

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 Committee on Rules

BILL: SB 1042

INTRODUCER: Senator Albritton

SUBJECT: Aquatic Preserves

DATE: February 28, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Favorable
2. Hackett	McVaney	GO	Favorable
3. Anderson	Phelps	RC	Pre-meeting

I. Summary:

SB 1042 designates the coastal region of Pasco, Hernando, and Citrus counties as the Nature Coast Aquatic Preserve and provides legislative intent. The bill provides the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) with the authority to maintain the preserve in a manner that is in the public interest and specifies authorized and prohibited activities within the preserve. The bill requires the Board of Trustees to adopt and enforce rules related to the management and preservation of the preserve and specifies that the creation of the preserve shall not infringe upon the riparian rights of adjacent property owners. The bill provides for civil penalties and specifies the preserve is subject to the Power Plant Siting Act.

The Department of Environmental Protection estimates to need 3 full-time equivalent positions and roughly \$400,000 in the 2020-21 fiscal year to implement the aquatic preserve. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2020.

II. Present Situation:

Sovereign Submerged Lands

Upon attaining statehood in 1845, “the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder.”¹ The title to lands under navigable waters passed from the United States to the state through operation of the

¹ *Merrill-Stevens Co. v. Durkee*, 62 Fla. 549, 57 So. 428, 432 (1912).

federal “equal footing” doctrine,² and included the submerged bed up to the “ordinary high water mark” of navigable rivers and lakes.³

The Florida Constitution⁴ provides that:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).⁵ The Board of Trustees is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶ The Department of Environmental Protection’s Office of Resilience and Coastal Protection carries out the Aquatic Preserve Program on behalf of the Board of Trustees.

Aquatic Preserves

The Florida Aquatic Preserve Act of 1975⁷ was created to ensure that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.⁸ An aquatic preserve is an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.⁹ Florida has 41 aquatic preserves, encompassing about 2.2 million acres.¹⁰ All but four of these submerged lands are located along Florida's 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life, and providing habitat for shorebirds. The aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.¹¹

² *Pollard v. Hagan*, 44 U.S. 212 (1845) (Under the Equal Footing Doctrine, the new states admitted into the Union since the adoption of the Constitution were given the same rights in submerged lands as the original states).

³ *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 339, 342 (Fla 1986); *Tilden v. Smith*, 94 Fla. 502, 113 So. 708, 712 (1927) (Concerning the boundary of fresh waters, the ordinary high water mark is the point where the presence and action of the water are so common and usual as to leave a mark upon the soil).

⁴ Art. X, s. 11 of the Florida Constitution.

⁵ DEP, *Submerged Land Management*, <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan. 13, 2020).

⁶ Section 253.03, F.S.

