
IN THE SUPREME COURT OF FLORIDA

Case No. 83,301

Upon Request From The Attorney General
For An Advisory Opinion As To The
Validity Of An Initiative Petition

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL -
SAVE OUR EVERGLADES TRUST FUND

INITIAL BRIEF OF ASSOCIATED INDUSTRIES
OF FLORIDA SERVICE CORPORATION
OPPOSING THE SAVE OUR EVERGLADES INITIATIVE

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INTRODUCTION

ASSOCIATED INDUSTRIES OF FLORIDA SERVICE CORPORATION ("AIF") submits this brief as an interested party in response to this Court's Interlocutory Order of March 11, 1994. AIF is a not-for-profit corporation organized under Florida law to represent employers on issues that impact the business community. AIF's mission is to advocate responsible public policies and to monitor developments that impact its members in the legislative, executive, and judicial branches of government. Its membership is diverse, ranging from service industries to agricultural interests to public utilities and fiber optics companies. At the present time, AIF has approximately 6000 member businesses throughout Florida. Seventeen of Florida's fifty largest private employers are AIF members.

Many of the agricultural industries doing business in counties contiguous to the Everglades are AIF members. However, the principles at stake here transcend the interests of the sugar processors. The Save Our Everglades initiative takes the unprecedented step of constitutionally singling out an industry for taxation. The petition and proposed amendment utilize inflammatory and unsubstantiated allegations to create emotional appeal to voters. Not only does this set an unfortunate precedent for tax and finance policy, but it also makes individual industries future targets for constitutional taxation. For these reasons, AIF has a direct and vital interest in the outcome of these proceedings.

STATEMENT OF THE CASE AND FACTS

In accordance with article IV, section 10, Florida Constitution and section 16.061, Florida Statutes (1993), the Florida Attorney General has petitioned this Court for an advisory opinion on the validity of the "Save Our Everglades" initiative petition (the "Everglades Initiative"). The Everglades Initiative seeks to amend article X of the Florida Constitution ("Miscellaneous") by adding a new section numbered "16" at the end of the article.

The Court has consistently ruled that its advisory opinions on constitutional initiatives are limited to whether a proposed amendment complies with the single-subject requirement of article XI, section 3, Florida Constitution,¹ and whether the ballot title and substance comply with section 101.161(1), Florida Statutes.² The Attorney General concluded that the Everglades Initiative appeared to comply with the single-subject and ballot requirements [A 2]. The Court issued an Interlocutory Order permitting interested parties to submit briefs on these issues.

The ballot title and summary of the Everglades Initiative provide as follows:

¹ Article XI, section 3 of the Florida Constitution limits a proposed amendment to "but one subject and matter directly connected therewith."

² Section 101.161(1) provides, in pertinent part:

The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Title: Save Our Everglades

Summary:

Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust.

The full text of the Everglades Initiative, which includes a "preamble" before the actual text of the proposed amendment, is set forth below:

(a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering water supply. Therefore, the sugarcane industry should help pay to clean up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem, and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.

(b) Article X, Florida Constitution, is hereby amended to add the following:

"Section 16. Save Our Everglades Trust Fund.

"(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

"(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a vacancy. Trustees' appointments shall be for five years; provided that

the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

"(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at a rate of \$.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its successor, and shall expire twenty-five years after the effective date of this Section.

"(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, south and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, provided that the Trustees may refine this definition.

"(e) Implementing legislation is not required for this Section, but nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall take effect on the day after approval by the electors."

SUMMARY OF THE ARGUMENT

The Everglades Initiative cannot appear on the ballot for the November general election because the proposed amendment violates the single-subject requirement of article XI, section 3, Florida Constitution, and because the ballot title and substance violate the requirements of section 101.161(1), Florida Statutes (1993). The defects are clear and conclusive.

Compliance with the single-subject requirement is measured by a functional test of whether the proposed amendment affects more than one function of government. Impact on other sections of the constitution is also a pertinent factor, as is the consideration of whether the proposal engages in "logrolling." The Everglades Initiative affects the legislative functions of taxation and appropriation, the executive function of regulating the state's natural resources, and the judicial functions of determining liability and resolving disputes involving real property. Several sections of the constitution would be affected by the proposed amendment, yet neither the amendment itself nor the ballot summary advise the voters of the changes that would result if the proposal were adopted. The proposal is guilty of "logrolling" because it requires voters to accept a number of potentially unpalatable changes in state government in order to approve the broad and popular general concept of cleaning up the Everglades.

In addition to failing to inform the voter about the proposal's impact on the constitution, the ballot summary is defective for omitting material facts and otherwise misleading the voter. The summary fails to mention the extensive powers granted

to the citizen Trustees who would control the proposed Trust, and fails to explain what the term "Everglades Ecosystem" means and that the definition is subject to "refinement" at any time on unknown grounds. The summary misleads the voter by casting as fact the proponents' subjective opinion that the sugarcane industry is liable for Everglades pollution; by calling the proposed revenue source a "fee" when in reality it is a tax ultimately to be borne by voters; by suggesting that other, undefined revenue sources will "help pay" for the clean-up; and by suggesting that the public will not be required to help pay for the clean-up.

Any of these substantial defects in the Everglades Initiative and ballot summary is sufficient to prevent the proposed amendment from appearing on the ballot. Cumulatively, they leave no doubt that the proposal is clearly and conclusively defective and must be stricken.

ARGUMENT

The Everglades Initiative is "clearly and conclusively defective" when measured against the single-subject and ballot requirements of Florida law.³ Askew v. Firestone, 421 So. 2d 151, 154-56 (Fla. 1982). Therefore, the Court must not permit it to be placed on the ballot.

I. THE EVERGLADES INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT OF ART. XI, SEC. 3.

Article XI, section 3, Florida Constitution provides that a proposed amendment "shall embrace but one subject and matter directly connected therewith." The single-subject requirement is a "rule of restraint ... 'which the people themselves have incorporated in our Constitution to protect it against precipitous and spasmodic changes in the organic law.'" Fine v. Firestone, 448 So. 2d 984, 993 (Fla. 1984) (quoting from Adams v. Gunter, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)). It has come to mean that a proposed amendment must have a unified "functional effect" on government, Evans v. Firestone, 457 So. 2d 1351, 1354

³ If ever a constitutional initiative were palpably unconstitutional as, inter alia, a denial of due process and equal protection, this would be it. However, AIF recognizes this Court's adherence to the position that constitutionality cannot be addressed in this proceeding. In Re: Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 19 Fla. L. Weekly S109, S110 & n.1 (Fla. March 3, 1994); Grose v. Firestone, 422 So. 2d 303, 306 (Fla. 1982); Gray v. Moss, 115 Fla. 701, 156 So. 262, 264 (1934). But see Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958) (constitutionality could be addressed prior to adoption if the proposed amendment could not be valid in any respect or under any condition); Gray v. Winthrop, 115 Fla. 721, 726-27, 156 So. 270, 272 (1934) (proposal may be stricken "when the amendment, if adopted, would palpably violate the paramount law and would inevitably be futile and nugatory and incapable of being made operative under any conditions or circumstances").

(Fla. 1984), and "a logical and natural oneness of purpose." Fine, 448 So. 2d at 990. The various parts of a proposed amendment must have a "natural relation and connection as component parts or aspects of a single dominant plan or scheme." Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So. 2d 997, 999 (Fla. 1993).

On its face and in its functional effect, the Everglades Initiative fails the test of "logical and natural oneness of purpose." It changes multiple government functions, and it constitutes impermissible "logrolling" because it confronts the voter with competing policy choices. The defects are clear and conclusive, mandating invalidation of the Everglades Initiative.

