State Affairs Committee

Thursday, March 7, 2013
9:00 AM
Morris Hall (17 HOB)

Will Weatherford
Speaker

Steve Crisafulli
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Thursday, March 07, 2013 09:00 am
End Date and Time:	Thursday, March 07, 2013 12:00 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 109 Consumptive Use Permits for Development of Alternative Water Supplies by Young, Pilon
HB 655 Political Subdivisions by Precourt

Consideration of the following proposed committee bill(s):

PCB SAC 13-01 -- Everglades Improvement and Management

NOTICE FINALIZED on 03/05/2013 16:23 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 109 Consumptive Use Permits for Development of Alternative Water Supplies
SPONSOR(S): Young and Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Deslatte	Blalock
2) State Affairs Committee		Renner	Camechis

SUMMARY ANALYSIS

Under current Florida law, the water management districts (WMDs) may require a consumptive use permit (CUP) for the development of alternative water supplies. These permits must be granted for a term of *at least 20 years*. If the permittee issues bonds for the construction of the project and requests an extension prior to the expiration of the permit, that permit *must* be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, provided that the WMD determines that the use will continue to meet the conditions for the issuance of the permit. These permits are subject to periodic compliance reports where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met.

This bill establishes a new type of CUP for the development of alternative water supplies (Extended Permit). Extended Permits approved by the state after July 1, 2013, for the development of alternative water supplies must have a term of *at least 30 years* if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Any public or private entity that wishes to develop an alternative water supply may be eligible to receive an Extended Permit regardless of the manner in which the water project will be financed.

If, within 7 years after an Extended Permit is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests an extension of the permit duration, the permit must be extended to expire upon the retirement of such bonds or 30 years after the date construction of the project is complete, whichever occurs later. However, a permit's duration may not be extended more than 7 years after the permit's original expiration date regardless of whether any bonds issued to finance the project will be outstanding at the end of the 7 years.

Extended Permits will be subject to periodic compliance reviews; however, if the permittee demonstrates that bonds issued to finance the project are outstanding, a WMD may not reduce the quantity of alternative water allocated by an Extended Permit unless a reduction is needed to address unanticipated harm to the water resources or to existing legal uses present when the permit was issued. Thus, during a compliance review, if bonds to finance the project are outstanding, a WMD may not reduce the amount of water allocated by the permit if the permittee does not demonstrate a need for the allocated water due to lower than expected population growth or demand. However, reductions in water allocations required by an applicable water shortage order will apply to Extended Permits.

Extended Permits may not authorize the use of non-brackish groundwater supplies or non-alternative water supplies.

The availability of Extended Permits, if utilized, may result in an indeterminate reduction in permit fees collected by WMDs. Please see Fiscal Comments for the fiscal impact on local government and private sector expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Consumptive Use Permitting

Section 373.236(5), F.S., authorizes consumptive use permits (CUP) for the development of alternative water supplies. The WMD or DEP may impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of WMD or DEP and is not harmful to the water resources of the area.[1]

A CUP establishes the duration and type of water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use: 1) must be a "reasonable-beneficial use" as defined in s. 373.019, F.S.; 2) must not interfere with any presently existing legal use of water; and 3) must be consistent with the public interest.

Reasonable-Beneficial Use

"Reasonable-beneficial use," as defined in statute, is the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.[2] In the words of the drafters of *A Model Water Code*, from which the reasonable-use standard was taken, "[w]asteful use of water will not be permitted under the reasonable-beneficial use standard, regardless of whether or not there is sufficient water to meet the needs of other riparian owners."[3] Rather, the reasonable-beneficial use standard requires efficient economic use of water and consideration of the rights of the general public.[4]

To that end, DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and on water management needs.[5] These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the use of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources through such adverse impacts as salt water intrusion. Notwithstanding DEP's rather broad discretion when interpreting these criteria, the district court in *Florida Water Management District v. Charlotte County*[6] nonetheless upheld DEP's use of these criteria for implementing the reasonable-beneficial use standard.

Existing Legal Users

The second criterion of the three-prong test protects the rights of existing legal water users for the duration of their permits.[7] Essentially, new users cannot obtain a CUP to use water if the use conflicts with existing

[1] Section 373.219, F.S. (2011).
[2] Section 373.019(16), F.S. (2011).
[3] Richard Hamann, *Consumptive Use Permitting Criteria*, 14.2-1, 14.2-2 (Fla. Env. & Land Use Law, 2001) (citing Frank E. Maloney, et al., *A Model Water Code*, 86-87 (Univ. of Fla. Press, 1972)).
[4] *Id.*
[5] Chapter 62-40,F.A.C. (2010).
[6] *Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001).
[7] Section 373.223(1)(b), F.S. (2011).

permits. But, when the permit is up for renewal, the competing use that the WMD determines best serves the public interest will be permitted, irrespective of which use was previously permitted.

This criterion only protects water users that actually withdraw water. Illustrative of this point, the court in *Harloff v. Sarasota*[8] held that a municipal wellfield was an existing legal use entitled to protection from interference by a new use. In contrast, a farmer who passively depended on the water table to maintain the soil moisture necessary for nonirrigated crops and the standing surface water bodies for watering cattle was denied protection as an "existing user."[9]

Public Interest

The third element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest",[10] determination of public interest is made on a case-by-case basis during the permitting process. For example, in *Friends of Fort George v. Fairfield Communities*,[11] the Division of Administrative Hearings considered the following factors in finding that water use was in the public interest: water conservation and reuse, total amount of water allocated, lack of salt water intrusion, reduction of estuarine pollution, and development of new water source. In a separate case, *Church of Jesus Christ of Latter Day Saints v. St. John's Water Management District*,[12] the St. John's WMD stated that the determination of whether a water use is in the public interest requires a determination of whether the use is "beneficial or detrimental to the overall collective well-being of the people or to the water resource in the area, the [WMD], and the State."

Duration of Permits and Compliance Reviews

According to s. 373.236(1), F.S., CUPs must be granted *for a period of 20 years* if: (1) requested by the applicant and (2) there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or DEP *may* require a permittee to produce a compliance report every 10 years.[13] A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

Consumptive Use Permits for the Development of Alternative Water Supplies

Section 373.019(5), F.S., defines "alternative water supplies" as "salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed

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[8] *Harloff v. Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991).
[9] *West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, August 30, 1989).
[10] *See, e.g.*, Rule 62-40.422, F.A.C. (2010) (criteria to determine whether transport of water between districts is consistent with the public interest).
[11] *Friends of Fort George v. Fairfield Communities*, 24 Fla. Supp. 2d 192-223, DOAH Case No. 85-3537, 85-3596 (Final Order dated Oct. 6, 1986).
[12] *Church of Jesus Christ of Latter Day Saints v. St. John's Water Management District*, 92 ER. F.A.L.R. 34 (Final Order, Dec. 13, 1990).
[13] In limited instances, the statute authorizes more frequent "look backs". For example, the Suwannee River WMD may require a compliance report every 5 years through July 1, 2015; but on that date the "look-back" period returns to 10 years.

after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan."

CUPs issued under s. 373.326(5), F.S., for the development of alternative water supplies must be issued for a term of *at least 20 years*.[14] If the permittee issues bonds to finance construction of the alternative water supply project, the permit term *must* be extended to expire upon retirement of the bonds if two conditions are met: 1) the permittee requests an extension during the term of the permit, and 2) the WMD determines that the use will continue to meet the conditions for issuance of the permit. As a matter of general practice in Florida, WMDs have historically issued CUPS with a maximum term of 20 years for the development of alternative water supplies.

During the term of these permits, compliance reports may be required by the WMD or DEP every 10 years (every 5 years if within the Suwannee River WMD). A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. During a compliance review, permits are subject to modification, including reductions or changes in water allocations.

Effects of proposed changes

The current text of s. 373.236(5), F.S., is designated as new subsection (5)(a) and amended to clarify that a CUP issued under that paragraph for the development of alternative water supplies may be approved only "if there is sufficient data to provide for reasonable assurance that the conditions for permit issuance will be met for the duration of the permit."

Additionally, the bill creates subsection (5)(b) in order to establish a new type of CUP for the development of alternative water supplies (for purposes of this analysis only, these permits will be referred to as "Extended Permits"). Under this new subsection, CUPs approved by the state after July 1, 2013, for the development of alternative water supplies must have a term of *at least 30 years* if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Any public or private entity that wishes to develop an alternative water supply may be eligible to receive an Extended Permit regardless of the manner in which the water project will be financed.

If, within 7 years after an Extended Permit is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests an extension of the permit duration, the permit *must* be extended to expire upon the retirement of such bonds or 30 years after the date construction of the project is complete, whichever occurs later. However, a permit's duration may not be extended more than 7 years after the permit's original expiration date regardless of whether any bonds used to finance the project are outstanding at the end of 7 years.

Extended Permits are subject to periodic compliance report reviews as described in s. 373.236(4), F.S.; however, during a compliance review, the WMDs may not reduce the quantity of alternative water allocated under an Extended Permit if the permittee demonstrates that bonds issued to finance the project are outstanding unless a reduction is needed to address unanticipated harm to the water resources or to existing legal uses present when the permit was issued. Thus, if bonds are outstanding, a WMD may no longer reduce the amount of water allocated if the permittee does not demonstrate a need for the allocated water due to lower than expected population growth or demand. However, reductions in water allocations required by an applicable water shortage order apply to Extended Permits.

Applicants may choose to apply for a CUP under subsection (5)(a), which is essentially current law authorizing CUPS with a duration of *at least 20 years*, or under new subsection (5)(b), which authorizes

[14] Section 373.236(5), F.S, (2011).

Extended Permits with a duration of *at least 30 years*.[15] Because WMDs have historically issued initial CUPs with a maximum term of 20 years, this bill effectively increases the minimum duration of an initial CUP for the development of alternative water supplies from 20 to 30 years. In addition, entities that issue bonds to finance a project are entitled to a 7-year extension of an Extended Permit if certain conditions are met; however, the duration of an Extended Permit may not be extended more than 7 years after the original expiration date even if bonds remain outstanding.

Extended Permits may not authorize the use of non-brackish groundwater supplies or non-alternative water supplies. Thus, a composite permit that authorizes both the use of traditional and alternative water supplies is not authorized under subsection 5(b).

