage rate in the Okeechobee Basin to .10 mill to generate just under $22 million each year.
5. The federal government agreed to pursue the C-51 flood control project, modified to include measures to provide additional water to the Everglades, at a cost of approximately $107 million.

Everglades Forever Act (1994)

The 1994 Legislature enacted the "Everglades Forever Act" as Chapter 94-115, Laws of Florida, in an attempt to end the lawsuits filed as a result of the federal Settlement Agreement, and the administrative appeals filed as a result of the passage of the Everglades Protection Act. It is this Act that established legislative findings that restoration of the Everglades was not proceeding as timely as was necessary, and it is this Act that is the framework of Everglades restoration efforts today.

The Everglades Forever Act requires the following:

1. Implementation of the Everglades Construction Project by the SFWMD through the construction of six Stormwater Treatment Areas according to a statutory schedule, with a 28 percent increase in the average annual water supply to the Everglades Protection Area.
2. Monitoring and research programs in the EAA conducted by DEP and the District.
3. Research by DEP and the District to propose a numerical Class III phosphorus standard in the EPA, with adoption of a rule by December 31, 2003.
4. **A default numerical Class III phosphorus standard of 10 ppb if a rule is not adopted by December 31, 2003.**
5. Creation of the agricultural privilege tax in the C-139 Basin and the EAA.
6. District use of 30 percent of P2000 funds to implement the Everglades Construction Project, and use of a portion of the Alligator Alley toll proceeds to restore the Everglades.

7. **By December 31, 2006, the DEP and the District must take necessary action to ensure that water delivered to the Everglades Protection Area achieves state water quality standards, including phosphorus criterion, in all parts of the Everglades Protection Area.**

Modifications to Federal Settlement Agreement (1995)[5]

In 1995, the parties in the federal case asked the Court to modify the Settlement Agreement based on the following issues:

1. The Settlement Agreement was not self-executing because it provided remedial measures for final development, promulgation, and implementation through the state administrative process.
2. On March 12, 1993, the Everglades SWIM Plan, providing Stormwater Treatment Areas as the other major component to restore the Everglades, was approved by the SFWMD, and the permit was issued by DEP.
3. The Settlement Agreement, the SWIM Plan, and the DEP Permit were all challenged. Only the BMP rule challenge was resolved through litigation. The SWIM Plan and the DEP Permit challenges were unresolved until passage of the Everglades Forever Act.
4. The SWIM Plan challenge, started in June of 1992, had fifteen parties. Through a mediation process, the parties developed an enhanced stormwater treatment area program known as the Technical Plan. Although the Statement of Principles was executed in July 1993, mediation broke down later in the year and the trial was scheduled to start when the Legislature enacted the Everglades Forever Act with a December 31, 2006 deadline.

The Modified Settlement Agreement, approved by an Omnibus Order entered in April 2001[6], included these two primary issues:

1. The establishment of two additional Stormwater Treatment Areas by the District, and an extension of the 2002 deadline to reach long-term phosphorus concentration limits in the Refuge and the Park to December 31, 2006.
2. A commitment by the federal government to secure funding for a portion of the construction costs of STA 1E, to be completed in conjunction with the C-51 flood control project.

Approval of the modified settlement was delayed due to an action filed by the Miccosukee Tribe to enforce the original settlement agreement.

DEP's Current Surface Water Quality Standards (chapter 62-302, F.A.C.)

Chapter 62-302, F.A.C., contains the current rules that govern surface water quality in Florida, and establishes that department rules regarding water quality standards are designed to protect the public health or welfare, and enhance the quality of the waters of the state. All surface waters have been classified according to designated uses. Class I surface waters are designated for potable water supply. Class II waters are classified for shellfish propagation or harvesting. Class III surface waters are designed for recreation, and propagation and maintenance of a

[5] United States v. SFWMD, No. 88-1886, Memorandum in Support of the Settling Parties' Joint Motion for Approval of Modifications to the Settlement Agreement Entered As a Consent Decree (1995)
[6] United States v. SFWMD, Omnibus Order (2001)

healthy, well-balanced population of fish and wildlife. The Everglades Protection Area contains both Class II and Class III waters.