A. The Everglades Initiative Improperly Performs Executive, Legislative, and Judicial Functions.

It is "axiomatic ... that enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." Evans, 457 So. 2d at 1353. Even the most complex and disparate collection of proposals could be lumped together under a broad title with popular appeal; thus, it is legally insufficient to say that all aspects of the Everglades Initiative are enfolded within the political slogan "Save Our Everglades." The single-subject requirement demands inquiry into how the proposed amendment may impact the functioning of the branches of government. If it "performs the functions of different branches of government, it clearly fails the functional test." Evans, 457 So. 2d at 1354.

The Everglades Initiative fails the functional test because it not only "affects," but completely usurps, the functions of all three branches of government.⁴ First, it deprives the legislature of all discretion in selecting the method of funding Everglades clean-up and the recipient of collected funds. This function is uniquely legislative. Art. VII, § 1, Fla. Const. The complete lack of legislative discretion permitted by the Everglades Initiative distinguishes it from the proposal in Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978), which required collection of unspecified taxes on gambling casinos and appropriation to local governments throughout the state for education and law enforcement in general, with no mandatory targeted spending. Floridians, 363 So. 2d at 338. The deprivation of legislative discretion in the Everglades Initiative further distinguishes this proposal from that approved in Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986), which merely identified a "potential revenue source" and a "tentative recipient." Carroll, 497 So. 2d at 1206. Assessment of a specified amount of tax on a product emanating from a small, predetermined geographic area, and

⁴ The Everglades Initiative thus violates not only the single-subject requirement of article XI, section 3, but also the separation of powers requirement of article II, section 3: "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." See Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260, 268 (Fla. 1991); Department of Agriculture and Consumer Serv. v. Bonanno, 568 So. 2d 24, 33 (Fla. 1990) (Ehrlich, J., concurring and dissenting); Askew v. Cross Keys Waterways, 372 So. 2d 913, 919 (Fla. 1978). If the proponents of the Everglades Initiative intend for it to fundamentally alter this basic component of Florida's law, they must so advise the voters, and their failure to do so violates the legal requirements for ballot summaries. See point II, infra.

mandatory appropriation of the collected funds to a designated recipient for predetermined purposes, are classic examples of "substantive ... essentially legislative" functions, and are impermissible in a constitutional initiative for that reason. Evans, 457 So. 2d at 1354.

Second, the Everglades Initiative usurps the executive functions under article IV, section 6, Florida Constitution that would otherwise rest with the Department of Environmental Protection. § 253.002, Fla. Stat. (1993). DEP, as a department within the executive branch, has the authority to determine geographic boundaries subject to environmental regulation, and to prescribe protective and restorative action. The Everglades Initiative would place such power, requiring highly detailed scientific and technical determinations, in the hands of "citizen Trustees" as to a huge geographic area, the bounds of which those same individuals would then have the power to modify on unspecified grounds. Encroachment on the "rulemaking powers of executive agencies" was a factor in the Court's recent invalidation of the Discrimination initiative in Discrimination, 19 Fla. L. Weekly at S110. The same defect is fatal to the Everglades Initiative.

Finally, and perhaps most disturbingly, the Everglades Initiative encroaches on the judicial function of state government by announcing as a fait accompli that "the sugarcane industry ... polluted the Everglades" and must help pay for the clean-up, by requiring the citizen Trustees to hear "disputes arising under" the proposed amendment, and by empowering the Trustees to be the final

arbiters of the definition of the "Everglades Ecosystem" subject to the proposed amendment.

It is axiomatic that the determination of liability for an alleged civil or criminal wrong rests with the judicial branch of government;⁵ a group of citizens cannot merely announce their opinion on who is to blame, market that opinion successfully, and give it the strength of law (let alone constitutional law). Nor may a group of citizens divest Florida's courts of their heretofore exclusive authority to determine boundary and other property disputes through in rem actions, without expressly advising the voters that such a result will occur.

These patent encroachments on the functions of all three branches of government constitute a clear violation of the single-subject rule. The Everglades Initiative is clearly and conclusively defective, and cannot be placed on the ballot.

**B. The Everglades Initiative
Improperly Engages In Logrolling.**

The "primary and fundamental concern" of the single-subject requirement is "the prevention of logrolling," Evans, 457 So. 2d at 1354, which is the practice of making voters "accept part of a proposal which they oppose in order to obtain a change which they support." Fine, 448 So. 2d at 993. Each part of a proposed

⁵ Litigation over the causes and cures of Everglades pollution is ongoing. See, e.g., United States v. South Florida Water Management District, Case No. 88-1886-Civ-Hoeveler (S.D. Fla. 2-24-92) (consent decree); Case Nos. 89-6029, 6269 (11th Cir., pending); Florida Sugar Cane League, Inc. v. South Fla. Water Management Dist., 617 So. 2d 1065 (Fla. 4th DCA 1993). See also legislative staff analyses of pending legislation, A 4, generally describing the course of the litigation.

amendment must be reasonably necessary to its chief purpose. Fine, 448 So. 2d at 990; In re Advisory Opinion to the Attorney General, Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991).

Measured against these legal standards, the Everglades Initiative must fail. It is simple enough to garner popular support for the concept of "saving" the Everglades, but a vote for that concept as embodied in the Everglades Initiative also requires a vote for placing the blame and the financial responsibility on the sugarcane industry and not on any other industry, entity, or group of people; a vote for creating an additional tax burden that will ultimately be borne by the voters themselves; a vote for placing enormous, unrestricted power in the hands of non-elected citizen Trustees with vaguely described qualifications, not subject to popular approval, sanction, or recall; and a vote for empowering citizen Trustees to "restore and manage" land in much of Florida in a manner they see fit -- not necessarily limited to land owned by the Trust.

Cleaning up the Everglades is a very broad and very popular concept, but it cannot properly be achieved through a constitutional initiative that requires voters to accept significant unpalatable ramifications. Some voters may favor cleaning up the Everglades, but disfavor the listed tag-alongs or favor alternatives not addressed by the Everglades Initiative at all. Yet to vote for what they want, clean-up, they must vote for what they do not want. This is impermissible logrolling, and it is fatal to the Everglades Initiative.

II. THE EVERGLADES INITIATIVE VIOLATES THE
BALLOT REQUIREMENTS OF SECTION 101.161(1).

The Everglades Initiative misleads voters by omitting material facts, and fails to give the voters fair notice of the chief purpose and effect of the proposed amendment. These clear and conclusive defects must keep the proposal off the ballot.

A. The Ballot Summary Omits Material Facts.

Although it need not explain every potential ramification, Carroll, 497 So. 2d at 1206, a ballot summary is fatally defective if it omits material facts that are essential to understanding the changes to be effected by the proposed amendment. Florida League of Cities v. Smith, 607 So. 2d 397, 399 (Fla. 1992); Limited Political Terms, 592 So. 2d at 228; Wadhams v. Board of County Comm'rs, 567 So. 2d 414, 416-17 (Fla. 1990); Askew, 421 So. 2d at 155-56. Such a defect exists within the Everglades Initiative ballot summary because it mentions Everglades clean-up, but says nary a word about the Trustees and the extensive powers granted them, which in fact consume the majority of the proposed amendment text.