B. SECTION DIRECTORY:

Section 1. Amends s. 373.236, F.S., specifying conditions for issuance, extension, and review of consumptive use permits for the development of alternative water supplies.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The availability of Extended Permits, if utilized, may result in an indeterminate reduction in permit fees collected by WMDs.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

Current law authorizes WMDs to issue new CUPs with durations of 30 years for the development of alternative water supplies; however, proponents of the bill assert that, in practice, WMDs have authorized CUPs with maximum durations of only 20 years. Proponents of the bill assert that, if a public or private entity initially obtains an Extended Permit with a 30-year duration, and then finances the alternative water supply project by issuing bonds with a 30-year term, the interest rate of the bonds will be reduced because the expiration of the initial Extended Permit more closely aligns with the retirement of the bonds. Thus, proponents assert, the capital costs of developing alternative water

[15] One reason an applicant may wish to receive a permit under subsection (5)(a) rather than new (5)(b) is to have the option, *at the end of a permit's term*, of extending the permit's duration so the permit expires when the bonds used to finance the project are retired rather than prior to retirement of the bonds.

supplies will be reduced if Extended Permits are authorized by this bill. In addition, by requiring a 7-year extension of an Extended Permit under certain circumstances, the permittee will avoid the costs and uncertainty associated with reapplying for a new permit at the end of the initial 30-year permit term.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to consumptive use permits for development of alternative water supplies; amending s. 373.236, F.S.; specifying conditions for issuance of permits; providing for issuance, extension, and review of permits approved after a specified date; providing for applicability and construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(5)(a) Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. However, if the permittee issues bonds for ~~the~~ construction of the project, upon request of the permittee before ~~prior to the~~ expiration of the permit, the ~~that~~ permit shall be extended for such additional time as ~~is~~ required for the retirement of bonds, not including any refunding or refinancing of such bonds, if ~~provided that~~ the governing board determines that the use will continue to meet the conditions for the issuance of the permit. Such a permit is subject to compliance reports under subsection (4).

(b)1. Permits approved on or after July 1, 2013, for the

development of alternative water supplies shall be granted for a term of at least 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If, within 7 years after a permit is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests an extension of the permit duration, the permit shall be extended to expire upon the retirement of such bonds or 30 years after the date construction of the project is complete, whichever occurs later. However, a permit's duration may not be extended by more than 7 years beyond the permit's original expiration date.

2. Permits issued under this paragraph are subject to compliance reports under subsection (4). However, if the permittee demonstrates that bonds issued to finance the project are outstanding, the quantity of alternative water allocated in the permit may not be reduced during a compliance report review unless a reduction is needed to address unanticipated harm to water resources or to existing legal uses present when the permit was issued. A reduction required by an applicable water shortage order shall apply to permits issued under this paragraph.

3. Permits issued under this paragraph may not authorize the use of nonbrackish groundwater supplies or nonalternative water supplies.

(c) Entities that wish to develop alternative water supplies may apply for a permit under paragraph (a) or paragraph (b).

Section 2. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 109 (2013)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Young offered the following:

Amendment

Remove line 46 and insert:

unless a reduction is needed to address harm to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 655 Political Subdivisions
SPONSOR(S): Precourt
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 7 N	Nelson	Rojas
2) State Affairs Committee		Stramski JS	Camechis

SUMMARY ANALYSIS

In 2003, the Florida Legislature prohibited political subdivisions from requiring employers to pay a minimum wage other than the federal minimum wage. This law did not limit the authority of a local government to establish a minimum wage for its own employees, employees of its contractors, or employers to which it provides direct tax abatements or subsidies. The term "political subdivision" was defined as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

HB 655 amends current law to also prohibit political subdivisions from requiring an employer to provide employment benefits that are not required by state or federal law. The term "employment benefits" refers to anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits. The term "employer" refers to any person who is required to pay a state or federal minimum wage to the person's employees.

This bill also prohibits a political subdivision from:

- Requiring, as part of a contract with the political subdivision, a minimum wage or employment benefit for employees of a political subdivision's contractors or subcontractors;
- Requiring, as a condition of receiving an abatement or subsidy, a minimum wage or employment benefit for employees of an employer that receives tax abatements or subsidies; or
- Awarding contract preferences based upon the wages or benefits provided to employees.

However, the bill does not limit the authority of a political subdivision to establish a minimum wage or provide employment benefits not otherwise required under state or federal law for its own employees.

The bill does not appear to have a fiscal impact on the state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal and State Minimum Wage Laws

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (29 U.S.C. s. 201, *et seq.*), establishing an initial federal minimum wage of $0.25 per hour.[1] The minimum wage for all covered, nonexempt employees has remained at $7.25 per hour since 2009. The Act includes several exemptions from the federal minimum wage, including:

- executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year; and
- causal babysitters and persons employed as companions for the elderly or infirm.

Employers also must pay tipped employees (e.g., servers in restaurants), who customarily and regularly receive more than $30 per month in tips, the federal minimum wage of $7.25 per hour. The employer may account for tips received by a tipped employee as part of the wage rate, but must also pay the employee a base wage of at least $2.13 per hour.[2]

The Wage and Hour Division of the United States Department of Labor enforces the federal Fair Labor Standards Act, including the federal minimum wage.

According to the United States Department of Labor, five states—Alabama, Louisiana, Mississippi, South Carolina and Tennessee—do not have an established minimum wage requirement. Nineteen states and the District of Columbia have minimum wage rates higher than the federal rate: Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington. Four states—Arkansas, Georgia, Minnesota and Wyoming—have minimum wage rates lower than the federal minimum wage. If an employee is subject to both a state and federal minimum wage law, the employee is entitled to the higher of the two minimum wages.[3]

The purpose of s. 448.110, F.S., the "Florida Minimum Wage Act," enacted in 2005, is to provide measures appropriate for the implementation of s. 24, Art. X of the State Constitution,[4] in accordance with authority granted to the Legislature pursuant to s. 24(f), Art. X of the State Constitution. To implement s. 24, Art. X of the State Constitution, the Department of Economic Opportunity is designated as the state Agency for Workforce Innovation.

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[1] http://www.dol.gov/oasam/programs/history/flsa1938.htm.
[2] The Fair Labor Standards Act of 1938, as amended.
[3] http://www.dol.gov/whd/minwage/america.htm.
[4] This provision of the State Constitution was proposed by Initiative Petition filed with the Secretary of State on August 7, 2003, and adopted in 2004. Its stated public policy is that: "[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship."

The Department of Economic Opportunity annually calculates an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, the Department of Economic Opportunity uses the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. Each adjusted state minimum wage rate takes effect on the following January 1. The Florida minimum wage was raised on January 1, 2013, from $7.67 to $7.79 per hour.

The Living Wage and Local Wage Ordinances in Florida

Since the early 1990s, more than 120 local governments across the country have enacted "living wage" laws. These laws typically establish wage standards in excess of state or federal minimum wage for businesses that receive contracts or subsidies from local governments.[5]

Living wage proponents argue that wages should be high enough to allow workers to meet basic needs (i.e., "living wages"). Proponents further note that the federal government has generally neglected the minimum wage, and that local governments have contributed to the problem, following a trend of cutting costs by contracting out services to firms who may pay lower wages and offer fewer benefits than public employment. These advocates additionally maintain that economic development efforts have channeled public funds in the form of tax breaks or incentives to businesses without regard to the quality of the jobs those businesses provide.[6] Opponents contend that minimum wage requirements result in increased costs to employers together with increased unemployment.[7]

Several Florida local governments have enacted living-wage laws that mandate higher hourly pay than the state's minimum wage, including Broward County, the City of Gainesville, Miami Beach, Miami/Dade County, Orlando and Palm Beach County.[8]

Power of Local Governments to Enact Minimum Wage Ordinances

Prior to the 1968 revision of the Florida Constitution, which authorized local home rule powers for both cities and charter counties, local governments had only those powers expressly granted by law. The power of self-government granted to non-charter counties in ch. 125, F.S., was extremely broad. In 1973, the Legislature enacted the Municipal Home Rules Power Act, now codified in ch. 166, F.S. This Act ensured that municipalities retained governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services.

The State Constitution permits counties to enact ordinances that are not inconsistent with state law.[9] The Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except:[10]

- annexation, merger, and exercise of extraterritorial power;
- a subject expressly prohibited by the State Constitution;
- a subject expressly preempted to state or county government by the State Constitution or by law; or
- a subject preempted to a county under a county charter (s. 166.021(3), F.S.).

State preemption precludes a local government from exercising authority in a particular area. Generally, a local government may pass a more stringent regulation than one provided by statute.

[5] http://www.nelp.org/content/content_issues/category/living_wage_laws/.
[6] *The Economic Impact of Local Living Wages* by Thompson and Chapman; http://www.epi.org/publication/bp170/.
[7] http://epionline.org/lw_faq.cfm.
[8] http://www.businessmanagementdaily.com/2768/local-ordinances-in-florida.
[9] Section 1(f) and (g), Art. VIII of the State Constitution; *see*, also, s. 125.01, F.S.
[10] Section 2(b), Art. VIII of the State Constitution.

However, a local government may not enact such an ordinance if the Legislature expressly prohibits regulation or if the imposition of regulation frustrates the purpose of a statute.[11]

Statutory Restriction of Minimum Wage Requirements

In 2003, the Florida Legislature enacted ch. 2003-87, L.O.F. The introductory language to this chapter law provided that:

- promoting the economic growth and prosperity of its citizens is among the most important responsibilities of the state;
- this economic growth and prosperity depends upon maintaining a stable business climate that will attract new employers to the state and allow existing employers to grow;
- with regard to worker wages, federal minimum wage provisions strike the necessary balance between the interests of workers and their employers;
- allowing each local government to establish minimum wage levels in their individual jurisdictions higher than those required by federal law would threaten to drive businesses out of these communities and out of the state in search of a more favorable and uniform business environment;
- higher minimum wage standards differing from one locale to another would encourage residents to conduct their business in jurisdictions where wage costs, and hence prices, are lower; and
- such artificial constraints would disrupt Florida's economy and threaten the public welfare.

Codified as s. 218.077, F.S., this law prohibits local governments from establishing minimum wage levels in their individual jurisdictions. The law specifically does not limit the authority of a political subdivision to establish a minimum wage for:

- its employees;
- the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract; or
- the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

Further, the law does not apply if it is determined that compliance would prevent receipt of federal funds by the political subdivision.[12] For example, this provision exempts wages required to be paid in connection with the Davis-Bacon and Related Acts (40 U.S.C. s. 276a), which apply to federally-funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts, and the Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Examples of the Acts related to Davis-Bacon wage determinations are the Federal-Aid Highway Acts, and the Housing and Community Development Act of 1974.[13]

[11] *See, Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826 (Fla. 1st D.C.A. 1996).
[12] Section 218.077(4), F.S.
[13] http://www.dol.gov/whd/govcontracts/dbra.htm.

