

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment and General Government

BILL: PCS/CS/SB 92 (387250)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Environment and Natural Resources Committee; and Senators Book and Mayfield

SUBJECT: C-51 Reservoir Project

DATE: February 22, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 92 revises provisions relating to the C-51 reservoir project, a water storage facility located in western Palm Beach County. The following provisions, currently applicable only to Phase II of the C-51 project, are extended to apply to the entire project. The revisions authorize the South Florida Water Management District (SFWMD) to:

- Acquire any portion of the C-51 reservoir project not already committed to utilities for alternative water supply purposes; and
- Acquire land near the C-51 reservoir as necessary to implement any part of the project.

Additionally, the bill:

- Requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement approved by the SFWMD;
- Requires that water made available by the reservoir project be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Authorizes using water from the reservoir project received from Lake Okeechobee to support consumptive use permits if such use is in accordance with the SFWMD rules;
- Authorizes the SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the Department of Environmental Protection (DEP) to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund to the water supply entity (up to \$30 million); and

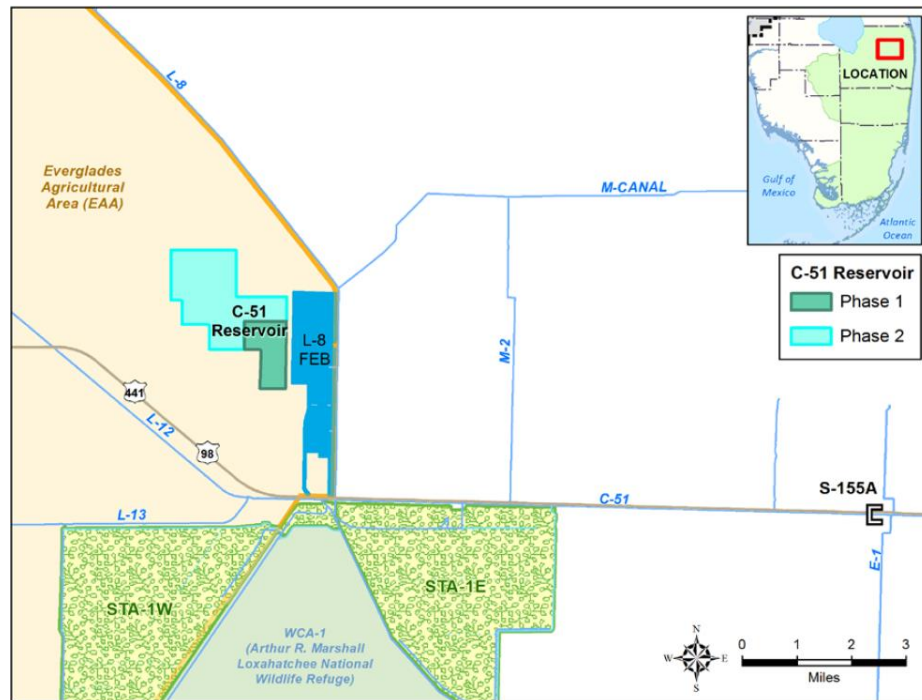
- Clarifies that the SFWMD is not responsible for repaying any portion of a loan that is waived pursuant to this bill.

The overall fiscal impact is indeterminate. The DEP Water Resource Protection and Sustainability Program Trust Fund revenue will be reduced up to \$30 million dependent on the DEP issuing the loan for the C-51 reservoir project and subsequently forgiving that loan.

II. Present Situation:

C-51 Reservoir Project

The C-51 reservoir project is a proposed water storage facility located in western Palm Beach County, on lands that are currently a rock mine owned by Palm Beach Aggregates, LLC (PBA). The project consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities, while also providing environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.¹ The project currently exists in two phases: Phase I, for which the mining operation is complete, and a consumptive use permit and an environmental resource permit have been issued; and Phase II, which is still in the conceptual stages.²



¹ Section 373.4598(9)(a), F.S.; See Palm Beach County, *Lake Worth Lagoon Management Plan Revision*, 68 (2008), available at <http://www.lwli.org/pdfs/LWLMP.pdf> (last visited Jan. 16, 2019). Discharges from the C-51 Canal into the Lake Worth Lagoon account for approximately 50 percent of the freshwater inflows into the lagoon.