Surface water quality criteria is both numeric and narrative, except within zones of mixing. **In 62-302.530, F.A.C., the criteria for nutrients, which includes phosphorus, is a "narrative" criteria: "In no case shall nutrient concentrations of a water body be altered so as to cause an imbalance in natural populations of aquatic flora or fauna"** However, pursuant to statutory requirements, the department is proposing a rule for adoption by the Environmental Regulation Commission that contains a **numeric criterion** for phosphorus limits in Class III waters.

DEP's Proposed Rule to Establish A Long-Term Geometric Numeric Phosphorus Criterion of 10 ppb for Class III waters in the EPA

In July 2001, the DEP published a Notice of Proposed Rule Development to implement statutory requirements that the department establish a numeric phosphorus criterion for Class III waters in the Everglades Protection Area. The rule proposed by the DEP, to be adopted by the Environmental Regulation Commission, established a long-term geometric mean of 10 ppb as the numeric phosphorus criterion for Class III waters in the EPA.[7]

The proposed rule also contained the following:

1. Findings that BMPs reduced phosphorus loads from the EAA to the EPA by more than twice the amount required by existing rules; that the STAs reduced phosphorus concentrations to less than 35 ppb, **exceeding the 50 ppb goal established in the Everglades Forever Act and the federal Settlement Agreement;** and that further efforts are necessary to achieve phosphorus reduction criteria.
2. Conclusions by the DEP that optimization of the existing STAs and BMPs is currently the most cost-effective and environmentally preferable means to achieve further phosphorus reduction in the EFA, **and should be exhausted before expanding the size of the STAs.**
3. Implementation of **Best Available Phosphorus Reduction Technology (BAPRT) will result in net improvement in the impacted areas of the EPA.**
4. CERP contains projects affecting the flows and phosphorus levels entering the EPA, and the DEP and the District are coordinating water quality improvement measures with CERP projects.
5. Moderating provisions for discharges into or within the EPA for measures such as net improvement in impacted areas and hydro pattern restoration.
6. The use of BAPRT to achieve and maintain compliance with numeric criterion, and to develop and implement maximum incremental phosphorus reduction measures. Implementation of BAPRT was recommended for an initial phase through 2016, and a second phase through 2026.
7. Requirements for Long-Term Compliance Permits for phosphorus discharges into the EPA.

The proposed rule was scheduled for adoption by the Commission on April 24-25, 2003, but has been postponed until the 2003 Regular Session has been concluded.

[7] Proposed Rulemaking "Water Quality Standards Within the Everglades Protection Area (EPA),", at 62-302.540, F.A.C. (March 2003)

Miccosukee Tribe Water Quality Standards

Pursuant to the Clean Water Act and corresponding federal regulations, the Miccosukee Tribe established its own water quality standards, including a numeric criterion for phosphorus, ruling that total phosphorus must not exceed 10 ppb.[8] The US Environmental Protection Agency approved the Tribe standards in 1998, and specifically concluded that the phosphorus criterion was not overly protective, met Clean Water Act requirements, and was scientifically defensible.[9] However, the 10 ppb standard does not apply on all tribal lands and on those where it does apply, moderating provisions also apply. On some agriculture, commercial, and residential developments, the Tribe adopted a narrative criterion for phosphorus.[10]

2003 Everglades Consolidated Report

On January 1, 2003, the SFWMD released the "2003 Everglades Consolidated Report" developed to provide updated information on the programs and permits which make up the Everglades Forever Act. The Report indicates that Everglades water quality generally meets the state numeric criteria, and the recovery from the 2000-2001 drought resulted in lower phosphorus concentrations over much of the EPA. Phosphorus loads from the EAA have been reduced to a greater extent than what is required in the Everglades Forever Act. Four of the six Stormwater Treatment Areas are fully operational, and the remaining two will be completed by October 2003. Together, BMPs and the STAs have prevented more than 1,300 metric tons of phosphorus from entering the Everglades Protection Area.[11]

With regard to phosphorus criterion, the 2003 Report states that "a numeric phosphorus criterion of 10 ppb measured as a long-term geometric mean would be protective of the natural flora and fauna of the Everglades", and that "adoption of a 10 ppb phosphorus criterion is further supported by the comprehensive literature review conducted by the United States EPA during its evaluation of the Miccosukee Tribe's proposed 10 ppb criterion." The Report goes on to say that "the Department's evaluation of the results of the Duke University Wetland Center Everglades dosing study clearly indicates that the center's recommended 15.6 ppb criterion would not be adequately protective of the natural flora and fauna".[12]