Effect of Proposed Changes

HB 655 amends s. 218.077, F.S., to further prohibit Florida political subdivisions[14] from requiring an employer to provide employment benefits not required by state or federal law.[15] This language prevents a local government from requiring additional employee benefits within its jurisdiction.

An "employer" is defined to be any person who is required under state or federal law to pay a state or federal minimum wage to the person's employees. The term "political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

"Employment benefits" means anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits.

The bill also specifically prohibits a political subdivision from requiring a minimum wage or employment benefits for the employees of two employer categories that currently are exempted from the minimum wage prohibitions of s. 218.077, F.S.: its contractors and employers that the political subdivision provides with tax abatements or subsidies.

This bill additionally prohibits a political subdivision from awarding contract preferences based on the wages or employment benefits provided to employees.

Fundamentally, the bill preempts any local ordinances that provide for minimum wages and employee benefits not required by state or federal law. However, the bill does not limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage, or to provide employment benefits not otherwise required under state or federal law, for its own employees.

Also, the bill preserves current statutory language providing that the law does not apply if it is determined that compliance would prevent receipt of federal funds by the political subdivision.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S., providing and revising definitions; prohibiting political subdivisions from requiring employers to provide certain employment benefits; prohibiting political subdivisions from requiring, or awarding preference on the basis of, certain wages or employment benefits when contracting for goods or services; conforming provisions to constitutional requirements relating to the state minimum wage.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

[14] "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Section 218.077(1)(e), F.S.

[15] Most employee benefits are provided voluntarily by employers. For example, federal or Florida laws do not require vacation leave, sick pay, paid holidays, or life insurance plans.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Employers, which contract with or receive tax abatements or subsidies from local governments having "living wage" ordinances, will no longer be required to pay employee wages in excess of state or federal requirements.

D. FISCAL COMMENTS: The Department of Economic Opportunity, Enterprise Florida, Inc., and Workforce Florida, Inc. facilitate state level incentives for businesses that contemplate the payment of relatively high wages compared to statewide or area averages.[16] It is unknown whether local governments may be thwarted in their own economic development agendas by language in the bill that prohibits the consideration of employee wages and benefits with regard to award guidelines, tax abatements and subsidies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: None.

Other Comments: Generally, local governments are opposed to state preemption and the erosion of home rule powers. Specifically, the bill would preclude local governments from taking into account local factors, such as varying costs of living, in determining applicable minimum wages.[17] The Florida League of Cities, representing the state's municipal governments, has indicated that it opposes this bill.

The Florida Chamber of Commerce has indicated that the preemption of sick leave requirements is one of its legislative priorities.[18]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[16] http://www.floridajobs.org/business-growth-and-partnerships/for-employers/find-tax-credit-and-incentive-programs.
[17] For example, the Living Wage Calculator maintained by the Massachusetts Institute of Technology indicates that a living wage, defined as a minimum estimate of the cost of living for a low wage family, is 46 percent higher in Broward County than in Columbia County for a single adult. http://livingwage.mit.edu/states/12/locations (last visited March 4, 2013).
[18] http://www.orlandosentinel.com/news/local/breakingnews/os-sick-time-florida-chamber-20130116,0,828943.story.

A bill to be entitled

An act relating to political subdivisions; amending s. 218.077, F.S.; providing and revising definitions; prohibiting political subdivisions from requiring employers to provide certain employment benefits; prohibiting political subdivisions from requiring, or awarding preference on the basis of, certain wages or employment benefits when contracting for goods or services; conforming provisions to constitutional requirements relating to the state minimum wage; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 218.077, Florida Statutes, is amended to read:

218.077 ~~Minimum~~ Wage and employment benefits requirements by political subdivisions; restrictions.—

(1) As used in this section, the term:

(a) "Employee" means any natural person who is entitled under state or federal law to receive a state or federal minimum wage.

(b) "Employer" means any person who is required under state or federal law to pay a state or federal minimum wage to the person's employees.

(c) "Employer contracting to provide goods or services for the political subdivision" means a person contracting with the political subdivision to provide goods or services to, for the

benefit of, or on behalf of, the political subdivision in exchange for valuable consideration, and includes a person leasing or subleasing real property owned by the political subdivision.

(d) "Employment benefits" means anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits.

(e) ~~(d)~~ "Federal minimum wage" means a minimum wage required under federal law, including the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq.

(f) ~~(e)~~ "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

(g) "State minimum wage" means a minimum wage required under the State Constitution or state law, including s. 24, Art. X of the State Constitution and s. 448.110.

(h) ~~(f)~~ "Wage" means that compensation for employment to which any state or federal minimum wage applies.

(2) Except as otherwise provided in subsection (3), a political subdivision may not:

(a) Establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, ~~or~~ to apply a state or federal minimum wage to wages

exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law.

(b) Require a minimum wage, other than a state or federal minimum wage, or employment benefits not otherwise required by state or federal law for the employees of an employer:

1. Contracting to provide goods or services for the political subdivision, or the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision.

2. Receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

(c) Award preferences on the basis of wages or employment benefits provided to employees by an employer when contracting to provide for goods and services for the political subdivision.

(3) This section does not limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law~~:~~

~~(a)~~ for the employees of the political subdivision~~;~~

~~(b) For the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision; or~~

~~(c) For the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy~~.

(4) If it is determined by the officer or agency responsible for distributing federal funds to a political subdivision that compliance with this act would prevent receipt of those federal funds, or would otherwise be inconsistent with federal requirements pertaining to such funds, then this act does ~~shall~~ not apply, but only to the extent necessary to allow receipt of the federal funds or to eliminate the inconsistency with such federal requirements.

Section 2. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 655 (2013)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: State Affairs Committee

Representative Precourt offered the following:

Amendment (with title amendment)

Remove lines 62-78 and insert:

state or federal law for the employees of an employer contracting to provide goods or services for the political subdivision, or the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision.

(c) Award preferences on the basis of wages or employment benefits provided to employees by an employer when contracting to provide for goods and services for the political subdivision.

(3) (a) A living wage ordinance that is in effect on July 1, 2013, shall remain in effect through July 1, 2016, after which such ordinance is repealed.

(b) This section does not:

1. Limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum

wage or to provide employment benefits not otherwise required under state or federal law~~:~~

~~(a)~~ for the employees of the political subdivision.~~;~~

2. Apply to a domestic violence ordinance, order, rule, or policy adopted by a political subdivision.

3. Apply to contracts entered into or procurements issued before July 1, 2013 ~~(b) For the employees of an employer contracting to~~

T I T L E A M E N D M E N T

Remove line 9 and insert:

services; providing for effect and repeal of certain ordinances; conforming provisions to constitutional

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 13-01 Everglades Improvement and Management
SPONSOR(S): State Affairs Committee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Blalock AFB	Camechis

SUMMARY ANALYSIS

The Everglades Forever Act (EFA) is the primary Florida law pertaining to the management, protection, and restoration of the Everglades.

The bill amends the Everglades Forever Act to:

1. Provide a legislative finding that implementation of best management practices (BMPs) funded by the owners and users of land in the Everglades Agricultural Area (EAA) effectively reduces nutrients in waters flowing into the Everglades Protection Area.

2. Update the definition of the "Long Term Plan" to include the South Florida Water Management District's (SFWMD's) "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, in addition to the SFWMD's "Everglades Protection Area Tributary Basin Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003.

3. Authorize the continued use of up to 0.1 mill of the SFWMD's ad valorem revenues within the Okeechobee Basin to implement the Long-Term Plan and delete obsolete references to the "interim phase" of the Long Term Plan.

4. Prohibit a permittee's discharge from being deemed to cause or contribute to any violation of water quality standards in the Everglades Protection Area if the discharge is in compliance with applicable permits and any associated orders.

5. Require the SFWMD, prior to the completion of all projects and improvements in the Long Term Plan, to complete a use attainability analysis to determine if those projects and improvements will achieve the water quality based effluent limits established in permits and orders authorizing the operation of those facilities.

6. Require payment of a $25 per acre agricultural privilege tax on property classified as agricultural within the Everglades Agricultural Area between November 2014 and November 2024. Thus, the tax rate will fall to $10 per acre beginning in 2025 rather than in 2017 as required by current law.

7. Provide that the Legislature intends that payment of the agricultural privilege tax, in addition to payment of the cost of continuing implementation of best management practices, fulfills the obligations of owners and users of land under Article II, Section 7(b) of the Florida Constitution.

The bill does not appear to have a fiscal impact on state government. The bill appears to have a positive fiscal impact on SFWMD of $6.6 million per year from 2016 through 2024 due to retention of the $25 per acre agricultural privilege tax. Conversely, landowners who pay the tax must pay the increased tax from 2016 through 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

The bill amends s. 373.4592(1)(g), F.S., to incorporate the finding that the implementation of best management practices (BMPs) funded by the owners and users of land in the Everglades Agricultural Area (EAA) effectively reduces nutrients in waters flowing into the Everglades Protection Area.

The bill also updates the definition of "Long-Term Plan" in s. 373.4592(2)(j), F.S., to include the "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, as may be subsequently modified in accordance with the Act, as well as the SFWMD's "Everglades Protection Area Tributary Basin Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003. The "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, being referenced in the definition of Long-Term Plan, is the new $880 million Everglades restoration plan described in more detail below.

In addition, the bill amends ss. 373.4592(3)(d) and 373.4592(3)(e), F.S., to remove outdated references to an initial phase and 10 year second phase of the previous Long-Term Plan.

The bill also amends s. 373.4592(4)(a), F.S., to authorize the continued use of up to 0.1 mill of the SFWMD's ad valorem revenues within the Okeechobee Basin for the purpose of implementing the Long-Term Plan.

The bill amends s. 373.4592(4)(f)4., F.S., to prohibit a permittee's discharge from being deemed to cause or contribute to any violation of water quality standards in the Everglades Protection Area if the discharge is in compliance with applicable permits and any associated orders.

The bill creates s. 373.4592(4)(h), F.S., which directs the SFWMD, prior to the completion of all projects and improvements in the Long Term Plan, to complete a use attainability analysis to determine if those projects and improvements will achieve the water quality based effluent limits established in permits and orders authorizing the operation of those facilities.

The bill amends s. 373.4592(6)(c)6., F.S., to require payment of a $25 per acre agricultural privilege tax on property classified as agricultural within the Everglades Agricultural Area between November 2014 and November 2024. Thus, the tax rate will fall to $10 per acre beginning in 2025 rather than in 2017 as required by current law.