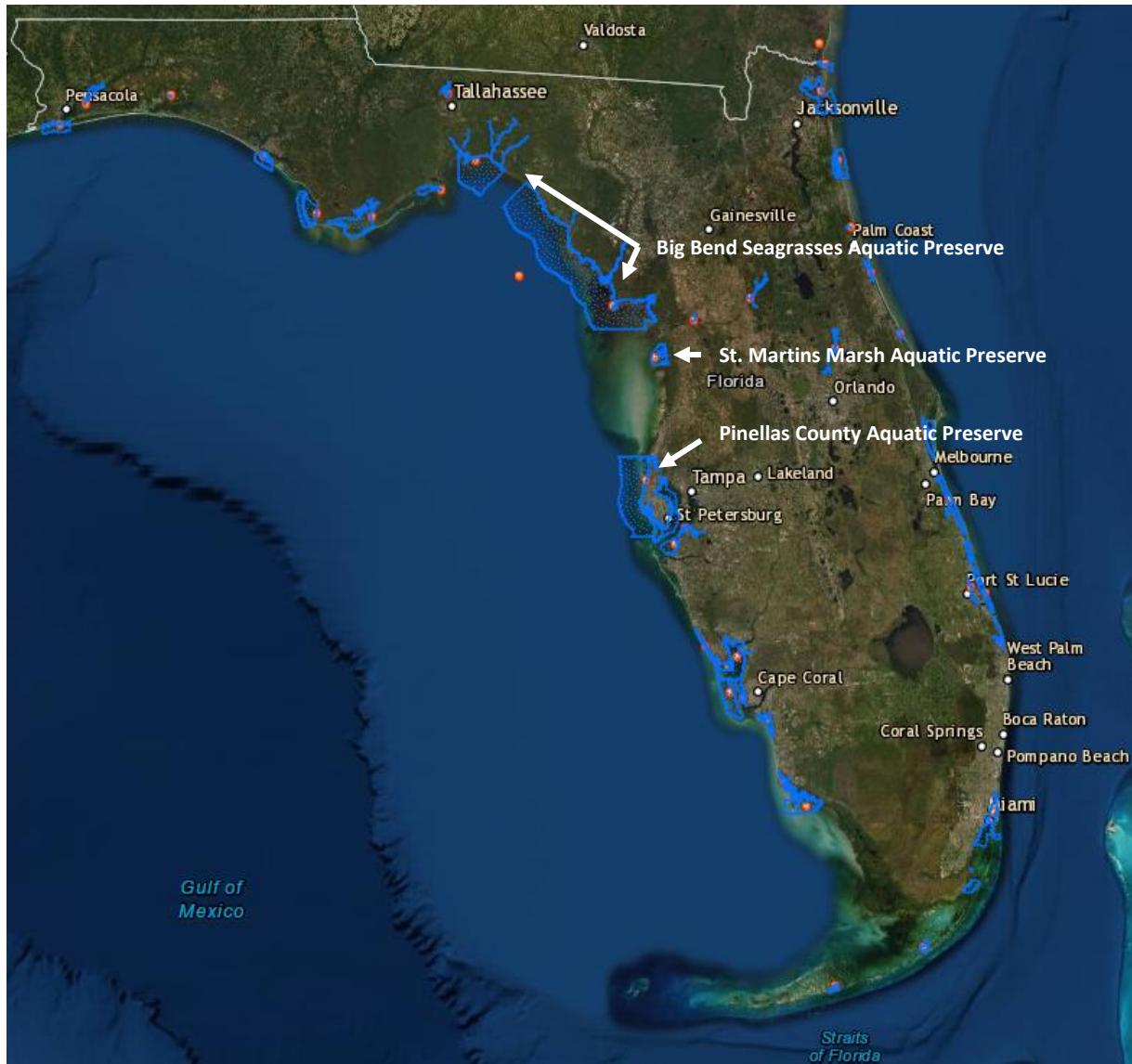
⁷ Section 258.35, F.S.

⁸ Section 258.36, F.S.

⁹ Section 258.37, F.S.

¹⁰ DEP, *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 1, 2020).

¹¹ *Id.*



Above is a map of Florida's aquatic preserves¹² with the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins March Aquatic Preserve specifically identified (each are mentioned in the bill as the proposed preserve would lie between them).

Current law¹³ restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs the Board of Trustees to maintain aquatic preserves subject to the following requirements:

¹² DEP, Aquatic Preserves of Florida StoryMap Component, <https://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0> (last visited Jan. 4, 2020).

¹³ Section 258.42, F.S.

- No further sale, lease, or transfer of sovereign submerged lands may be approved or consummated by the Board of Trustees except when such sale, lease, or transfer is in the public interest.
- The Board of Trustees cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.
- No further dredging or filling of submerged lands may be approved by the Board of Trustees except for certain activities that must be authorized pursuant to a permit.

The Board of Trustees' rules further provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally.¹⁴ Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board of Trustees. Docking facilities and structures for shore protection are restricted as to size and location.¹⁵

No wastes or effluents may be discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act. Riparian owners may selectively trim or alter mangroves on adjacent publicly owned submerged lands, provided that the selective trimming or alteration is in compliance with the requirements of state law including permit requirements for mangrove trimming.¹⁶

Fees

Leases of sovereign submerged lands are significantly more expensive for leases within aquatic preserves. The annual fee for standard term leases is six percent of the annual income, the base fee (currently \$0.1413/sq. ft.), or the minimum annual fee (currently \$423.89). Leases in aquatic preserves carry an additional charge equal to twice the base fee, which currently amounts to \$0.2826 per square foot. The additional charge is applied as long as 75% or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁷

Nature Coast

"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and

¹⁴ Fla. Admin. Code R. 18-20.004. Note that every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code and/or ch. 258, F.S.