The proponents' choices of title and ballot summary for the Everglades Initiative suggest only that the chief purpose of the Everglades Initiative is to "save," "restore," and "clean up" the Florida Everglades. The text of the proposed amendment itself, however, is largely devoted to a detailed plan that gives the citizen Trustees broad powers that the summary fails to even mention. Whereas the only trust purpose mentioned in the ballot summary is to restore the Everglades, the actual text of the

proposed amendment says that the "sole purpose of the Trust is to expend funds" to return the "Everglades Ecosystem" to its historical ecological functions by far-ranging and non-exclusive means.

The summary uses the term "Everglades Ecosystem" without telling the voter what it means; only the text generally describes the geographical areas that would be subject to the extensive powers of the Trustees (including the authority to alter that definition and thus the geographic scope of the subject lands). None of this information appears in the ballot summary, even though it is material to the proposed amendment and to the voter's ability to make an informed decision about it. This failure to inform constitutes a clear and conclusive defect.

B. The Ballot Summary Is Misleading.

A ballot summary must advise voters of "the meaning and ramifications of the proposed amendment." Wadhams, 567 So. 2d at 418. It must "give the voter fair notice of the decision he must make." Askew, 421 So. 2d at 155. It must "fairly reflect the chief purpose of the proposed amendment," In re Advisory Opinion to the Attorney General, English -- The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988), or "accurately track[] and describe[] the proposed amendment." In re Advisory Opinion to the Attorney General, Limitation of Non-Economic Damages in Civil Actions, 520 So. 2d 284, 287 (Fla. 1988).

The most glaringly misleading aspect of the Everglades Initiative ballot summary is its conclusory assertion that the sugarcane industry is responsible for the pollution of the

Everglades. The voter is left to assume that this statement of fact, printed in black and white on an official state ballot, must be true. A voter cannot possibly make an informed decision if the decision is based upon inaccurate factual assumptions that go to the very heart of the proposal. A subjective evaluation by the proponent of an initiative has no place on the ballot, and renders it fatally defective. Evans, 457 So. 2d at 1355 ("[T]he ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, and no more.").

The ballot summary misleads the voter by euphemistically denominating the revenue source as a "fee," when in fact the source is an excise tax on sugar. Had the summary used the word "tax," the voter would have a more realistic understanding that a vote for the proposed amendment constitutes a vote to assess a tax that will doubtless be passed on to consumers.

The ballot summary is further misleading for saying that the sugarcane industry will "help pay" for clean-up and restoration, implying that unspecified other sources of revenue will also "help pay." The text of the amendment makes no such provision for other sources of revenue, nor any suggestion of how any other sources could be tapped after adoption of a constitutional provision that says only that the sugarcane industry is responsible.⁶ The placement of sole blame on the sugarcane

⁶ Note also that the text of the proposal says the Trust will be "funded initially" by the sugarcane tax, and is silent on how additional funding would be determined or from what sources.

industry and the silence on other sources of clean-up funds also has the potential to mislead the voter into thinking that the public will not be required to pay for the clean-up.

The type of misleading conclusory statement of purported fact upon which the Everglades Initiative relies is precisely the reason why constitutional initiatives are subject to greater judicial scrutiny than are legislative enactments and constitutional revisions by commission.⁷ The constitution is our fundamental law and is intended to endure, not to fall prey to the political correctness of the day:

The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and changing political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values.

Marine Net Fishing, 620 So. 2d at 1000 (McDonald, J., concurring, joined by Barkett, C.J., and Overton and Kogan, JJ.). See also Evans, 457 So. 2d at 1358 (McDonald, J., concurring).⁸ The lack of popular, legislative, or judicial input at the drafting stage

⁷ Constitutional revision is governed by article XI, sections 2, 4, and 5.

⁸ Justice McDonald's concurrences in Evans and in Marine Net Fishing are particularly apropos here because they warn against using the initiative process to effect changes that are statutory in nature. On such matters, "a concerted effort should be made to have the Legislature address the subject." Marine Net Fishing, 620 So. 2d at 1000 (McDonald, J., concurring, joined by Barkett, C.J., and Overton and Kogan, JJ.) The Legislature is, in fact, currently considering companion bills on this very subject: CS/SB 1350 and PCB NR 94-14. [See A 4]. See also, e.g., section 373.4592, Florida Statutes (1993) (Marjorie Stoneman Douglas Everglades Restoration Act).

must be countered by careful scrutiny before a proposed amendment reaches the ballot:

It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted to single-subject changes in the state constitution.

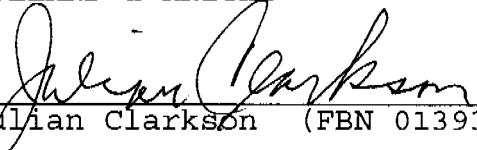
Fine, 448 So. 2d at 988. The same reasoning justifies careful judicial screening to prevent conclusory statements of the proponents' subjective position from going before the voters in the guise of established fact, and to protect the voters from otherwise misleading ballot summaries. These dangers and fatal flaws exist in the Everglades Initiative, justifying its removal from the ballot.

CONCLUSION

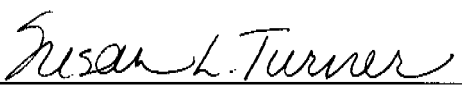
Because the Everglades Initiative affects more than one function of government and constitutes impermissible logrolling, and because its ballot summary omits material facts and is misleading, the proposal violates Florida's single-subject and ballot substance requirements. Accordingly, the Court should

render its opinion invalidating the Everglades Initiative and prohibiting its submission to the voters.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with the attached Appendix was furnished to the following by United States mail, this 31st day of March, 1994.

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TAL-41604

SAVE OUR EVERGLADES

TITLE: SAVE OUR EVERGLADES

SUMMARY:

Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust.

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election.

Name _____
(Please print information as it appears on voter records)

Street Address _____

City _____ Zip _____

Precinct _____ Congressional District _____

County _____ Date Signed _____

Sign as Registered

FULL TEXT OF PROPOSED AMENDMENT:

(a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering water supply. Therefore, the sugarcane industry should help pay to clean up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem, and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.

(b) Article X, Florida Constitution, is hereby amended to add the following:
"Section 16. Save Our Everglades Trust Fund.

"(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

"(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a vacancy. Trustees' appointments shall be for five years, provided that the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section

shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

"(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at a rate of \$.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its successor, and shall expire twenty-five years after the effective date of this Section.

"(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, south and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, provided that the Trustees may refine this definition.

"(e) Implementing legislation is not required for this Section, but nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall take effect on the day after approval by the electors."

104.185 — It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s.775.082, s.775.083,s775.084.

MAIL COMPLETED PETITION FORMS TO:

Paid Political Advertisement: SAVE OUR EVERGLADES COMMITTEE _____



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL
ROBERT A. BUTTERWORTH

FILED
SID J. WHITE
MAR 8 1994
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

March 8, 1994

The Honorable Rosemary Barkett
Chief Justice, and
Justices of The Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Madam Justice and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On March 2, 1994, the Secretary of State, as required by section 15.21, Florida Statutes, submitted to this office an initiative petition seeking to amend the State Constitution to create a trust fund to restore the Everglades. The petition provides:

- (a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering water supply. Therefore, the sugarcane industry should help pay to clean up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.
- (b) Article X, Florida Constitution, is hereby amended to add the following:

"Section 16. Save Our Everglades Trust Fund.

"(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water

quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

"(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a vacancy. Trustees' appointments shall be for five years; *provided that* the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

"(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at a rate of \$.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its successor, and shall expire twenty-five years after the effective date of this Section.

"(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, south and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, *provided that* the Trustees may refine this definition.