Lastly, the bill amends s. 373.4592(6)(h), F.S., to provide that the Legislature intends that payment of the agricultural privilege tax, in addition to payment of the cost of continuing implementation of BMPs, fulfills the obligations of owners and users of land under Article II, Section 7(b) of the Florida Constitution.

Present Situation

2012 Restoration Strategies Regional Water Quality Plan

The SFWMD, Florida Department of Environmental Protection (FDEP), and United States Environmental Protection Agency (USEPA) engaged in technical discussions starting in 2010 and reached a consensus on new strategies for further improvement of water quality in America's Everglades in 2012. These agreed upon strategies will expand water quality improvement projects to

achieve the low phosphorus water quality standard established for the Everglades. The primary objectives were to establish a Water Quality Based Effluent Limit (WQBEL) that would achieve compliance with Florida's numeric phosphorus criterion in the Everglades Protection Area and to identify a suite of additional water quality projects to work in conjunction with the existing Everglades Stormwater Treatment Areas (STAs) to meet the WQBEL.

The SFWMD is implementing this technical plan to complete six projects that will create more than 6,500 acres of new STAs and 110,000 acre-feet of additional water storage through construction of flow equalization basins (FEBs) (Figure 1). The primary purpose of FEBs is to attenuate peak stormwater flows prior to delivery to STAs and provide dry season benefits, while the primary purpose of STAs is to utilize biological processes to reduce phosphorus concentrations in order to achieve the WQBEL. A FEB is a constructed storage feature used to capture and store peak stormwater flows. Water managers can move water from FEBs into STAs at a steady rate to optimize STA performance and achieve water quality improvement targets.

The projects have been divided into three flow paths (Eastern, Central and Western), which are delineated by the source basins that are tributary to the existing Everglades STAs. The identified projects primarily consist of Flow Equalization Basins (FEBs), STA expansions, and associated infrastructure and conveyance improvements.

The Eastern Flow Path contains STA-1E and STA-1W. The additional water quality projects for this flow path include an FEB in the S-5A Basin with approximately 45,000 acre-feet (ac-ft) of storage and an STA expansion of approximately 6,500 acres (5,900 acres of effective treatment area) that will operate in conjunction with STA-1W. The Central Flow Path contains STA-2, Compartment B and STA-3/4. The additional project is an FEB with approximately 54,000 ac-ft of storage that will attenuate peak flows to STA-3/4, and STA-2 and Compartment B. The Western Flow Path contains STA-5, Compartment C and STA-6. An FEB with approximately 11,000 ac-ft of storage and approximately 800 acres of effective treatment area (via internal earthwork) within STA-5 are being added to the Western Flow Path.

Design and construction of new projects will be achieved in the following phases to allow for stormwater treatment areas and flow equalization basins to mature and begin treating water as soon as possible:

Phase One (2012-2016)

- 45,000 acre-foot FEB in the eastern Everglades, close to the Loxahatchee National Wildlife Refuge, to work in conjunction with 11,500 acres of existing STAs (STA-1 East and STA-1-West).
- 54,000 acre-foot FEB in the central Everglades, adjacent to 31,800 acres of existing and newly completed STAs (STA-3/4, STA-2 and Compartment B) and utilizing construction already completed for the Everglades Agricultural Area-A1 Reservoir.

Phase Two (2013-2018)

- 4,700 acres of new STA in the eastern Everglades, adjacent to the Loxahatchee National Wildlife Refuge and adding to the treatment capacity of 11,500 acres of existing STAs (STA-1 East and STA-1-West).

Phase Three (2018-2024)

- 2018-2022: 1,800 acres of new STA in the eastern Everglades, adjacent to the Loxahatchee National Wildlife Refuge and adding to the treatment capacity of 11,500 acres of existing STAs (STA-1 East and STA-1-West) and 4,700 acres of STA added in Phase Two.
- 2018-2023: 11,000 acre-foot FEB in the western Everglades, adjacent to 13,700 acres of existing and newly completed STAs (STA-5, STA-6 and Compartment C).

- 2019-2024: 800 acres of earthwork in the existing STA-5 to maximize treatment in the western Everglades.

The strategies also include additional source controls – where pollution is reduced at the source – in areas of the eastern Everglades where phosphorus levels in stormwater runoff have been historically higher. In addition, a science plan will ensure continued research and monitoring to improve and optimize the performance of water quality treatment technologies.

Implementation of the technical plan is estimated to cost $880 million. The SFWMD is proposing to fund the plan through a combination of state and SFWMD revenues, including $220 million in ad valorem reserves and $300 million in anticipated revenues associated with long-term new growth in South Florida (Table 1).

The project construction schedule is intentionally planned over a 12-year period to balance timely and reasonable progress in improving Everglades water quality with the implementation of the SFWMD's ongoing core mission responsibilities for flood control, water supply and natural systems restoration. It also recognizes the economic and engineering realities associated with planning, permitting, designing, constructing and operating massive, biologically-based public works projects that rely on cutting-edge engineering, science and technology.

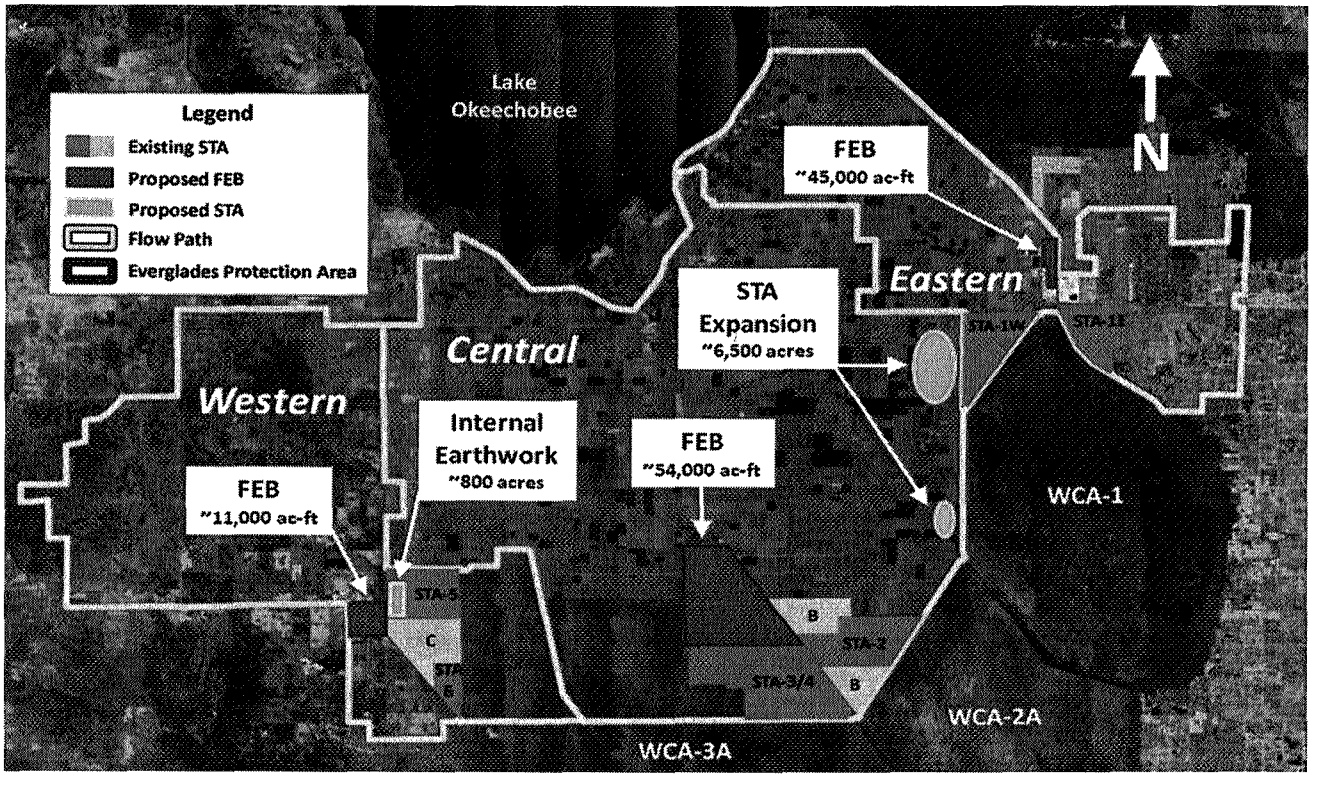

Figure 1. Restoration Strategies Flow Paths and Projects

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Everglades Restoration Strategies Funding
Estimated Project Costs

Flow Path	Projects	Cost
Eastern Flow Path	FEB & STAs	$365M
Central Flow Path	FEB	$120M
Western Flow Path	FEB & Earthwork	$130M
	Replacement Features	$180M
	Science Plan	$ 55M
	Source Controls	$ 30M
	Total	**$880M**

Table 1. Restoration Strategies Project Costs

Section 373.4592, F.S., "Everglades Forever Act:" Goals and Findings

The Everglades Forever Act (EFA)[1] is the primary Florida law pertaining to the management, protection, and restoration of the Everglades. Originally enacted in 1994, the statute outlines the state's commitment to preserve and restore an ecosystem that is "unique in the world and one of Florida's great treasures."[2] The statue is also designed to function in concert with the Comprehensive Everglades Restoration Plan (CERP), a multi-billion, multi-decade plan jointly implemented and funded by the state and federal government. The foremost goals of the EFA include improving both the quantity and quality of waters discharged into the Everglades Protection Area, and protecting native plants and animals of the Everglades by stemming the proliferation of invasive, non-native species within the ecosystem.[3]

As indicated in the legislative findings made at the outset of the EFA, the legislature was particularly concerned with excessive phosphorous levels in the Everglades. The EFA states that, "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."[4] This goes hand in hand with the other goals set forth in the EFA.

Non-point sources of pollution, such as from agricultural areas and suburban storm water runoff, are a contributor of phosphorous contamination in the Everglades.[5] The EFA addresses non-point nutrient pollution primarily via two methods: (1) requiring the implementation of best management practices

[1] Section 373.4592, F.S.
[2] Section 373.4592(1)(a), F.S.
[3] Section 373.4592(1)(e), F.S. *See also* Michael T. Olexa & Zachary Broome, Handbook of Florida Water Regulation: Florida Everglades Forever Act, University of Florida Institute of Food and Agricultural Services.
[4] Section 373.4592(1)(d), F.S.
[5] Michael T. Olexa & Zachary Broome, Handbook of Florida Water Regulation: Florida Everglades Forever Act, University of Florida Institute of Food and Agricultural Services.