¹⁵ Section 258.42, F.S. Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria.

¹⁶ Section 258.42, F.S.

¹⁷ Fla. Admin. Code Rule 18-21.011.

the City of Dunnellon.¹⁸ This area is a sanctuary to endangered species¹⁹ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.²⁰

Florida Electrical Power Plant Siting Act

The Power Plant Siting Act (PPSA)²¹ is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits.²² The certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.²³

¹⁸ Nature Coast Coalition, Nature Coast History, <http://www.naturecoastcoalition.com/nchistory.htm> (last visited Jan. 13, 2020), *see also* Florida Nature Coast, *Where would you like to go?*, <http://floridanaturecoast.org/> (last visited Jan. 14, 2020).

¹⁹ *Id.*

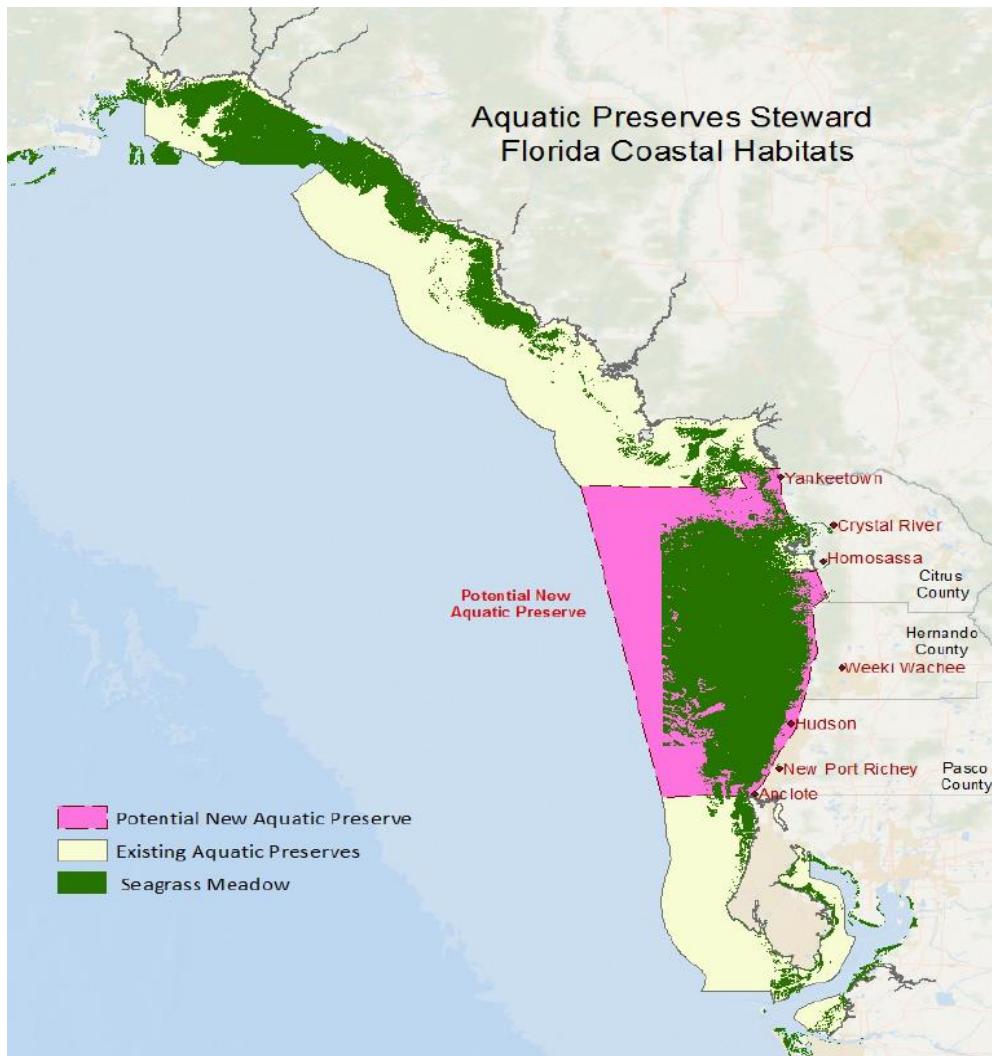
²⁰ Department of Environmental Protection, *House Bill 1123*, 2 (Feb. 27, 2014)(on file with the Senate Committee on Environmental and Natural Resources).