"(e) Implementing legislation is not required for this Section, but nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this

Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall take effect on the day after approval by the electors."

The ballot title and summary for the proposed amendment provides:

SAVE OUR EVERGLADES

Creates the Save Our Everglades Trust to restore the Everglades for future generations. Directs the sugarcane industry, which polluted the Everglades, to help pay to clean up pollution and restore clean water supply. Funds the Trust for twenty-five years with a fee on raw sugar from sugarcane grown in the Everglades Ecosystem of one cent per pound, indexed for inflation. Florida citizen trustees will control the Trust.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, of the Florida Constitution.

Article XI, section 3, Florida Constitution, reserves to the people the power to propose the revision or amendment of any portion of the Constitution by initiative. It requires, however, that any such revision or amendment "embrace one subject and matter directly connected therewith." Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984). This Court has stated that a proposed amendment meets this single subject requirement if it has "a logical and natural oneness of purpose[.]" Advisory Opinion to the Attorney General--Limited Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991), quoting, Fine v. Firestone, 448 So. 2d at 990 (Fla. 1984).

As this Court recently stated in In re: Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, No. 82,674 (Fla. March 3, 1994), "[t]o ascertain whether 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." Slip Op at 4. The proposed amendment provides for the appointment of five trustees,

who are appointed by the Governor subject to Senate confirmation, to administer the Save Our Everglades Trust. The Trust shall be funded by revenues collected by the state as provided therein and deposited into the Trust, "all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purposes of the Trust."

The amendment recognizes the Legislature's authority to appropriate the trust funds that must be expended by the trustees solely for the purposes of the Trust. Similar language is currently contained in Article IV, section 9, Florida Constitution, which creates the Game and Fresh Water Fish Commission, whose funds are subject to appropriation by the Legislature.*

The proposed constitutional amendment does not appear to have as broad a "collateral impact" as that rejected in In re Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination, supra at 10. Rather the proposed amendment appears to demonstrate a "oneness of purpose." Subsection (a) states that the purpose of the amendment is to create and fund a trust fund for the purpose of restoring the Everglades ecosystem. The remaining subsections, providing for the appointment of trustees, funding, definitions, a severability clause, and an effective date, appear to be logically related to the subject of the amendment. See, Advisory Opinion to the Attorney General--Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993).

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, also requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary complies with section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, prescribes the requirements for the ballot title and summary of a proposed constitutional amendment. This Court has stated on several occasions "that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." Askew v. Firestone,

* See also, Art. XII, s. 9(c), Fla. Const., referencing the state roads distribution fund deriving revenues from the second gas tax.

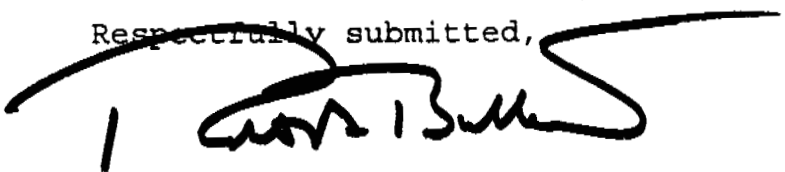
The Honorable Rosemary Barkett
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421 So. 2d 151, 155 (Fla. 1982), quoting, Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954). However, the summary is not required to explain every detail or ramification of the proposed amendment. Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So. 2d at 228.

The ballot title and summary of the Save Our Everglades amendment states the chief purpose of the measure. Recently, this Court in Advisory Opinion to the Attorney General--Limited Marine Net Fishing, supra, upheld a ballot title and summary of an initiative petition although the severability and implementing legislation provisions of the amendment were not referenced in the ballot summary. The ballot summary of the proposed amendment would appear to be sufficient.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution, and whether the proposed title and substance comply with section 101.161, Florida Statutes.

Respectfully submitted,



Robert A. Butterworth
Attorney General

RAB/tgk

The Honorable Rosemary Barkett
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I hereby certify that, as required by section 16.061(2), Florida Statutes, true copies of the foregoing petition on the citizens' initiative to amend the Florida Constitution, entitled "Save Our Everglades," have been furnished by hand delivery to the Honorable Jim Smith, Secretary of State, The Capitol PL02, Tallahassee, Florida 32399-0250; and by United States Mail to the principal sponsor of the proposed amendment, Mr. George Barley, Chairman, Save Our Everglades, Inc., 1919 Espanola Drive, Orlando, Florida 32804, on the 8th day of March 1994.



Robert A. Butterworth

Supreme Court of Florida

FRIDAY, MARCH 11, 1994

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL - SAVE
OUR EVERGLADES TRUST FUND

CASE NO. 83,301

INTERLOCUTORY ORDER

Attorney General, Robert A. Butterworth, pursuant to the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes (1991), has requested this Court's opinion as to whether the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution, seeking to amend the State Constitution to create a trust fund to restore the Everglades, complies with Article XI, section 3, Florida Constitution, and whether the proposed ballot title and substance comply with section 101.161, Florida Statutes (1991). The petition provides:

- (a) The people of Florida believe that protecting the Everglades Ecosystem helps assure clean water and a healthy economy for future generations. The sugarcane industry in the Everglades Ecosystem has profited while damaging the Everglades with pollution and by altering water supply. Therefore, the sugarcane industry should help pay to clean

up the pollution and to restore clean water. To that end, the people hereby establish a Trust, controlled by Florida citizens, dedicated to restoring the Everglades Ecosystem and funded initially by a fee on raw sugar from sugarcane grown in the Everglades Ecosystem.

(b) Article X, Florida Constitution, is hereby amended to add the following:

"Section 16. Save Our Everglades Trust Fund.

"(a) There is established the Save Our Everglades Trust Fund (Trust). The sole purpose of the Trust is to expend funds to recreate the historical ecological functions of the Everglades Ecosystem by restoring water quality, quantity, timing and distribution (including pollution clean up and control, exotic species removal and control, land acquisition, restoration and management, construction and operation of water storage and delivery systems, research and monitoring).

"(b) The Trust shall be administered by five Trustees. Trustees shall be appointed by the governor, subject to confirmation by the Senate, within thirty days of a

vacancy. Trustees' appointments shall be for five years; provided that the terms of the first Trustees appointed may be less than five years so that each Trustee's term will end during a different year. Trustees shall be residents of Florida with experience in environmental protection, but Trustees shall not hold elected governmental office during service as a Trustee. Trustees may adopt their own operating rules and regulations, subject to generally-applicable law. Disputes arising under this Section shall be first brought to a hearing before the Trustees, and thereafter according to generally-applicable law. Trustees shall serve without compensation but may be reimbursed for expenses.

"(c) The Trust shall be funded by revenues which shall be collected by the State and deposited into the Trust, all of which funds shall be appropriated by the Legislature to the Trustees to be expended solely for the purpose of the Trust. Revenues collected by the State shall come from a fee on raw sugar from sugarcane grown within the Everglades Ecosystem. The fee shall be assessed against each first processor of sugarcane at

a rate of \$.01 per pound of raw sugar, increased annually by any inflation measured by the Consumer Price Index for all urban consumers (U.S. City Average, All Items), or successor reports of the United States Department of Labor, Bureau of Labor Statistics or its successor, and shall expire twenty-five years after the effective date of this Section.

"(d) For purposes of this Section, the Everglades Ecosystem is defined as Lake Okeechobee, the historical Everglades watershed west, south and east of Lake Okeechobee, Florida Bay and the Florida Keys Coral Reef, provided that the Trustees may refine this definition.