(BMPs) in the Everglades Agricultural Area (EAA); and (2) mandating the construction of storm water treatment areas (STAs).[6]

Everglades Forever Act: Everglades Long-Term Plan

In 2003, the legislature substantially amended the EFA, creating the Everglades Long-Term Plan.[7] The statute establishes that a long-term planning process is the optimal means by which to reduce the flow of excess levels of phosphorous into the Everglades.[8] At the heart of this process is the utilization of STAs and BMPs.[9]

The 2003 amendments also provide that the Long-Term Plan be implemented over the course of an initial 13-year phase (2003-2016) "and shall, to the maximum extent practicable, achieve water quality standards relating to the phosphorous criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose."[10] For every five years thereafter, the Florida Department of Environmental Protection (FDEP) must "review and approve incremental phosphorous reduction measures to be implemented at the earliest practicable date."[11]

Everglades Forever Act: Everglades Program

Section 373.4592(4), F.S., establishes the core substantive programs of the EFA, which are to be implemented by the SFWMD. These include:

- The construction of a number of STAs currently in operation, as directed under the Everglades Construction Project set out in Section (4)(a).
- The implementation of a water supply management program designed to improve the quantity of water reaching the Everglades and improve hydroperiod deficiencies,[12] in part via a reduction in wasteful discharges of fresh water to tide and water conservation practices and reuse measures.
- Providing additional inflows to the Everglades Protection Area so as to realize an average annual increase of 28 percent compared to the baseline years of 1979 to 1988 without reducing water quality benefits.
- SFWMD is directed to develop a model to be used for quantifying the amount, timing, and distribution of water needed to account for all reductions in flow to the Everglades Protection Area from BMPs.
- The development, through cooperation with federal and state agencies, of other programs and methods designed to increase the water flow and improve the hydroperiod of the Everglades Protection Area.[13]

Everglades Forever Act: Funding

To fund the various projects called for as part of the Everglades Program, SFWMD is empowered to levy an ad valorem tax on property owners within the Okeechobee Basin not exceeding 0.1 mill.[14] The 0.1 mill ad valorem tax must be used for design, construction, and implementation of the initial phase of the long term plan, including operation, maintenance, and enhancements of the Everglades

[6] Section 373.4592(4), F.S.
[7] Section 373.4592(3), F.S.
[8] Section 373.4592(3)(a), F.S.
[9] Section 373.4592(3)(b), F.S.
[10] Section 373.4592(3)(d), F.S.
[11] Section 373.4592(3)(e), F.S.
[12] A hydroperiod is defined as "the number of days per year that an area of land is dry or the length of time there is standing water at a location."
[13] Section 373.4592(4)(b)5., F.S.
[14] Section 373.4592(4)(a) F.S.

Construction Project.[15] Moreover, the 0.1 mill ad valorem tax must be the sole direct SFWMD contribution from SFWMD ad valorem taxes "appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project, unless the Legislature by specific amendment to this section increases the 0.1 mill ad valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project."[16]

Everglades Forever Act: Research and Monitoring Program

Section 373.4592(4)(d), F.S., establishes an Everglades research and monitoring program requiring FDEP and SFWMD to review and evaluate water quality data for the Everglades Protection Area and tributary waters and to identify additional information necessary to adequately describe water quality.[17] The statute also requires FDEP and SFWMD to similarly monitor and gauge the effectiveness of STAs and BMPs.[18] The department must continue research intended to optimize the design and operation of STAs and to identify other treatment and management methods that may potentially provide superior water quality and quantity benefits to the Everglades.[19]

Furthermore, the statute requires that SFWMD "shall monitor all discharges into the Everglades Protection Area for purposes of determining compliance with state water quality standards."[20] The SFWMD and FDEP is required to annually issue a peer-reviewed report regarding the research and monitoring program that summarizes all of its data and findings.[21]

Everglades Forever Act: Evaluation of Water Quality Standards

With regard to phosphorous, the EFA states that "[i]n no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna."[22] In the event that FDEP did not adopt a phosphorous criterion before December 31, 2003, the statute sets the phosphorous criterion at 10 parts per billion (ppb) in the Everglades Protection Area.[23] The statute also establishes the method of evaluating compliance with the phosphorous criterion, which is based upon a long term mean of concentration levels measured at a number of sampling stations recognized as reasonably representative of receiving waters in the Everglades Protection Area.[24]

Everglades Forever Act: Florida's Phosphorous Rule

In 2005, FDEP utilized the rulemaking authority granted to it under the EFA to promulgate rule 62-302.540, F.A.C. (Rule). The Rule "implemented the requirements of the Everglades Forever Act by utilizing the powers and duties granted the FDEP under the EFA and other applicable provisions of Chapters 373 and 403, F.S., to establish water quality standards for phosphorus, including a numeric phosphorus criterion, within the Everglades Agricultural Area (EAA)."[25]

The Rule also sets a numeric phosphorous criterion for Class III waters (waters used for recreation and aquatic life support) at a "long-term geometric mean of 10 ppb, but shall not be lower than the natural

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[15] *Id.*
[16] *Id.*
[17] Section 373.4592(4)(d), F.S.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Section 373.4592(4)(e), F.S.
[23] *Id.*
[24] *Id.*
[25] Rule 62-302.540, F.A.C.

conditions of the Everglades Protection Area, and shall take into account spatial and temporal variability."[26] Achievement of the phosphorus criterion within the Everglades Protection Area is gauged based on monthly data collected from monitoring stations in both impacted and unimpacted areas of four separate water bodies: Water Conservation Areas 1, 2 and 3, and the Everglades National Park.[27]

In both impacted and unimpacted areas, each water body "will have achieved the criterion if the five year geometric mean averaged across all stations is less than or equal to 10 ppb."[28] The following conditions must be met as well:

- The annual geometric mean averaged across all stations is less than or equal to 10 ppb for three of five years.
- The annual geometric mean averaged across all stations is less than or equal to 11 ppb.
- The annual geometric mean at all individual stations is less than or equal to 15 ppb. Individual station analyses are representative of only that station.

Everglades Forever Act: Best Management Practices (BMPs)

Section 373.4592(4)(f), F.S., outlines the BMP program to be applied to agricultural activities in the EAA. The statute requires SFWMD to enforce the BMP program and other requirements of chapter 40E-61 and 40E-63 (the administrative rules pertaining to BMPs) during the terms of the existing permits issued pursuant to those rules.[29] Those rules are to thereafter be amended to implement a comprehensive program consisting of testing, research, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area.[30] A five-year permitting system is established as well. In accordance with this program:

- EAA landowners must sponsor a program of BMP research with experts to identify appropriate BMPs.
- BMPs must be field tested in the EAA to reflect soil and crop types.
- BMPs as required for varying crop and soil types must be included in permit conditions in the five year permits issued pursuant to the EFA.
- SFWMD must conduct research along with the cooperation of EAA landowners to identify water quality parameters not being significantly improved via STAs and BMPs, and to identify further BMP strategies to assist in meeting those parameters.
- As of December 31, 2006, all permits, including those issued prior to that date, must include additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, "no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area."[31]
- Landowners in the C-139 Basin (an area within the EAA described in detail in Section (16) of the statute) must not exceed an annual loading of phosphorus based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows must not increase the annual average loading of phosphorus stated above.[32]

[26] Rule 62-302.540(4)(a), F.A.C.
[27] Rule 62-302.540(4)(b), F.A.C
[28] Rule 62-302.540(d)(1), F.A.C
[29] Section 373.4592(4)(f), F.S.
[30] *Id.*
[31] Section 373.4592(4)(f)4., F.S.
[32] Section 373.4592(4)(f), F.S.

The Everglades Forever Act: Agricultural Privilege Tax

Section 373.4592(6), F.S., of the EFA, establishes an annual agricultural privilege tax on those entities conducting an agricultural trade or business on real property located within the EAA.[33] The tax is collected "in the manner applied for ad valorem taxes."[34] For tax notices mailed between November 2006 and November 2013, the annual agricultural privilege tax is set at $35 per acre.[35] For November 2014 through November 2016, the annual tax rate is $25 per acre.[36] For November 2017 and beyond, the tax rate drops to $10 per acre.[37]

The statute also creates an incentive credit to be applied against the agricultural privilege tax based on a reduction of phosphorous loads via the utilization of BMPs at points of discharge within the EAA.[38] The total phosphorous load attributable to the EAA as a whole is to be measured for each annual period against the total phosphorous load that would have occurred during the 1979-1988 base period using a model described chapter 40E-63 of the Florida Administrative Code.[39] This method is intended to assist SFWMD in making an annual ministerial determination of whether any incentive credit will be available.[40] Incentive credits, if any, will reduce the tax only to the extent that the phosphorous load reduction exceeds 25 percent.[41] The reduction of phosphorous loads by each percentage point in excess of 25 percent creates a credit in the amount of $0.65 per acre from November 2006 through November 2013.[42] The statute does not provide an incentive credit rate beyond 2013.

In addition, incentive credits may not reduce the agricultural privilege tax to less than $24.89 per acre, which is defined by the statute as the "minimum tax."[43] To the extent that the application of credits would reduce the amount of the tax below the minimum tax level, any unused credits may be carried forward, on a phosphorous load percentage basis, for use in subsequent years.[44] Moreover, any property that achieves an annual flow weighted mean concentration of 50 ppb of phosphorous at each discharge structure serving the property is entitled to have the minimum tax "included on the annual tax notice mailed in November of the next ensuing calendar year."[45] Phosphorous reductions in excess of 50 ppb are carried forward to the subsequent year in determining whether the minimum tax is to be applied.[46] All unused or excess incentive credits will expire after tax notices are mailed in November 2013.[47]

Agricultural entities in the EAA are also entitled to have the agricultural privilege tax on their properties reduced to the minimum tax by participating in the baseline plan defined in Chapter 40E-63, F.A.C, which consists of the implementation of BMPs and the monitoring of phosphorous levels at discharge points on the property.[48] To qualify for the minimum tax, participants must achieve phosphorous load reductions of 45 percent or greater for the period of November 2006 through November 2013.[49] A phosphorous load reduction schedule is not provided for beyond 2013.