In Chapter 5: Development of Numeric P Criterion, the Report goes on to say that phosphorus criterion is achieved if "the annual geometric mean of measured total phosphorus concentrations for that station during the year does not exceed 15 ppb, and the arithmetic average of the annual geometric mean…. during the five-year period encompassing that year and the previous four years is maintained at or below 10 ppb criterion."[13] The upper annual concentration limit of 15 ppb takes into account uncontrollable factors such as water depth, rainfall, sediment type, vegetation type, hydrology, fire, and climate changes.

[8] Miccosukee Tribe of Indians of Florida, Water Quality Standards (Adopted December 19, 1997)
[9] Dan Schedit, 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 II-A Waters." (May 20, 1999)
[10] Rizzardi, Keith, "*Translating Science Into Law: Phosphorus Standards in the Everglades"*, Journal of Land Use & Environmental Law, Vol. 17, Fall 2001, No. 1
[11] 2003 Everglades Consolidated Report 2, 3
[12] 2003 Everglades Consolidated Report, 19
[13] 2003 Everglades Consolidated Report, 5-3

Final Report of the Peer Review Panel Concerning the Draft 2003 Everglades Consolidated Report (submitted October 2002)[14]

The Everglades Consolidated Report is reviewed by a Peer Review Panel with the task of determining if appropriate scientific models and applications were used, along with all relevant data, and to determine if the Report presented a logical consequence of science and data. For the 2003 Report, the Peer Review Panel determined the following:

1. While scientific evidence supports a 10 ppb standard, it does not support that 10 ppb is the only protective standard. It also does not support that the 10 ppb is appropriate throughout the entire Everglades Protection Area.
2. The application of a uniform phosphorus criterion across the Everglades may not provide necessary patterns of variability.

Long-Term Plan

The "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" was prepared by Burns & McDonnell for the South Florida Water Management District. The Conceptual Plan examined the progress made in reducing phosphorus levels discharged into the Everglades Protection Area through implementation of the Everglades Construction Project as mandated in the Everglades Forever Act, and found that while efforts have exceeded expectations, additional work is necessary before the goal of 10 ppb can be reached. The Conceptual Plan recommended a planning horizon from 2003-2016

On March 12, 2003, the District Governing Board endorsed the Conceptual Plan and the goal of achieving the proposed Everglades phosphorus criterion of 10 ppb consistent with associated natural variability, but made two modifications:

1. The Plan objective was changed 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 Consolidation Report"[15] (15 ppb).
2. The Governing Board directed staff to implement a second 10-year phase (2017-2026) of continuous improvement in phosphorus reduction as necessary to meet the plan objective. No later than December 2013, updated project scopes, cost estimates, and implementation schedules are to be developed to cover the second 10-year phase.

The Governing Board expressed the need for legislative review and ratification of the Conceptual Plan which contains a consensus approach developed by technical representatives of the District, the DEP, the US Department of the Interior, the EAA Environmental Protection District, and other stakeholders.

The Long-Term Plan has three components:

[14] Final Report of the Peer Review Panel Concerning the 2003 Everglades Consolidated Report 10, 33

[15] Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals, Executive Summary 5

1. Pre-2006 Projects: 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 Board recognized the possibility that the long-term geometric mean total phosphorus concentration of 10 ppb in discharges from the Basins might be met, but also recognized the possibility that it might not.
2. Process Development and Engineering (estimated at $31.2 million): optimizing water quality performance in existing and proposed facilities; integration with CERP, maintaining and improving source controls, and acceleration of the recovery of previously impacted areas in the EPA.
3. Post-2006 (estimated at $36 million): Adaptive implementation of additional water quality improvement measures such as conversion of additional lands to STAs.[16]

CERP[17]

The CERP is a plan which provides a framework to restore, protect, and preserve the water resources in central and south Florida, including the Everglades, through the capture, storage, and redistribution of water lost to tide, and the regulation of water quality, water quantity, timing and distribution. CERP includes 16 counties, covers more than 18,000 square miles, has at least 60 elements, and is expected to cost at least $8.6 billion over the next 40 years. Major project components include surface water storage reservoirs, water preserve areas, underground water storage, treatment wetlands, wastewater reuse, and improved water conservation.