"(e) Implementing legislation is not required for this Section, but nothing shall prohibit the establishment by law or otherwise of other measures designed to protect or restore the Everglades. If any portion of this Section is held invalid for any reason, the remaining portion of this Section shall be severed from the void portion and given the fullest possible force and application. This Section shall

take effect on the day after approval by
the electors."

The ballot title and summary for the proposed amendment provides:

SAVE OUR EVERGLADES

Creates the Save Our Everglades Trust to restore
the Everglades for future generations. Directs
the sugarcane industry, which polluted the Ever-
glades, to help pay to clean up pollution and
restore clean water supply. Funds the Trust for
twenty-five years with a fee on raw sugar from
sugarcane grown in the Everglades Ecosystem of
one cent per pound, indexed for inflation.

Florida citizen trustees will control the Trust.

Section 16.061, Florida Statutes, requires the Attorney General,
within 30 days after receipt of the proposed amendment to the
Florida Constitution by citizens' initiative, to petition this
Honorable Court for an advisory opinion as to whether the text of
the proposed amendment complies with Article XI, section 3, of the
Florida Constitution.

The full text of the Attorney General's letter is attached
hereto as an exhibit and made a part thereof.

IT IS, THEREFORE, the order of the Court that interested
parties shall file their briefs on or before March 31,
1994, and serve a copy thereof on the Attorney General.
Reply briefs shall be filed on or before April 15, 1994.

An original and seven copies of all briefs should be filed. Oral argument is scheduled for 9 a.m. MONDAY, MAY 2, 1994. All parties who have filed a brief and have asked to be heard may have the opportunity of presenting oral argument depending on the Court's calendar and the number of parties requesting to be heard. The amount of time allocated to each party will be determined after the filing of the briefs.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

sg
cc: The Honorable Robert A.
Butterworth
The Honorable Jim Smith
Mr. George Barley

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

DATE: March 15, 1994 REVISED: 03/24/94

SUBJECT: Everglades restoration

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Gee	Voigt	1. NR	FAV/CS
2. Fournier	Beggs	2. FT	Fav/4 amendments
3. _____	_____	3. RC	_____
4. _____	_____	4. _____	_____

I. SUMMARY:

This bill responds to the current impasse in efforts to define and implement measures to clean up and restore the Everglades. A program is legislatively established which provides a schedule for construction of stormwater treatment areas and expands requirements for on-farm best management practices which together are considered the best available technology for improving water quality and water quantity in the Everglades. A system of agricultural discharge permit fees is established to generate funds from the landowners in the EAA to pay a proportional share of the costs of these construction projects.

This bill substantially amends s. 373.4592, s. 259.101, s. 298.22, and repeals s. 1 of ch. 91-80, L.O.F.

II. PRESENT SITUATION:

The Everglades ecological system contributes to South Florida's water supply, flood control, and recreation. It offers a rich abundance of wildlife and plant life that is dependent on a diversity of habitat types. The Everglades system is considered unique in the nation and the world.

Man's original water management activities in South Florida were designed to drain the region and exploit the natural resources of rich soils and tropical climate for agricultural development. The Central and Southern Florida Flood Control and Other Purposes Project (C&SF Project), which was initiated in the 1940s, established a number of complex and interrelated management objectives. Canals, pump stations, and structures were constructed or modified to provide water supply to coastal areas, and flood protection for agricultural and urban development within the Everglades Agricultural Area (EAA). The southern end of the project discharges into Everglades National Park. In addition, large tracts of land within the water conservation areas (WCAs) were set aside in public ownership to provide flood water and water supply storage and for environmental resource protection. Although environmental preservation and protection of the WCAs, including the Loxahatchee National Wildlife Refuge, and the Everglades National Park were included in the original authorizations for the C&SF, management of the C&SF involved striking a delicate balance between shifting management priorities. Over the years, management priorities of this system have changed, with alternating emphasis on flood control (during hurricane years), water supply, (during droughts) and, in recent

years, environmental protection of the Everglades' natural resources.

Adverse environmental effects are occurring in the Everglades as a result of certain water quality and water quantity impacts. The U.S. Department of Justice is prosecuting a lawsuit against the South Florida Water Management District (SFWMD) and the Florida Department of Environmental Protection (DEP) alleging that these agencies have failed to enforce water quality standards as required by Florida law. The suit asserts that water discharging into the Everglades National Park and the Loxahatchee National Wildlife Refuge is polluted and is damaging these parks and their ecosystems.

Stormwater runoff and natural drainage from the EAA, a 700,000-acre area south of Lake Okeechobee, flows south through three WCAs owned by the SFWMD before it enters the Everglades National Park. In most years, in excess of half a million acres of sugar cane and as many as 50,000 acres of vegetables are in cultivation in the EAA. Water discharged from the EAA is enriched with nutrients, especially phosphorus, from the oxidation of natural concentrations of certain elements in the soil and applied fertilizers. These additional nutrients are changing the Everglades environment. Because plants and animals native to the Everglades depend on very low nutrient levels, the introduction of additional nutrients allows faster-growing, nonnative plants to displace the slow-growing, native species. Increased nutrient levels also cause an increase in plant density, a lowering of dissolved oxygen, and changes in the value of the environment as shelter and feeding habitat for native animals. Concentrations of algae are evident in many areas, and cattails and exotic species are multiplying and dominating some sections of the Everglades system.

The 1990 Legislature enacted ch. 91-80, L.O.F., the Marjory Stoneman Douglas Everglades Protection Act, which required the SFWMD to adopt an Everglades SWIM plan and contained other provisions intended to give the SFWMD tools to increase protection of the Everglades. A SWIM plan has been adopted and considerable debate has taken place regarding the most appropriate actions needed to reduce polluted runoff into the Everglades. Currently, these efforts appear to be centered on the creation of several storm water treatment areas, each composed of several thousand acres of planted marsh through which polluted runoff would be filtered, emerging with greatly-reduced nutrient levels. Such systems have never been used on the scale envisioned and their success over time is theoretical. Acquisition of these, perhaps, 70,000 acres and necessary construction activities will require hundreds of millions of dollars.

In July 1993, an agreement intended to end pollution of the Everglades and to begin restoration efforts was reached between the U.S. Department of the Interior, the U.S. Justice Department, the state, and sugar industry leaders. The agreement allocated costs among the state, the agricultural interests, and the federal government. Since that time, however, an impasse has developed among the parties regarding funding and implementation of the plan.

III. EFFECT OF PROPOSED CHANGES:

Section 1. Section 373.4592, F.S., is amended to provide guidance and requirements for activities to help clean up and restore the Everglades. A number of legislative findings are made. Among them is a recognition that the agreement formed in July 1993 between the Federal Government, the Department of Environmental Regulation, the South Florida Water Management District and agricultural representatives formed a basis to bring to a close

five years of costly litigation. That agreement and the related conceptual design plan will be used to begin the cleanup and renewal of the Everglades ecosystem. The Legislature finds that stormwater treatment areas are the best available technology for achieving the water quality goals of the Everglades Program. A combined program of agricultural best management practices (BMPs), stormwater treatment areas (STAs), and other requirements in this bill provide a reasonable method of achieving an interim total phosphorus discharge goal of 50 parts per billion (ppb).

A number of terms are defined in the bill, among these are: "Best Management Practices," "Department," "Everglades Agricultural Area," "Everglades Program," "Everglades Construction Project," "Interim Total Phosphorus Discharge Goal," "Stormwater Treatment Areas," and "Western Basin Area."