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[33] Section 373.4592(6), F.S.
[34] Section 373.4592(6)(b), F.S.
[35] Section 373.4592(6)(c)1., F.S.
[36] Section 373.4592(6)(c)6., F.S.
[37] *Id.*
[38] Section 373.4592(6)(c)2., F.S.
[39] *Id.*
[40] *Id.*
[41] Section 373.4592(6)(c)3., F.S.
[42] *Id.*
[43] Section 373.4592(6)(c)4., F.S.
[44] *Id.*
[45] *Id.*
[46] Section 373.4592(6)(c)5., F.S.
[47] Section 373.4592(6)(c)4., F.S.
[48] Section 373.4592(6)(c)5., F.S.
[49] *Id.*

If for any given year, the number of total acres subject to the agricultural privilege tax is less than the number of acres listed on the agricultural privilege tax roll certified in November 1994, the minimum tax is subject to increase.[50] For each tax year, SFWMD must determine the amount, if any, by which the sum of the following figures exceeds $12,367,000:

(1) The product of the minimum tax multiplied by the number of acres subject to the agricultural privilege tax.
(2) The "ad valorem tax increment," defined as "50 percent of the difference between the amount of ad valorem taxes actually imposed by the SFWMD for the immediate prior tax year against property included on the Everglades agricultural privilege tax roll certified for the tax notices mailed in November 1994 that was not subject to the Everglades agricultural privilege tax during the immediate prior tax year and the amount of ad valorem taxes that would have been imposed against such property for the immediate prior tax year if the taxable value of each acre had been equal to the average taxable value of all other land classified as agricultural within the EAA for such year; however, the ad valorem tax increment for any year shall not exceed the amount that would have been derived from such property from imposition of the minimum tax during the immediate prior tax year."[51]

The aggregate of these figures is referred to by the statute as the "excess tax amount."[52] If for any tax year, the amount computed in figure (1) above is less than $12,367,000, the excess tax amount is applied as follows: "If the excess tax amount exceeds such difference [the difference between $12,367,000 and the amount computed in Figure 1 above], an amount equal to the difference must be deducted from the excess tax amount and applied to eliminate any increase in the minimum tax. If such difference exceeds the excess tax amount, the excess tax amount must be applied to reduce any increase in the minimum tax. In such event, a new minimum tax shall be computed by subtracting the remaining excess tax amount from $12,367,000 and dividing the result by the number of acres subject to the Everglades agricultural privilege tax for such tax year."[53]

The statute also provides for a hardship exception, whereby if either the Governor, the President, or the U.S. Department of Agriculture declares a state of emergency or disaster "resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops," payment of the privilege taxes are to be deferred for a period of one year, with subsequent annual payments deferred as well depending on the time of year in which the declaration is made.[54]

Florida's "Polluter Pays Amendment" and the Meaning of "Primarily Responsible"

In 1996, Florida's voters approved a constitutional amendment, what is now Article II, Section 7(b), Florida Constitution ("Polluter Pays Amendment"), providing that "those in the EAA who cause water pollution within the Everglades Protection Area or the EAA shall be primarily responsible for paying the costs of the abatement of that pollution."[55] Prior to its passage, the initiative was deemed constitutional by the Supreme Court of Florida, which held that the initiative was "sufficiently clear and embraced but a single subject."[56]

Following its passage, the Governor sought guidance from the Florida Supreme Court on two questions pertaining the amendment's proper function and application:[57]

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[50] Section 373.4592(6)(e), F.S.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Section 373.4592(6)(d), F.S.
[55] Article II, Section 7(b), Fl. Const.
[56] Advisory Opinion to Governor – 1996 Amendment 5 (Everglades), 706 So.2d 278, 279-80 (1997).
[57] *Id.*

(1) Is the amendment self-executing, or does it require the legislature to enact implementing legislation to determine how to carry out its intended purposes?
(2) What does the term "primarily responsible" mean? For instance, does it mean responsible for more than half the costs of abatement, a substantial part of the costs of abatement, the entire cost, or something different?

In an advisory opinion, the Court answered the first question in the negative, stating that the amendment cannot be implemented without the aid of the legislation as it does not provide enough guidance for accomplishing its purpose.[58]

As to the meaning of "primarily responsible," the Court found that the words should be applied "in accordance with their ordinary meaning to require that individual polluters, while not bearing the total burden, would bear their share of the costs of abating the pollution found to be attributable to them."[59] The Court declined to specify an exact percentage of the costs polluters would be responsible for.

The issue was revisited by the Florida Supreme Court in the 2002 case *Barley v. South Florida Water Management Dist.*[60] The petitioners owned property within the Okeechobee Basin, wherein the SFWMD authorized by various statutory authority, including the EFA, to levy ad valorem taxes on property within the SFWMD.[61] The petitioners argued that because they were non-polluters, SFWMD's authority to levy taxes on them and similarly situated property owners was inconsistent with Article II, Section 7(b), Florida Constitution, which in their view, required polluters within the EAA to pay for 100 percent of the pollution they caused.[62] In finding against the petitioners, the Court echoed its own advisory opinion in stating that the words "primarily responsible" would be applied within their "ordinary meaning."[63] According to the Court, this "includes a recognition that individual polluters would not bear the 'total burden.'" The Court held that SFWMD's levy of an ad valorem tax on all property, including that of non-polluters, within Okeechobee Basin was thus constitutionally valid.[64] Lastly, the Court noted that the "polluter pays" provision does not expressly prohibit the state from taxing other persons or entities for the purpose of paying for pollution abatement in the EPA or EAA.

During the next regular session in 2003, the Legislature amended the law imposing the Everglades Agricultural Privilege Tax as follows:

> (6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—
>
> (c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades agricultural privilege taxes for each year shall be computed in the following manner:
>
> 6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 <u>through November 2016 shall be $25 per acre and for tax notices mailed in November 2017</u> and thereafter shall be $10 per acre.
>
> (h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this act to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution <u>and that payment of the tax complies with the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.</u>

[58] *Id.*
[59] *Id.* at 81.
[60] 823 So.2d 73 (2002).
[61] *Id.* at 74.
[62] *Id.*
[63] *Id.*
[64] *Id.*

The 2002 Barley opinion and the 1997 advisory opinion discussed above are the only opinions in which the Florida Supreme Court has interpreted the "polluter pays" provision, and there are no additional lower appellate court decisions that address the issue. There are also no appellate court decisions directly interpreting the agricultural privilege tax provision in s. 373.4592(6), F.S., including language added during the 2003 session.

Recent Everglades Litigation

The current state of Everglades regulation has been heavily shaped by two separate but interrelated cases, the origins of which stretch back to 1988: *U.S. v. South Florida Water Management District* and *Miccosukee Tribe of Indians v. U.S.* In fact, an impetus behind the EFA was putting an end to such litigation.[65] Nonetheless, to quote Judge Gold from a ruling issued in 2011, "[i]t is now...eighteen years after EPA, [SFWMD], and [FDEP] recognized in 1993 that it was time to 'bring to a close 5 years of costly litigation,' which has now expanded to twenty-three years of costly litigation over many of the same issues... ."[66]

U.S. v. South Florida Water Management District (Moreno Case)

In 1988, the United States sued SFWMD and the Florida Department of Environmental Regulation (now FDEP) in federal district court alleging that waters entering the Loxahatchee National Wildlife Refuge ("Refuge") and Everglades National Park ("Park') were being polluted with phosphorus runoff from farms in the EAA.[67] After three years of costly and contentious litigation, the State Parties admitted liability and entered into settlement agreement with the federal government. That agreement was subsequently approved in a Consent Decree entered by then presiding Judge William Hoeveler.[68]

Under the Consent Decree, the State Parties agreed to implement a two part phosphorus control program. First, they agreed to build and operate by 2004 approximately 35,000 acres of constructed wetlands (known as Stormwater Treatment Areas ("STAs")) that remove phosphorus with plants (there were initially five STAs: STA-1W, STA-2, STA-3/4, STA-5 and STA-6). In addition, they would implement an agricultural best management practices regulatory program in the EAA designed to achieve a 25% reduction in phosphorus discharges from the basin. Finally, the State Parties committed to researching and adopting a numeric phosphorus water quality standard for the Everglades.

Under the Decree, the State Parties also had to meet initial interim phosphorus limits for the Refuge and Park and, by December 31, 2006, the lower of the new numeric phosphorus water quality standard or the long-term phosphorus limits described in Decree, whichever was lower. Pursuant to the Decree, a violation of an applicable phosphorus limit requires the State Parties to construct more STAs, impose more agricultural BMPs, or a combination of both.

Since the Decree was entered, it was amended to require the Army Corps of Engineers to build a 5,500 acre STA adjacent to the Refuge (known as STA-1E). In 2004, in response to a potential violation of the Refuge's interim limits, the State Parties agreed to build an additional 17,000 acres of STAs adjacent to STA-2 and STAs-5 and 6 (known as Compartment B and Compartment C STAs, respectively. The SFWMD also built pumps and canals that diverted untreated stormwater discharges from Wellington away from the Refuge. Finally, in 2005, FDEP adopted a numeric phosphorus water quality standard for the Everglades. Under the Rule, phosphorus levels in the Refuge and Water Concentration Areas 2 and 3 must be at or below a long-term geometric mean of 10 ppb, taking into account spatial and temporal variability. Phosphorus levels in the Park must meet the limits prescribed by the Consent Decree.

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[65] *Miccosukee Tribe of Indians v. U.S.*, 2011 WL 1264977 2011, at 17.
[66] *Id.*.
[67] *See U.S. v. South Florida Water Management District,* 847 F. Supp 1567 (S.D. Fla. 1992).
[68] *Id.*

Today, after an investment of approximately $1.5 billion, the SFWMD is operating nearly 60,000 acres of STAs, which in 2011 treated 735,000 acre-feet of water and reduced total phosphorous loads to the Everglades Protection Area by 79%. In 1996, SFWMD also successfully implemented the EAA BMP program, with annual farm nutrient runoff having been reduced by approximately 55 percent over the programs 16-year history. Combined, these two control programs have reduced phosphorus levels in waters entering the Everglades from a high of 200 ppb to as low as 13 ppb, with some waters in the Everglades National Park achieving phosphorous levels below the 10 ppb goal.

Miccosukee Tribe of Indians v. U.S. (Gold Case)

In 2003, the Florida Legislature amended the EFA to allow rules creating new discharge limits for structures discharging into the Everglades, including the SFWMD's STAs. Rather than meet the phosphorus water quality standard by the EFA's 2006 deadline, the new rule would allow dischargers, including the SFWMD, to discharge at higher levels through 2016 provided they were implementing "Best Available Phosphorus Reduction Technology" (BAPRT), which the EFA amendments defined as the projects in the SFWMD's *Long-Term Plan for Achieving Water Quality Standards* (Long-Term Plan).

In 2004, the Miccosukee Tribe brought suit against the United States Environmental Protection Agency (EPA) claiming that the 2003 EFA amendments, and portions of the State's subsequently-adopted phosphorus water quality standard[69] (Phosphorus Rule) that implemented them, violated the Federal Clean Water Act (CWA). FDEP subsequently intervened as a defendant in the case. SFWMD was not a party to the lawsuit and FDEP never issued permits with moderating provisions.