² South Florida Water Management District, *Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, 1–2*, available at <https://www.sfwmd.gov/sites/default/files/documents/C-51%20Reservoir%20Ph%201.pdf> (last visited Jan. 16, 2019); South Florida Water Management District, *Lower East Coast Water Supply Plan Update, Planning Document*, 188–190 (2018), available at https://www.sfwmd.gov/sites/default/files/documents/2018_lec_plan_planning_doc.pdf (last visited Jan. 16, 2019).

Phase I of the project will provide approximately 14,000 acre-feet of water storage and will be connected hydraulically to the adjacent L-8 Flow Equalization Basin, which is part of the SFWMD's regional system for conveying and managing water.³ The SFWMD has designated Phase I as a pilot alternative water supply project, and the project is located in the Lower East Coast Regional Planning Area, in a restricted allocation area.⁴ Water from Phase I will be conveyed via coordinated operation of canal systems to individual utility wellfields to provide direct aquifer recharge.⁵ Phase I will capture and store excess stormwater runoff, and reduce freshwater discharges from the C-51 Canal into the Lake Worth Lagoon on the east coast, while increasing available water supply for consumptive uses.⁶ The project will provide 35 million gallons of water per day (mgd) for public water supply.⁷ The estimated cost of constructing the project is approximately \$161 million.⁸ Once funding is secured, the project can be delivered within 24 months.⁹

In February of 2017, the SFWMD entered into an Operation and Maintenance Agreement with PBA for Phase I of the C-51 reservoir project.¹⁰ Under the agreement, PBA is responsible for construction of Phase I of the C-51 reservoir project. Since Phase I is dependent on the SFWMD's regional system, the SFWMD agreed to operate, maintain, repair, replace, and rehabilitate the project. The SFWMD must be compensated for these services.¹¹ When PBA has completed the Phase I project, PBA will transfer ownership of the project to C-51 Reservoir, Inc. (C-51 NFP), a Florida not-for-profit corporation.¹² C-51 NFP will be governed by the water supply utilities and other water users who have contracted for capacity in the Phase I project.¹³

Phase II of the C-51 reservoir project is located immediately west of Phase I. Phase II could potentially provide a total of 46,000 acre-feet of water storage and is estimated to cost a total of approximately \$286 million.¹⁴ Potential uses for Phase II are still being considered.¹⁵

³ Section 373.4598(9)(b), F.S.

⁴ Section 373.037, F.S.; Lower East Coast Water Supply Plan Update, *supra* note 2, at 25.

⁵ Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 1; *See* Lower East Coast Water Supply Plan Update, *supra* note 2, at 189. The water from Phase I will be conveyed and managed through coordination between SFWMD, the Lake Worth Drainage District, and/or other local water control districts.

⁶ Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 1.

⁷ *Id.*

⁸ Lenhart J. Lindahl, P.E., Assistant Executive Director, South Florida Water Management District, Governing Board Meetings, *C-51 Reservoir O&M Agreement*, slide 3 (Feb. 9, 2017), available at <http://my.sfwmd.gov/webapps/publicMeetings/viewFile/10427> (last visited Jan. 16, 2019).

⁹ Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 2.

¹⁰ South Florida Water Management District, Governing Board Monthly Meeting Agenda, *Operation and Maintenance Agreement for Phase 1 of the C-51 Reservoir Project Between the South Florida Water Management District and Palm Beach Aggregates, LLC*, Packet Pg. 77 (2017), available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10423> (last visited Jan. 16, 2019); South Florida Water Management District, *Governing Board Monthly Meeting Minutes*, 7–8 (February 9, 2017), available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10485> (last visited Jan. 16, 2019).

¹¹ Operation and Maintenance Agreement, *supra* note 10, at Packet Pg. 85.

¹² *Id.* at Packet Pg. 80.

¹³ *Id.*

¹⁴ Section 373.4598(9)(b), F.S.; Lindahl, *supra* note 8, at slide 3.

¹⁵ *See* Brian J. Accardo, General Counsel, South Florida Water Management District, Governing Board Meetings, Videos, *Constructing the Senate Bill 10 Reservoirs: Opportunities and Challenges in 2019* (Nov. 8, 2018), available at <http://sfwmd.ig2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1878&Format=Agenda> (last visited Jan. 15, 2019). The presentation discussing Phase II of the C-51 reservoir project begins around 1:16:00.