The Legislature finds that the Everglades Program required by this bill establishes more extensive and comprehensive requirements for surface water improvement and management within the Everglades than the previously adopted SWIM Plan (which was previously adopted in 1991, but is currently under challenge). The district will not propose another SWIM Plan for the Everglades until the Everglades Program requirements of this bill are fully implemented.

Subsection (4) of section 1 establishes the Everglades Program which consists of several components:

a. Everglades Construction Project which establishes a schedule for land acquisition and construction of the system of STAs according to the Technical Mediated Plan. The district is directed to complete any internal system modifications to divert the discharges of the special districts near the lake and divert their discharge to the STA serving these districts within 60 days of construction of the STA. The district is to operate the Everglades Construction Project to improve the hydroperiod of the Everglades Protection Area. A phosphorus reduction program is established for the western basins. Provision is made for technological advances as they occur for the Everglades Construction Project.

b. Everglades Research Program - Directs the district and DEP to establish a monitoring program to evaluate the effectiveness of the STAs and BMPs. DEP shall issue annual reports which summarize the research findings on phosphorus reduction and other water quality findings.

c. Evaluation of water quality standards - By July 1, 1997, the department shall initiate agency action, including rule amendments necessary to establish the numeric interpretation of the Class III criterion for phosphorus acting as a nutrient in the Everglades Protection Area, and initiate such agency action as is necessary to bring all sources into compliance with state water quality standards in the Everglades Protection Area. A total phosphorus concentration of 10 ppb, which approximates the natural background concentrations of total phosphorus in the Everglades Protection Area, shall become the numeric interpretation of the Class III criterion for phosphorus in the Everglades Protection Area in the event that the department does not initiate agency action by July 1, 1997 or take final agency action to establish the criterion by July 1, 1998.

Any other water quality standards must include the department's anti-degradation standards and EAA canal classifications. In recognition of the special nature of the conveyance canals of the EAA, as a component of the classification process, the department is directed to formally recognize by rulemaking existing actual beneficial uses of the conveyance canals in the Central and

Southern Florida Flood Control Project. This shall include recognition of the Class III designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife, and the integrated water management purposes for which the Central and Southern Florida Flood Control Project was constructed, such as flood control, conveyance of water to and from Lake Okeechobee for urban and agricultural water supply and Everglades hydroperiod restoration, and conveyance of water to the STAs and navigation.

e. Everglades Water Supply and Hydroperiod - Guidance and direction is provided for several actions to improve water quantity considerations.

f. Control of Exotic Species - Guidance and direction is provided.

Subsection (5) makes a legislative determination that it is in the public interest to minimize the potential loss of land and related product supply to farmers and processors who are most impacted by acquisition of land for construction of stormwater treatment areas for treatment of waters in the EAA. Impacted farmers as defined in this subsection have priority in leasing available lands from the State of Florida, including water management districts in such other areas where they operate to offset the loss of lands for building stormwater treatment areas.

Subsection (6) creates a system of agricultural discharge permit fees as the mechanism to raise funds from farms in the EAA, to pay a share of the cost to build stormwater treatment areas to improve water quality as it passes from the EAA to the area south of the EAA known as the Everglades Protection Area. All owners of real property in the EAA which is assessed as agricultural under the provisions of ch. 193, F.S., or on which commercial agricultural activities take place are required to obtain an agricultural discharge permit to be granted by rules of the SFWMD. The permit is required for the right of discharging or allowing water to flow from such land on an annual basis. The fees would be charged all calendar years through 2013. The minimum annual per acre fee shall be \$23.50 through the year 2013. The maximum per acre fee shall not exceed \$23.50 for the period 1994-1997, \$27 for the period 1998-2001, \$31 for the period 2002-2005 and \$35 for the period 2006-2013.

Incentive credits will be used in calculating payments for each year to the extent that annual phosphorus load reductions exceed 25 percent. The incentive credit is calculated by a system of BMP performance credits which will reduce the maximum per acre discharge permit fee based on measured phosphorus load reductions, rounded to the nearest 1 percent. For the period 1994-1997 each percent reduction in excess of 25 percent shall result in a per acre credit of \$.33; for the period 1998-2001 each percent reduction in excess of 25 percent shall result in a per acre credit of \$.54; for the period 2001-2005 each percent reduction in excess of 25 percent shall result in a per acre credit of \$.61; for the period 2006-2013 each percent reduction in excess of 25 percent shall result in a per acre credit of \$.65.

Notwithstanding the foregoing, acreage which has achieved either of the following shall be charged the minimum \$23.50.

(a) The acreage that achieves an annual phosphorus load reduction of 30 percent or more for the period 1994-1997, 35 percent or more for the period 1998-2001, 40 percent or more for the period 2001-2005 and 45 percent or more for the period 2006-2013; or

(b) The acreage has achieved an average annual flow weighted mean concentration of 50 ppb of phosphorus in the agricultural water discharged.

The district is authorized to use the non-ad valorem collection and enforcement method as provided in ch. 197, F.S.

Provisions relating to collecting funds authorized in 1991 through a stormwater utility in the EAA are deleted.

Subsection (7) recognizes the need to initiate cleanup and restoration of the Everglades Protection Area as promptly as possible, and the district is authorized to construct the Everglades Construction Project in accordance with the conditions of the department's Notice of Intent for the Interim A Permit as modified by the department's amended Notice of Intent and the Everglades Construction Project prior to any final agency action on the permit.

STAs are authorized to discharge into the Everglades Protection Area if they are constructed, operated and maintained in accordance with this section and approved by the department.

The SFWMD is directed to establish a separate Everglades Fund which shall be used for the purpose of funding the Everglades Construction Project.

Section 2. Section 259.101, F.S., is amended to provide that beginning in 1994 and ending in the year 2000 the allocation of P-2000 funds for water management districts shall first make available to the SFWMD \$5 million for acquisition of land for stormwater treatment areas and other lands determined necessary to further the restoration of the Everglades in accordance with s. 373.4592, F.S.

Section 3. The Legislature finds that construction of Alligator Alley, designated as State Highway 84 and federal Interstate Highway 75, has contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historic southern Everglades. The Legislature determines that it is appropriate and in the public interest to produce needed financial resources to help restore the natural resource values lost by construction of this highway.

The Department of Transportation is directed to continue the system of tolls on this highway until December 31, 2004.

Funds generated in excess of that required to operate and maintain this highway shall be used for environmental projects to restore the natural values of the Everglades south of this highway, especially Florida Bay.

Section 4. Section 298.22, F.S., is amended to clarify that drainage districts created pursuant to this law have powers to condemn or acquire land needed to implement requirements of the Everglades Program.

Section 5. Section 1 of ch. 91-80, L.O.F., is repealed, which named s. 373.4592, F.S., as the Marjory Stoneman Douglas Everglades Protection Act.

Section 6. \$500,000 is appropriated to the Department of Environmental Protection for fiscal year 1994-1995 from the Pollution Recovery Fund and 10 positions are authorized to carry out provisions of this act.

This act takes effect upon becoming a law.

IV. CONSTITUTIONAL ISSUES:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill directs the South Florida Water Management District to create a trust fund to be used to fund project construction. This needs to pass in a separate bill by a 3/5 majority.

V. ECONOMIC IMPACT AND FISCAL NOTE:

A. Tax/Fee Issues:

The bill creates a system of agricultural discharge permit fees as a mechanism for raising funds from farms in the EAA with which to pay part of the cost of the Everglades Construction Project. This fee is expected to raise between \$10.0 and \$12.2 million annually, and fee levels may rise in the future.