In July 2008, Judge Alan Gold agreed with the Tribe and issued an order enjoining EPA and FDEP from issuing new permits containing moderating provisions.[70] In essence, the Court perceived the new variance procedure as creating a statutorily mandated "blanket variance," and not a typical variance which is generated on a case by-case analysis. The Court also directed EPA to conduct a thorough, written review of other provisions in the 2003 EFA amendments and Phosphorus Rule to determine if they complied with the CWA (what the Court refers to as a "Determination Letter"). Neither EPA nor FDEP appealed Judge Gold's ruling.

EPA never conducted the review, prompting the Tribe to file a motion for contempt against EPA. The Tribe subsequently broadened the scope of its motion to include claims against FDEP. The Tribe asserted that EPA and FDEP violated the July 2008 order by allowing the SFWMD to continue to operate under old permits *issued prior* to the Court's July 2008 order. Those permits authorized discharges above the phosphorus water quality standard; however, they did so in reliance upon existing regulations authorizing "administrative orders" and "compliance schedules" - frequently used devices that allow a discharger to bring itself into compliance with a water quality standard provided it implements new remedies within a certain timeframe.

On April 14, 2010, Judge Gold again agreed with the Tribe and ruled that EPA and FDEP violated his July 2008 order (but stopped short of holding them in contempt).[71] In so ruling, the Court clarified (and largely rewrote) the scope of his earlier injunction. In summary, the Court ordered:

- EPA "shall direct the State of Florida" to delete the 2003 EFA amendments and those portions of the Phosphorus Rule that implemented them. Attached to his order are underlined/strike through versions of the EFA and Phosphorus Rule reflecting the text the Court wants the Legislature and FDEP to remove from the EFA and Rule 62302.540, F.A.C.
- EPA shall determine the remedies and strategies that the SFWMD must implement, "with specific milestones . . . that provide an enforceable framework" to ensure that discharges to the

[69] Rule 62-302.540, F.A.C

[70] *Miccosukee Tribe of Indians v. U.S.*, 2008 WL 2967654.

[71] *Miccosukee Tribe of Indians v. U.S.*, 2010 WL 9034624.

Everglades are in compliance with the Phosphorus Rule. The EPA shall then direct FDEP to amend the SFWMD's existing NPDES permits to include the new remedies and strategies.
- After FDEP issues the new NPDES permits, EPA is to revoke FDEP's authority to issue NPDES permits for discharges into the Everglades.

On September 3, 2010, the EPA issued its Amended Determination as required by the Court. The Amended Determination describes a two-part Water Quality Based Effluent Limit for STA discharges. Total phosphorus concentrations in STA discharges may not exceed either 10 parts per billion (ppb) as an annual geometric mean in more than two consecutive years or 18 ppb as an annual flow weighted mean. The Amended Determination also provides direction on how the SFWMD should achieve the STA discharge limits, including expanding existing STAs to provide an additional 42,000 acres of effective treatment area.

In April of 2011, Judge Gold again revisited the case to address several issues, such as, conforming the NPDES permitting program to meet the water quality based effluent limitations for phosphorous described in the Amended Determination. Judge Gold emphasized that "it is necessary to enact and enforce the appropriate water standard and [quality based effluent limitations] *now*, and to have *immediate* conformance of the permits for the purpose of enforcing all terms therein."[72] To accomplish this, Judge Gold ordered that permitting authority be primarily transferred to the EPA: "the EPA must now take the reins of the permitting issues and take action as to what it has committed itself to doing."[73] Specifically, the EPA was ordered to issue permits without compliance schedules so that the water quality based effluent limitations are immediately enforceable.[74] In June of 2011, the EPA rejected the amended NPDES permits for the SFWMD that had been submitted by FDEP.

Clean Water Act Variances and Use Attainability Analysis

Under section 303 of the federal Clean Water Act (CWA), states are required to adopt water quality standards (WQS) for their navigable waters, and to review and update those standards at least every three years. These standards must include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, or navigation;
- Water quality criteria that defines the amounts of pollutants in either numeric or narrative form, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.[75]

The CWA does provide some flexibility to permittees required to meet an established WQS by allowing the enforcing agency to revise the designated use for a specific waterbody or to grant an individual permittee a variance that temporarily modifies the water quality standards to the highest use and criteria that are currently available. A water quality variance is a temporary change in a State's water quality standards and its relevant criteria, usually regarding a specific pollutant. The underlying standards remain in place. In granting the variance, the State must follow its established variance policies and the variance is then subject to public and EPA review. Variances are based on a use attainability demonstration and target achievement of the highest attainable use and associated criteria during the variance period.

A Use Attainability Analysis (UAA) is a structured scientific assessment of the factors affecting the attainment of uses specified in Section 101(a)(2) of the CWA (the so called "fishable/swimmable" uses). The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria described in EPA's water quality standards regulation.

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[72] *Miccosukee Tribe of Indians v. U.S.*, 2011 WL 1264977 2011, at *18.
[73] *Id.* at *20.
[74] *Id.*
[75] 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. §§ 131.6, 131.10-12.1.

Under 40 CFR 131.10(g) States can issue a variance or remove a designated use that is not an "existing use," as defined in § 131.3, C.F.R., or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

1. Naturally occurring pollutant concentrations prevent the attainment of the use; or
2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
4. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
6. Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.4592, F.S., relating to the Everglades Forever Act.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill appears to have a positive fiscal impact on SFWMD revenues by extending, from 2016 to 2024, the year that the $25 per acre agricultural privilege tax is scheduled to be reduced to $10 per acre. Retaining the $25 per acre tax, rather than decreasing the tax to $10 after 2016, will result in a positive impact of $6.6 million per year from 2017 through 2024 when the tax rate will drop to $10 per acre.

2. Expenditures:

   According to the SFWMD, completion of a use attainability analysis may be accomplished within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a negative fiscal impact on private landowners who pay the annual agricultural privilege tax, by extending the current tax rate of $25 per acre until 2024. Under current law, the tax rate is scheduled to fall to $10 per acre in 2017.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to Everglades improvement and management; amending s. 373.4592, F.S.; providing findings; revising the definition of "Long Term Plan"; revising the usage of the ad valorem tax proceeds; providing that certain discharges may not be deemed to cause or contribute to violations of water quality standards; directing the South Florida Water Management District to complete a use attainability analysis; requiring payment of an agricultural privilege tax of $25 for an extended period of time; providing legislative intent that payment of the agricultural privilege tax and costs of continuing implementation of best management practices fulfills certain constitutional requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) of subsection (1), paragraph (j) of subsection (2), paragraph (d) and (e) of subsection (3) paragraphs (a), (f), and (h) of subsection (4), and paragraphs (c) and (h) of subsection (6) of section 373.4592, Florida Statutes, are amended to read:

373.4592 Everglades improvement and management.—

(1) FINDINGS AND INTENT.—

(g) The Legislature finds that the Long Term Plan ~~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 Long Term Plan ~~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 and that implementation of BMPs, funded by the owners and users of land in the EAA, effectively reduces nutrients in waters flowing into the Everglades Protection Area. 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.

(2) DEFINITIONS.—As used in this section:

(j) "Long-Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as subsequently modified in accordance with paragraph (3)(b), and the district's "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, as may be subsequently modified pursuant to paragraph (3)(b) ~~modified herein~~.

(3) EVERGLADES LONG-TERM PLAN.—

(d) ~~The Legislature recognizes that the Long-Term Plan contains an initial phase and a 10-year second phase.~~ The Legislature intends that a review of this act at least 10 years after implementation of the Long-Term Plan ~~initial phase~~ is appropriate and necessary to the public interest. The review is the best way to ensure that the Everglades Protection Area is achieving state water quality standards, including phosphorus reduction, and the Long-Term Plan is using the best technology available. ~~A 10-year second phase of the Long-Term Plan must be approved by the Legislature and codified in this act prior to implementation of projects, but not prior to development, review, and approval of projects by the department.~~

(e) The Long-Term Plan shall be implemented ~~for an initial 13-year phase (2003-2016)~~ and shall achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures.

(4) EVERGLADES PROGRAM.—

(a) Everglades Construction Project.—The district shall implement the Everglades Construction Project. By the time of completion of the project, the state, district, or other governmental authority shall purchase the inholdings in the Rotenberger and such other lands necessary to achieve a 2:1 mitigation ratio for the use of Brown's Farm and other similar lands, including those needed for the STA 1 Inflow and Distribution Works. The inclusion of public lands as part of the

project is for the purpose of treating waters not coming from the EAA for hydroperiod restoration. It is the intent of the Legislature that the district aggressively pursue the implementation of the Everglades Construction Project in accordance with the schedule in this subsection. The Legislature recognizes that adherence to the schedule is dependent upon factors beyond the control of the district, including the timely receipt of funds from all contributors. The district shall take all reasonable measures to complete timely performance of the schedule in this section in order to finish the Everglades Construction Project. The district shall not delay implementation of the project beyond the time delay caused by those circumstances and conditions that prevent timely performance. The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purposes of the design, construction, and acquisition of the Everglades Construction Project. The ad valorem tax proceeds not exceeding 0.1 mill levied within the Okeechobee Basin for such purposes shall also be used for design, construction, and implementation ~~of the initial phase~~ of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in ~~the initial phase of~~ the Long-Term Plan, and including the enhancements and operation and maintenance of the Everglades Construction Project and shall be the sole direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project unless the Legislature by specific amendment to this section increases the 0.1 mill ad

valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project. Notwithstanding the provisions of s. 200.069 to the contrary, any millage levied under the 0.1 mill limitation in this paragraph shall be included as a separate entry on the Notice of Proposed Property Taxes pursuant to s. 200.069. Once the STAs are completed, the district shall allow these areas to be used by the public for recreational purposes in the manner set forth in s. 373.1391(1), considering the suitability of these lands for such uses. These lands shall be made available for recreational use unless the district governing board can demonstrate that such uses are incompatible with the restoration goals of the Everglades Construction Project or the water quality and hydrological purposes of the STAs or would otherwise adversely impact the implementation of the project. The district shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Everglades Construction Project, consistent with their qualifications and abilities, for the construction and operation of these STAs. The following milestones apply to the completion of the Everglades Construction Project as depicted in the February 15, 1994, conceptual design document:

1. The district must complete the final design of the STA 1 East and West and pursue STA 1 East project components as part of a cost-shared program with the Federal Government. The

district must be the local sponsor of the federal project that will include STA 1 East, and STA 1 West if so authorized by federal law;

2. Construction of STA 1 East is to be completed under the direction of the United States Army Corps of Engineers in conjunction with the currently authorized C-51 flood control project;

3. The district must complete construction of STA 1 West and STA 1 Inflow and Distribution Works under the direction of the United States Army Corps of Engineers, if the direction is authorized under federal law, in conjunction with the currently authorized C-51 flood control project;

4. The district must complete construction of STA 3/4 by October 1, 2003; however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;

5. The district must complete construction of STA 6;

6. The district must, by December 31, 2006, complete construction of enhancements to the Everglades Construction Project recommended in the Long-Term Plan and initiate other pre-2006 strategies in the plan; and

7. East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agricultural lease number 3420 shall complete any system modifications described in the Everglades Construction Project to the extent that funds are available from the Everglades Fund. These entities shall divert the discharges described within the Everglades Construction

Project within 60 days of completion of construction of the appropriate STA. Such required modifications shall be deemed to be a part of each district's plan of reclamation pursuant to chapter 298.