In 2017, the Legislature enacted a number of provisions pertaining to the C-51 reservoir in Senate Bill 10.¹⁶ For Phase II of the C-51 reservoir project, the SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project or to enter into a public-private partnership.¹⁷ The SFWMD is authorized to acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the district or the state as necessary to implement Phase II of the project.¹⁸ The state and the SFWMD are authorized to consider potential swaps of land that is owned by the state or the SFWMD to achieve an optimal combination of water quality and water storage.¹⁹ The SFWMD is prohibited from exercising eminent domain for the purpose of implementing the C-51 reservoir project.²⁰

If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project, state law requires that:

- The SFWMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries in addition to providing relief to the Lake Worth Lagoon;
- Water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and
- Any water received from Lake Okeechobee may not be made available to support consumptive use permits.²¹

Phase I of the C-51 reservoir project is authorized to be funded through specific appropriation or through the water storage facility revolving loan fund, as provided in s. 373.475, F.S.²² Phase II of the C-51 reservoir project is authorized to be funded using Florida Forever bonds, pursuant to the water storage revolving loan fund, as a project component of the Comprehensive Everglades Restoration Program, or pursuant to s. 375.041(3)(b)4., F.S.²³

In 2017, the state authorized a \$30 million loan to implement Phase I of the C-51 reservoir project.²⁴ The loan would be administered through the water storage facility revolving loan fund, which allows the DEP to provide funding assistance to local governments or water supply entities for the development and construction of water storage facilities.²⁵ The loan is to be repaid from the proceeds of the sale of unreserved capacity in the water storage facility, or other appropriate payment, at time of receipt. The loan is required to have a 30-year term, may be prepaid at any time, and accrues interest until repayment. The loan is secured by a first mortgage lien on the water storage facility and a collateral assignment of unreserved capacity as adequate security for the loan. The loan does not reserve for use by the state or the SFWMD any capacity authorized pursuant to the consumptive use permit for Phase I of the C-51 reservoir.²⁶

¹⁶ Chapter 2017-10, s. 3, Laws of Fla.

¹⁷ Section 373.4598(9)(c), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at (d).

²² *Id.* at (e).

²³ *Id.*

²⁴ Chapter 2017-10, s. 12, Laws of Fla.

²⁵ Section 373.475, F.S.

²⁶ Chapter 2017-10, s. 12, Laws of Fla.

Through capacity allocation agreements between PBA and public water utilities or other water users, participants can contribute a pro rata share of the capital costs, and operating and maintenance costs, in exchange for a contractual allocation of the permitted storage capacity in the Phase I project as an alternative water supply.²⁷ As of fall 2018, four utilities have entered into capacity allocation agreements with PBA: Broward County, the City of Sunrise, the City of Dania Beach, and the City of Hallandale Beach.²⁸ These agreements cover a total of 13 mgd of the available 35 mgd in Phase I.²⁹

Restricted Allocation Areas

The term “restricted allocation area” is defined as an area within a water supply planning region of the SFWMD, the Southwest Florida Water Management District, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for a planning period of at least 20 years, and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water.³⁰ Florida law authorizes water management districts to designate and implement alternative water supply projects within restricted allocation areas.³¹

Due to concerns regarding water availability, the SFWMD has declared the Lake Okeechobee Service Area a restricted allocation area.³² Therefore, additional restrictions apply when allocating surface water derived from the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8 of the Florida Administrative Code, to address lower lake management levels and storage under the U.S. Army Corps of Engineers’ Lake Okeechobee Regulation Schedule.³³

The subsection of the SFWMD’s permit applicant’s handbook titled Lower East Coast Regional Water Availability also establishes restricted allocation areas.³⁴ As a component of the recovery strategy for the minimum flows and levels for the Everglades and the Northwest Fork of the

²⁷ Broward County, *Agreement for Capacity Allocation in Phase 1 of the C-51 Reservoir*, 2 (2017), available at http://cragenda.broward.org/docs/2017/CCCM/20170502_537/24471_2017-04-26%20C-51%20Capacity%20Allocation%20Agreement%20-%20AI%2024471.pdf (last visited Jan. 10, 2019); See Broward County, *County Commission, Meeting Agendas, Meeting of May 2nd, 2017*, http://cragenda.broward.org/agenda_publish.cfm?id=&mt=ALL&get_month=5&get_year=2017&dsp=ag&seq=535 (last visited Jan. 16, 2019); See generally City of Hallandale Beach, *Agreement for Capacity Allocation in Phase 1 of the C-51 Reservoir*, (2018), available at http://apps.sfwmd.gov/entsb/docdownload?object_id=0900eeee8aac3958 (last visited Jan. 10, 2019).