²¹ Sections 403.501-403.518, F.S.

²² Section 403.504, F.S.

²³ Section 403.511(2)(b)2., F.S.

III. Effect of Proposed Changes:



SB 1042 creates the Nature Coast Aquatic Preserve in the area described by the map above.

The bill creates the “Nature Coast Aquatic Preserve” in the area identified above. The intent of the designation is that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

The following restrictions will be applicable within the aquatic preserve:

- The Board of Trustees may not sell, transfer, or lease sovereign submerged lands in the preserve, except upon a showing of extreme hardship on the part of the applicant and a determination by the board that such sale, transfer, or lease is in the public interest.
- The Board of Trustees may not approve the further dredging or filling of submerged lands of the preserve except:
 - Minimum dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve.

- Other alterations of the physical conditions of the submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the aquatic preserve.
- The Board of Trustees may authorize minimum dredging and filling of the submerged lands for the construction and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads. Such projects may be authorized only upon a specific finding by the board that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality, valuable habitats, and utility of the preserve. This provision does not authorize the connection of upland canals to the waters of the preserve.
- The Board of Trustees may authorize the dredging of submerged lands if the Board of Trustees determines that such dredging is necessary to eliminate conditions hazardous to the public health or to eliminate stagnant waters, islands, and spoil banks, and that such dredging would enhance the aesthetic and environmental quality, habitats, and utility of the preserve and is clearly in the public interest as determined by the board.
- Before approving any dredging or filling the board must provide for public notice of such dredging or filling.
- There may not be any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with activity that is authorized by the bill.
- The Board of Trustees may not approve the seaward relocation of bulkhead lines or the further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of a seawall is prohibited without the approval of the Board of Trustees, which approval may be granted only if riprap construction is used in the seawall. Approval is granted by a letter of consent.
- The Board of Trustees may, for lands lying within the preserve:
 - Enter into agreements for and establish lines delineating sovereignty and privately owned lands.
 - Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.
 - Accept gifts of land within or contiguous to the preserve.
 - Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of any of such lands.
 - Take any action that is convenient or necessary to accomplish any of the acts and matters authorized under this paragraph.
 - Conduct restoration and enhancement efforts in the preserve and its tributaries.
 - Stabilize eroding shorelines of the preserve and its tributaries which are contributing to turbidity by planting natural vegetation to the greatest extent feasible and placing riprap, as determined by Pasco, Hernando, and Citrus Counties in conjunction with the Department of Environmental Protection.

The Board of Trustees is required to adopt and enforce rules that provide:

- Additional preserve management criteria as necessary to accommodate special circumstances.

- Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as sport fishing, commercial fishing, boating, and swimming.
- Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be authorized, but only after a formal finding of compatibility with the purposes of the aquatic preserve.

The establishment or the management of the preserve is not authorized to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be authorized by the board or the Department of Environmental Protection, subject to any other applicable laws under the jurisdiction of other agencies. However, before approving any such improvements, the board or the department must give public notice. In addition, the bill authorizes enforcement pursuant to the Environmental Protection Act,²⁴ and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill.

The bill clarifies that it is subject to the Florida Electrical Power Plant Siting Act.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

²⁴ Section 403.412, F.S., is the Environmental Protection Act, which authorizes the Department of Legal Affairs, any political subdivision, or citizen of the state to maintain an action for injunctive relief against any agency with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.

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

None.

B. Private Sector Impact:

Sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve will become more expensive under the current fee schedules. This negatively impacts future lessees.

C. Government Sector Impact:**Revenues**

Fees for leases of sovereign submerged lands located within the new aquatic preserve will increase under the current fee schedule, resulting in higher revenues for the state.

Expenditures

The Department of Environmental Protection estimates it will incur roughly \$216,000 in recurring costs, as well as roughly \$175,000 in non-recurring start-up costs. These costs include three additional full-time equivalent positions to establish and maintain the new aquatic preserve. These costs and workload needs are an amount higher than the Department of Environmental Protection is able to absorb within current funding.

The Department of Environmental Protection will incur some costs associated with the adoption of rules required by this bill. Such costs should be absorbed within the department's current level of resources.

The bill allows the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve. This would have a positive fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 258.3991 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