CERP is funded equally by the federal government and the State of Florida. For the first ten years, the State and the federal government have agreed to each provide $200 million annually. The state's $200 million share is split equally with the District, the local sponsor for the CERP project.

In the 2002 Regular Session, the Legislature enacted Chapter 2002-261, Laws of Florida, to create a bond program for Everglades restoration. Beginning in fiscal year 2002-2003 and continuing for the next seven fiscal years, the Legislature authorized the sale of at least $125 million bonds each year to address specified restoration needs. Bonds may not be issued until debt service has been appropriated, and bond proceeds must be deposited into the Save our Everglades Trust Fund. The SFWMD will continue to use ad valorem revenue to fund the district share, and federal funding is provisional on congressional appropriations for specific Everglades restoration projects.

Bonds were not sold for the 2002-2003 fiscal year due to lawsuits filed over provisions relating to the administrative procedures act which were amended into the legislation.

"Polluters Pay" Constitutional Provision

In the 1996 General Election, more than 68 percent of persons voting in the election approved the "Polluters Pay" amendment to the State Constitution. The amendment provided that "those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection

[16] Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals, Executive Summary 6, 7

[17] Committee Briefing Book, Natural Resources Committee, Florida House of Representatives (Dec. 2002)

Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution". (see Art. II, s. 7, Constitution of the State of Florida) The Legislature did not act to implement the provision.

In 1996, then Attorney General Robert Butterworth issued Advisory Opinion 96-92 to the Executive Director of the South Florida Water Management District, which stated that although the Legislature could enact provisions to implement "Polluters Pay", the District had a duty to ensure that polluters in the EAA were primarily responsible for paying the costs of pollution abatement. In March of 1997, then Governor Chiles requested a clarifying Advisory Opinion from the Florida Supreme Court. The Court concluded that the "Polluters Pay" amendment "is not self-executing and cannot be implemented without the aid of legislative enactment because it fails to lay down a sufficient rule of accomplishing its purpose". (Advisory Opinion to the Governor No. 90,042.)

To date, the "Polluters Pay" amendment has not been implemented by the Legislature.

Funding the Everglades Construction Project

The 1994 original project estimates for the Everglades Construction Project were $713 million in revenue from ad valorem taxes, federal, state, and agricultural taxes, with $684.8 million in expenses for construction, operation and maintenance, land acquisition, engineering and federal expenses. The 2002 project estimates are revenues of $863.1 million from agriculture and ad valorem taxes, federal, and state sources, with expenses of $861.1 million. By 2007, expenses will outstrip revenues. The projected shortfall is just over $19 million.

III. Effect of Proposed Changes:

Section 1: Amends s. 373.4592, F.S., to provide the following:

Legislative Findings:

- Use of a long term planning process is the best way to ensure that Stormwater Treatment Areas will perform at the optimal level and achieve additional phosphorus reduction in the Everglades Protection Area (EPA).
- The "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals" (Long-Term Plan), dated March 17, 2003 and prepared by Burns & McDonnell for the South Florida Water Management District (SFWMD), provides the best available phosphorus reduction technology (BAPRT) providing the Plan seeks to achieve the numeric interpretation for phosphorus of the Class III narrative nutrient criterion at the earliest possible date.
- Revisions to the Long-Term Plan must be incorporated through an adaptive management approach with a Process Development and Engineering component to identify and implement measures such as additional compartmentalization; improved flow control; vegetation management; operation refinements; and improvements in agricultural and urban best management practices to reduce phosphorus criterion at the earliest possible date.
- The rulemaking process and the Long-Term Plan are a good faith effort by the State of Florida to meet the federal water quality provisions of the United States Environmental Protection Agency, and to maintain consistency with the Settlement Agreement dated July 26, 1991, entered in Case No. 88-1886-Civ-Hoeveler, United State District Court.

Establishes the Legislature's intent that the implementation of the Long-Term Plan be integrated and consistent with the implementation of the Comprehensive Everglades Restoration Program (CERP) to avoid unnecessary and duplicative costs. The Long-Term Plan will be implemented for a 13-year phase that runs from 2003-2016. A second phase may be implemented only with legislative approval.