²⁸ Lower East Coast Water Supply Plan Update, *supra* note 2, at 189.

²⁹ *Id.*

³⁰ Section 373.037(1)(c), F.S.

³¹ Section 373.037, F.S.

³² South Florida Water Management District, *Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District*, 63 (Sept. 7, 2015), available at https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf (last visited Jan. 15, 2019).

³³ *Id.*

³⁴ *Id.* at 55; Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 1. The Lower East Coast Regional Water Availability Rule applies to Phase I.

Loxahatchee River, additional restrictions have been adopted for the permitted allocations of water use withdrawals. These restrictions assist in implementing the objective of the SFWMD to ensure that water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.³⁵

III. Effect of Proposed Changes:

Section 1 amends s. 373.4598(9), F.S., to revise the following provisions that are currently restricted to Phase II of the C-51 project to apply to all phases of the project:

- The SFWMD may acquire any portion of the C-51 project not already committed to utilities for alternative water supply; and
- The SFWMD may acquire land near the C-51 reservoir project to implement any part of the project.

The bill also requires the operation of Phase I to be in accordance with any operation and maintenance agreement approved by the SFWMD. At present, this would require the SFWMD to operate the C-51 reservoir project in accordance with the Operation and Maintenance Agreement that the SFWMD entered into with PBA in February of 2017. In addition, the existing requirement for the reservoir project to be operated in a way that reduces regulatory releases from Lake Okeechobee is relaxed by clarifying that the C-51 reservoir need only be operated to reduce such regulatory releases to the extent practicable. This gives greater flexibility to the SFWMD in its operation of the project. It is not yet fully known how the C-51 reservoir project's functions will impact regulatory releases from Lake Okeechobee.

The bill clarifies that water from the C-51 reservoir project would be available for use in natural systems in addition to any "permitted," rather than "allocated," amounts for water supply, so that the SFWMD would make deliveries consistent with district rules and permits. Also, water from the C-51 reservoir project received from Lake Okeechobee would be available to support consumptive use permits, but only if such use is in accordance with the SFWMD rules.

The SFWMD would be authorized to enter into a capacity allocation agreement with PBA, and receive a pro rata share of unreserved capacity in Phase I. The SFWMD would have authority to request that the DEP waive repayment of any or all of the \$30 million loan the state authorized in 2017 for the implementation of Phase I, if a loan for Phase I is issued through the water storage facility revolving loan fund. The DEP can authorize such a waiver if the DEP determines that reasonable value has been received. The SFWMD would not be responsible for repaying any portion of a loan that is waived in such a manner.

Section 2 provides that the bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁵ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Depending on whether the DEP approves of a waiver of any or all of the loan amount and what reasonable value the DEP deems appropriate, the loan recipient may receive a positive fiscal impact. The owners of any portions of the C-51 reservoir project, or any lands near the project, may be impacted if the SFWMD decides to acquire a portion of the project or lands near the project.

C. Government Sector Impact:

There may be a negative fiscal impact to the Water Resource Protection and Sustainability Program Trust Fund if the owners of the C-51 reservoir project receive a loan and then subsequently repayment of the loan is waived. If any or all of the loan repayment is waived, the DEP will not receive repayment of up to \$30 million for the water storage facility revolving loan fund depending on what reasonable value the DEP deems appropriate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.4598 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 20, 2019:

The committee substitute makes a technical change requiring the operation of Phase I to be in accordance with any operation and maintenance agreement approved by the SFWMD rather than adopted by the SFWMD.

CS by Environment and Natural Resources Committee on January 22, 2019:

The CS removes the section of the bill that would expand certain allocation of funding from the Land Acquisition Trust Fund to include the entire C-51 reservoir project, instead of only Phase II of the project.

- B. **Amendments:**

None.