(f) EAA best management practices.—

1. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs in achieving and maintaining compliance with state water quality standards and restoring and maintaining designated and existing beneficial uses. The program shall include an analysis of the effectiveness of the BMPs in treating constituents that are not being significantly improved by the STAs. The monitoring program shall include monitoring of appropriate parameters at representative locations.

2. The district shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code, during the terms of the existing permits issued pursuant to those rules. Chapter 40E-61, Florida Administrative Code, may be amended to include the BMPs required by chapter 40E-63, Florida Administrative Code. Prior to the expiration of existing permits, and during each 5-year term of subsequent permits as provided for in this section, those rules shall be amended to implement a comprehensive program of research, testing, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area. Under this program:

a. EAA landowners, through the EAA Environmental

Protection District or otherwise, shall sponsor a program of BMP research with qualified experts to identify appropriate BMPs.

b. Consistent with the water quality monitoring program, BMPs will be field-tested in a sufficient number of representative sites in the EAA to reflect soil and crop types and other factors that influence BMP design and effectiveness.

c. BMPs as required for varying crops and soil types shall be included in permit conditions in the 5-year permits issued pursuant to this section.

d. The district shall conduct research in cooperation with EAA landowners to identify water quality parameters that are not being significantly improved either by the STAs or the BMPs, and to identify further BMP strategies needed to address these parameters.

3. The Legislature finds that through the implementation of the Everglades BMPs Program and the implementation of the Everglades Construction Project, reasonable further progress will be made towards addressing water quality requirements of the EAA canals and the Everglades Protection Area. Permittees within the EAA and the C-139 Basin who are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida Administrative Code, have made all payments required under the Everglades Program, and are in compliance with subparagraph (a)7., if applicable, shall not be required to implement additional water quality improvement measures, prior to December 31, 2006, other than those required by subparagraph 2., with the following exceptions:

a. Nothing in this subparagraph shall limit the existing

authority of the department or the district to limit or regulate discharges that pose a significant danger to the public health and safety; and

b. New land uses and new stormwater management facilities other than alterations to existing agricultural stormwater management systems for water quality improvements shall not be accorded the compliance established by this section. Permits may be required to implement improvements or alterations to existing agricultural water management systems.

4. As of December 31, 2006, all permits, including those issued prior to that date, shall require implementation of additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, no permittee's discharge shall be deemed to cause or contribute to any violation of water quality standards in the Everglades Protection Area if the discharge is in compliance with applicable permits and any associated orders.

5. Effective immediately, landowners within the C-139 Basin shall not collectively exceed an annual average loading of phosphorus based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows shall not increase the annual average loading of phosphorus stated above. Provided that the C-139 Basin does not exceed this annual average loading, all landowners within the Basin shall be in compliance for that year. Compliance determinations for individual landowners within the C-139 Basin for remedial action, if the Basin is determined

by the district to be out of compliance for that year, shall be based on the landowners' proportional share of the total phosphorus loading. The total phosphorus discharge load shall be determined as set forth in Appendix B2 of Rule 40E-63, Everglades Program, Florida Administrative Code.

6. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the quality of the discharge from the C-139 Basin. Upon determination by the department or the district that the C-139 Basin is exceeding any presently existing water quality standards, the district shall require landowners within the C-139 Basin to implement BMPs appropriate to the land uses within the C-139 Basin consistent with subparagraph 2. Thereafter, the provisions of subparagraphs 2.-4. shall apply to the landowners within the C-139 Basin.

(h) Prior to the completion of all projects and improvements in the Long Term Plan, the district shall complete a use attainability analysis to determine if those projects and improvements will achieve the water quality based effluent limits established in permits and orders authorizing the operation of those facilities.

(6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—

(c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades

agricultural privilege taxes for each year shall be computed in the following manner:

1. Annual Everglades agricultural privilege taxes shall be charged for the privilege of conducting an agricultural trade or business on each acre of real property or portion thereof. The annual Everglades agricultural privilege tax shall be $24.89 per acre for the tax notices mailed in November 1994 through November 1997; $27 per acre for the tax notices mailed in November 1998 through November 2001; $31 per acre for the tax notices mailed in November 2002 through November 2005; and $35 per acre for the tax notices mailed in November 2006 through November 2013.

2. It is the intent of the Legislature to encourage the performance of best management practices to maximize the reduction of phosphorus loads at points of discharge from the EAA by providing an incentive credit against the Everglades agricultural privilege taxes set forth in subparagraph 1. The total phosphorus load reduction shall be measured for the entire EAA by comparing the actual measured total phosphorus load attributable to the EAA for each annual period ending on April 30 to the total estimated phosphorus load that would have occurred during the 1979-1988 base period using the model for total phosphorus load determinations provided in chapter 40E-63, Florida Administrative Code, utilizing the technical information and procedures contained in Section IV-EAA Period of Record Flow and Phosphorus Load Calculations; Section V-Monitoring Requirements; and Section VI-Phosphorus Load Allocations and Compliance Calculations of the Draft Technical Document in

Support of chapter 40E-63, Florida Administrative Code - Works of the District within the Everglades, March 3, 1992, and the Standard Operating Procedures for Water Quality Collection in Support of the Everglades Water Condition Report, dated February 18, 1994. The model estimates the total phosphorus load that would have occurred during the 1979-1988 base period by substituting the rainfall conditions for such annual period ending April 30 for the conditions that were used to calibrate the model for the 1979-1988 base period. The data utilized to calculate the actual loads attributable to the EAA shall be adjusted to eliminate the effect of any load and flow that were not included in the 1979-1988 base period as defined in chapter 40E-63, Florida Administrative Code. The incorporation of the method of measuring the total phosphorus load reduction provided in this subparagraph is intended to provide a legislatively approved aid to the governing board of the district in making an annual ministerial determination of any incentive credit.

3. Phosphorus load reductions calculated in the manner described in subparagraph 2. and rounded to the nearest whole percentage point for each annual period beginning on May 1 and ending on April 30 shall be used to compute incentive credits to the Everglades agricultural privilege taxes to be included on the annual tax notices mailed in November of the next ensuing calendar year. Incentive credits, if any, will reduce the Everglades agricultural privilege taxes set forth in subparagraph 1. only to the extent that the phosphorus load reduction exceeds 25 percent. Subject to subparagraph 4., the reduction of phosphorus load by each percentage point in excess

of 25 percent, computed for the 12-month period ended on April 30 of the calendar year immediately preceding certification of the Everglades agricultural privilege tax, shall result in the following incentive credits: $0.33 per acre for the tax notices mailed in November 1994 through November 1997; $0.54 per acre for the tax notices mailed in November 1998 through November 2001; $0.61 per acre for the tax notices mailed in November 2002 through November 2005, and $0.65 per acre for the tax notices mailed in November 2006 through November 2013. The determination of incentive credits, if any, shall be documented by resolution of the governing board of the district adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

4. Notwithstanding subparagraph 3., incentive credits for the performance of best management practices shall not reduce the minimum annual Everglades agricultural privilege tax to less than $24.89 per acre, which annual Everglades agricultural privilege tax as adjusted in the manner required by paragraph (e) shall be known as the "minimum tax." To the extent that the application of incentive credits for the performance of best management practices would reduce the annual Everglades agricultural privilege tax to an amount less than the minimum tax, then the unused or excess incentive credits for the performance of best management practices shall be carried forward, on a phosphorus load percentage basis, to be applied as incentive credits in subsequent years. Any unused or excess incentive credits remaining after certification of the

Everglades agricultural privilege tax roll for the tax notices mailed in November 2013 shall be canceled.

5. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph 1., the owner, lessee, or other appropriate interestholder of any property shall be entitled to have the Everglades agricultural privilege tax for any parcel of property reduced to the minimum tax, commencing with the tax notices mailed in November 1996 for parcels of property participating in the early baseline option as defined in chapter 40E-63, Florida Administrative Code, and with the tax notices mailed in November 1997 for parcels of property not participating in the early baseline option, upon compliance with the requirements set forth in this subparagraph. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for consideration of reduction to the minimum tax on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the reduction in phosphorus load attributable to such parcel of property. The phosphorus load reduction for each discharge structure serving the parcel shall be measured as provided in chapter 40E-63, Florida Administrative Code, and the permit issued for such property pursuant to chapter 40E-63, Florida Administrative Code. A parcel of property which has achieved the following annual phosphorus load reduction standards shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year: 30 percent or more for the tax notices

mailed in November 1994 through November 1997; 35 percent or more for the tax notices mailed in November 1998 through November 2001; 40 percent or more for the tax notices mailed in November 2002 through November 2005; and 45 percent or more for the tax notices mailed in November 2006 through November 2013. In addition, any parcel of property that achieves an annual flow weighted mean concentration of 50 parts per billion (ppb) of phosphorus at each discharge structure serving the property for any year ending April 30 shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year. Any annual phosphorus reductions that exceed the amount necessary to have the minimum tax included on the annual tax notice for any parcel of property shall be carried forward to the subsequent years' phosphorus load reduction to determine if the minimum tax shall be included on the annual tax notice. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 through November <u>2024</u> ~~2016~~ shall be $25 per acre and for tax notices mailed in November <u>2025</u> ~~2017~~ and thereafter shall be $10 per acre.

(h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida<u>.</u> ~~and~~ The Legislature intends this act to be

a general law authorization of the Everglades agricultural privilege tax within the meaning of s. 9, Art. VII of the State Constitution and further intends that payment of the tax, in addition to payment of the cost of continuing implementation of BMPs, fulfills ~~complies with~~ the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.

Section 2. This act shall take effect upon becoming law.