Excess toll revenue from Alligator Alley Toll Road would be used for projects to help the southern Everglades, including Florida Bay. The Department of Transportation projects that no excess revenue will be available until 1997-98. Anticipated available revenue is:

	<u>Year</u>	<u>Revenue (mil)</u>
	1997-98	\$ 1.0
	1998-99	3.5
	1999-2000	4.1
	2000-01	11.1
	2001-02	11.8
	2002-03	12.6
	2003-04	10.1
Through	12-31-04	4.6

The SFWMD is not required to expend more than 0.1 mill in ad valorem revenue from the Okeechobee Basin to pay for the Everglades Construction Project.

B. Private Sector Impact:

The South Florida Water Management District (SFWMD) estimates that the Everglades Construction Project will cost approximately \$465 and take 11 years to complete. The project will be paid for as it is built; no bonds will be issued. The \$465 million is based on 1993 construction costs and no allowance is made for inflation. The mediated plan called for the agricultural industry to pay \$322 over 20 years to fund this project, with annual contributions of \$12.5 million in years 1-12, increasing to \$18.5 in year 13.

This bill raises between \$10 and \$12.2 million annually from the discharge permit fees paid by the agricultural industry. The bill provides for increases in the fee, but also allows growers to avoid these fee increases by adopting best management practices and reducing phosphorus. If all growers

meet these conditions, this fee will raise only \$200 to \$244 million over the life of the program.

Since the agricultural contribution to this project is made over 20 years, public sources of funds will be required to pay more than their share of the total in the project's early years. When an appropriate discount rate is applied to their revenue stream, it shows that agriculture's contribution is less than a comparison of total dollars would indicate.

Residents in the SFWMD are being assessed 0.1 mill for ad valorem tax dedicated to Everglades restoration. Currently, this assessment generates approximately \$21.8 million per year.

People traveling on Alligator Alley (State Highway 84) are currently paying a toll fee which is used to operate and maintain this highway. In future years a portion of the funds generated in excess of that required to operate and maintain this highway will be available to restore natural values of the Everglades south of this highway, especially Florida Bay.

C. Government Sector Impact:

According to the technical mediated plan, the State of Florida and the SFWMD would participate in the costs of the Everglades Construction Project. The district would provide \$33 million from P-2000 funds it receives for land acquisition for water management projects, provide \$21.8 per year from its ad valorem taxes, and a one-time \$14 million from its mitigation fund. The State of Florida would be requested to sell \$30 million of its state lands in the EAA or provide funds in some other manner. Since the state has not arranged to sell \$30 million of its lands, this bill attempts to allocate additional funds from the P-2000 program to the district to meet the state's share.

The Federal Government is expected to pursue the authorized C-51 flood control project and the measures designed to provide substantial amounts of water to the Everglades. The first cost of the C-51, modified to include measures to provide additional water to the Everglades, is approximately \$107 million.

The bill appropriates \$500,000 to the Department of Environmental Protection for fiscal year 1994-1995 from the Pollution Recovery Fund, and 10 positions are authorized to carry out provisions of this act.

D.

1994-95 REVENUE SUMMARY
 (millions of \$)

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
	\$	\$	\$	\$	\$	\$	\$	\$
Discharge fee	--	--	--	--	11.1	11.1	11.1	11.1
Alligator Alley Tolls	--	--	--	**	--	--	--	**

* Insignificant
 ** Indeterminate

VI. TECHNICAL DEFICIENCIES:

None.

VII. RELATED ISSUES:

None.

VIII. AMENDMENTS:

#1 by Finance, Taxation & Claims:

This amendment replaces the agricultural discharge fee with an agricultural privilege tax and provides for its administration. It also provides that the tax rate shall be adjusted if the taxable acreage decreases, and provides credits for phosphorus load reductions. (WITH TITLE AMENDMENT)

#2 by Finance, Taxation & Claims:

This amendment removes the provision using Preservation 2000 funds to acquire land needed for Everglades restoration. (WITH TITLE AMENDMENT)

#3 by Finance, Taxation & Claims:

This amendment removes the provision which used tolls from Alligator Alley to fund Everglades improvement projects. (WITH TITLE AMENDMENT)

#4 by Finance, Taxation & Claims:

This amendment provides for an appropriation from the Pollution Recovery Trust Fund for Everglades projects. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

STORAGE NAME: pcb14a.nr
DATE: March 30, 1994

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
NATURAL RESOURCES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: PCB NR 94-14A
RELATING TO: Everglades restoration
SPONSOR(S): Committee on Natural Resources and Representative Rudd
STATUTE(S) AFFECTED: Sections 373.4592, 298.22, F.S.
COMPANION BILL(S): CS/SB 1350

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) NATURAL RESOURCES YEAS 13 NAYS 11
(3) FINANCE AND TAXATION
(4)
(5)

I. SUMMARY:

Proposed Committee Bill 14 (PCB 14) provides extensive legislative intent that the Everglades should be protected for water quality, water quantity, and hydroperiod while taking into account South Florida residents and agricultural interests. It recognizes that the Statement of Principles of July, 1993 provides good long-term clean-up and restoration objectives and should be pursued expeditiously. It further recognizes that stormwater treatment areas (STAs) are currently the best technology available for reducing the phosphorous in water runoff.

This bill directs the South Florida Water Management District (SFWMD or district) to implement the Everglades Construction Project (the Project), including the construction of STA's, according to a statutory schedule. However, it authorizes the district to utilize superior technology as it becomes available and is proven more effective. The bill specifically requires a 28 percent average annual increase in water supply to the Everglades Protection Area. The bill requires the Project to be operated according to the February 15, 1994 conceptual design document to increase inflows and water quantity, and improve hydroperiod. It requires reductions of water flows from best management practices to be replaced and it specifies how this replacement must be accomplished.

The bill requires the Department of Environmental Protection (DEP or department) and the district, to initiate and conduct several monitoring programs in the Everglades Agricultural Area (EAA) and the Everglades Protection Area. It requires the DEP and the SFWMD, by 1998, to complete research necessary to propose a numerical Class III standard for phosphorous in the Everglades Protection Area and to evaluate existing water quality standards. It requires the department to adopt a rule by December 31, 2003. It provides a method for arriving at a phosphorus criterion in the event the dates established for rule-writing and adoption are not met.

The district is required to issue an interim report to the Governor and Legislature by 1999. Construction of STAs 3 and 4 may not be started until three months after the interim report is submitted. Beginning 2000, the district has to submit an annual report, summarizing specific data. The district must establish a biological monitoring network and must prepare a survey of exotic species at least once every two years.

STORAGE NAME: pcb14a.nr

DATE: March 30, 1994

PAGE 2

The bill creates an agricultural discharge permit fee structure to be assessed between the years 1994 through 2013, to entities pursuing agricultural activities.

This bill allocates a portion of the tolls collected until the year 2004 from the Alligator Alley, will be used to restore the natural systems of the Everglades. The bill appropriates \$500,000 from the Pollution Recovery Trust Fund to be given to the DEP , along with 10 positions, to carry out the provisions of this act.

The bill provides that the Seminole Tribe's rights are not altered or diminished by this act. This bill specifically repeals the short title, "The Marjory Stoneman Douglas Act".

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Everglades ecological system contributes to south Florida's water supply, flood control, and recreation. Although it is only 50 percent as large as it originally was, it is still considered by some to be one of the rarest places on earth in that it offers an incredible abundance and variety of marine, plant, and bird life. However, much of it is disappearing, along with most of its wildlife. In fact, estimates show that almost ninety percent of the wading-bird population within the Everglades has already vanished and been dislocated.