Not later than December 31, 2008, the Department of Environmental Protection (DEP) is also directed to review and approve incremental phosphorous reduction measures which must be implemented at the earliest possible date. Implementation of the Long-Term Plan, to the maximum extent practicable, must achieve water quality standards in the EPA as determined by a network of monitoring stations.

During the initial phases of the Long-Term Plan, eminent domain procedures cannot be implemented to acquire additional lands for Stormwater Treatment Areas. The SFWMD is authorized to expand its use of the Okeechobee Basin tax to include funding, design, construction and implementation, operation and maintenance of the enhancements required in the initial phase of the Long-Term Plan, including the ECP. Not later than December 31, 2006, the SFWMD must complete construction of enhancements to the ECP recommended in the Long-Term Plan, and must initiate other Pre-2006 strategies contained in the Plan.

DEP's rule adopting a phosphorus criterion must include moderating provisions for authorized discharges if the use of BAPRT provides net improvement to impacted areas. The DEP must determine that discharges to unimpacted areas as authorized by moderating provisions, including the use of BAPRT, provide environmental benefits that clearly outweigh potential adverse impacts. During the implementation of the initial phase of the Long-Term Plan, DEP permits will be based on the use of BAPRT , and will include technology based effluent limitations that are consistent with the Long-Term Plan.

Provides that for the agricultural privilege tax assessed in the C-139 Basin, the per acre tax for tax notices mailed from November 2003 through November 2013 will be calculated using the total acreage on the Basin tax roll in 2001. Agricultural privilege taxes in the Everglades Agricultural Area (EAA) will be assessed at $25 per acre for tax notices mailed from November 2014 through November 2016.

Provisions requiring the DEP and the SFWMD to meet state water quality standards, including the phosphorus criterion, in all parts of the EPA by December 31, 2006, are revised to require that by that same date, the DEP and the SFWMD must take any action necessary to implement the Pre-2006 Projects and Strategies of the Long-Term Plan so that water delivered to the EPA achieves state water quality standards, including the phosphorus criterion and moderating provisions, to the maximum extent practicable.

Provides that by December 31, 2003, the SFWMD must submit an application for permit modification to the DEP to incorporate proposed changes to the ECP and other works delivering water to the EPA as are needed to implement the Pre-2006 Projects and Strategies of the Long-Term Plan, in all permits issued by the DEP. Proposed changes must be designed to meet state water quality standards, including phosphorus criterion and moderating provisions, to the

maximum extent practicable. Under no circumstances shall any project or strategy cause or contribute to a violation of state water quality standards.

During the implementation of the initial phase of the Long-Term Plan, permits issued by the DEP must be technology based, and must include technology based effluent limitations consistent with the Long-Term Plan.

Payment of the Everglades agricultural privilege tax is compliance by the owners and users of the land in the EAA with the provisions of s. 7 (b), Art. II, of the Constitution of the State of Florida, known as the "Polluters Pay" provision.

Section 2: Repeals section 3 of chapter 96-412, Laws of Florida, and section 84 of chapter 96-321, Laws of Florida, both of which are codified in the bill. These sections provide a description of property excluded from the C-139 Basin.

Section 3: Provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill authorizes the SFWMD to continuing assessing the ad valorem tax of .10 mill in the Okeechobee Basin to be used for the expanded purposes of the long-term plan. The original assessment was to provide funds to design, construct, and acquire lands for the Everglades Construction Project. Once land acquisition, design and construction of the Project was complete, the district would have stopped the special assessment.

The bill makes revisions to the per acre agricultural privilege tax assessed in the C-139 Basin to provide that the assessment will be calculated using the acreage on the 2001 tax roll.

The bill makes revisions to the per acre agricultural privilege tax assessed in the EAA to provide that for a two-year period, starting with the tax notices mailed in November

2014, the per acre assessment will be $25 instead of the $10 assessment provided in current law..

B. Private Sector Impact:

Private property owners in the Okeechobee Basin will continue to pay an ad valorem tax of .10 mill.

Agricultural interests in the EAA will see an increase in the per acreage assessment starting in 2014.

C. Government Sector Impact:

The 2003 Everglades Consolidated Report 5-Year project estimates for the Everglades Construction Project indicate that in 2007, project expenses are expected to surpass revenues by approximately $19 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.