When Florida became a state in 1845, the Everglades covered approximately four million acres of the state. Massive sheets of fresh water moved from Orlando to the tip of the Keys. In the last 150 years, most of the Everglades has disappeared, because the fresh water upon which it depended for its sustenance has been diverted and removed. The water which should have gone into the Everglades has been drained, diked, and channelized and the dry lands which have been created as a result have been used to accommodate agricultural interests and urban growth. These factors have contributed to changing the water quality, water quantity and the timing of water (also called the hydroperiod) draining into the Everglades, so that today only 2 million acres of the original Everglades remains.

When south Florida was being settled, the first water management activities were directed to draining and diking the region to make it more suitable for development. In the 1940s, the Central and Southern Florida Flood Control and Other Purposes Project was initiated to build canals, levees, pump stations, and structures to provide water to coastal areas and to provide flood control and water storage in the agricultural and urban areas. This project designated 700,000 acres immediately south of Lake Okeechobee, in the Everglades to become the EAA and it retained 900,000 acres in five Water Conservation Areas.

Over the years, management priorities of this system have shifted from a desire to drain and channelize the land to protecting and restoring the Everglades natural resources. The challenge today is in striking a balance between the agricultural interests who have a desire to continue farming the lands and the environmental interests who seek to restore the remaining Everglades to its former beauty.

Stormwater runoff and natural drainage from the EAA flows south through three water conservation areas owned by the South Florida Water Management before it enters Everglades National Park. In most years, over half a million acres of sugar cane and as many as 50,000 acres of vegetable are cultivated in the EAA. Water discharged from the EAA is enriched with nutrients from two sources: a) the oxidation of natural concentrations of phosphorus, nitrogen and other elements existing naturally in the soil (this oxidation occurs, however, as a result of the drainage of lands for agricultural uses), and b) applied fertilizers. These additional nutrients are changing the Everglades environment. Because the plants and animals native to the Everglades depend on extremely low nutrient levels, the introduction of additional nutrients allows faster growing, non-native plants to displace the slow-growing native community. Increased nutrient levels also cause an increase in plant density, a lowering of dissolved oxygen, and changes in the value of the environment as shelter and feeding habitat for native animals. Concentrations of algae are evident in many areas, and

cattails and exotic species are multiplying and dominating sections of the Everglades system. Most recent data indicate cattails have taken over more than 20,000 acres of sawgrass prairies and marshes in the Everglades ecosystem, while Melaleuca has displaced native plants in 500,000 acres.

Recognizing the devastation being wrought on the Everglades, since 1983, Florida, under the then Governor Bob Graham established a task force called the "Save Our Everglades" program. This was a multi-faceted effort to restore the entire ecosystem, ranging from restoration of the Kissimmee River to saving the endangered Florida panther.

In 1988, the United States sued Florida for not enforcing water quality standards for agricultural runoff water entering the Arthur R. Marshall Loxahatchee National Wildlife Refuge and the Everglades National Park. By 1992, the federal court approved a proposed settlement of the lawsuit. This settlement was not self-executing and required a number of actions to be taken to reduce phosphorus pollution, to develop a regulatory program for the EAA, and to develop a water quality monitoring program. Meanwhile, other suits had been filed against the SFWMD, the state, federal agencies and other parties challenging various actions.

The 1990 Legislature enacted the Marjory Stoneman Douglas Everglades Protection Act (ch. 91.-80, Laws of Florida), which required the district to adopt an Everglades Surface Water Improvement Management (SWIM) plan and contained other provisions designed to give the SFWMD tools to further protect the Everglades. The current proposed SWIM plan included the construction of four stormwater treatment areas to reduce nutrient load discharged to the Everglades Protection Area from the EAA, together with the implementation of Best Management Practices in the EAA to reduce phosphorus loads carried in agricultural drainage waters. A SWIM plan was adopted over considerable debate regarding the best way to reduce polluted runoff into the Everglades.

A technical group was convened to negotiate and mediate issues surrounding the current SWIM plan in an attempt to settle related litigation. The discussions of the Technical Mediation Group culminated in the acceptance by the various representatives (with a single exception) of a conceptual design document dated February 15, 1994.

In July 1993, an agreement (the "Statement of Principles") intended to end pollution of the Everglades and to begin restoration efforts was reached between the U.S. Department of the Interior, the U.S. Justice Department, the state, and sugar industry leaders. The Statement of Principles allocated costs among the state, the agricultural interests, and the federal government. Since that time, an impasse has developed among the parties concerning how much each party should pay for cleanup and the water quality standards that need to be achieved after cleanup.

B. EFFECT OF PROPOSED CHANGES:

This bill is designed to help clean up and restore the Everglades and to provide a funding mechanism to ensure that STAs are built to help reduce the phosphorous levels from the waters that are discharged from the EAA lands and that best management practices are used during the interim while a phosphorus criterion and a discharge limit is established.

C. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 373.4592, Florida Statutes (F.S.) to provide legislative intent that: a) the Everglades ecological system is endangered and needs to be restored, b) the current plans have not been timely enough to restore the Everglades and so authorizes the district to proceed with the Everglades Program, c) the Statement of Principles of July 1993 entered into by the South Florida Water Management District, the federal Government, the DEP, and the agricultural industry should be used to begin clean-up and renewal of the Everglades ecosystem, d) a reduction in the levels of phosphorus will benefit the ecology of the Everglades Protection Area, e) the natural values in the Everglades should be preserved (including water quality, water quantity and hydroperiod) while maintaining the quality of life for the residents in South Florida and minimizing the impact on South Florida jobs, f) plans for improved water supply and hydroperiod management in the Everglades must be expedited, and wasteful fresh water discharges to the tide must be reduced to aid in optimum times for delivery of waters into the Everglades, g) the Statement of Principles of July 1993, the Everglades Construction Project, and the regulatory requirements of this bill establish good long-term clean-up and restoration objectives, h) the STAs are currently the best available technology for achieving water quality standards for the Everglades and that a combined program of best management practices (BMPs), STAs and requirements imposed by this act is a reasonable means for achieving an interim phosphorus discharge reduction, i) the Everglades Program is a good long-term program for restoring and protecting the Everglades Protection Area, and j) the Everglades Construction Project and the regulatory requirements of the Statement of Principles be pursued expeditiously recognizing that superior technology be employed when available. Deletes current language addressing the SWIM plan as it relates to the Everglades.

Provides definitions for "best management practice", "C-139 Basin", "Department", "Everglades Construction Project", "Everglades Program", "Phosphorus criterion", and "Stormwater Treatment Areas". Amends definitions of "Everglades Agricultural Area" and deletes definitions of "plan" and "Stormwater utility". For certain purposes within one subsection, provides definitions of "Available land", "Designated acre", "Impacted farmer", "Impacted vegetable farmer", "Trustee", "Vegetable-area available land".

Provides legislative intent that the Everglades Program requires more comprehensive requirements for surface water improvement and management than the requirements imposed by the SWIM plan (ss. 373.451- 373.456, F.S.). Prohibits the district from proposing or taking final agency action on any SWIM plan related to the Everglades Protection Area and the EAA, while the Everglades Program is in effect. Authorizes the South Florida Water Management District (SFWMD) to implement certain strategies contained in the 1992 SWIM plan. Deletes provisions requiring the adoption of an Everglades SWIM plan.

Creates a new subsection 373.4592(4), F.S., and requires the SFWMD to complete and implement the Everglades Construction Project (the Project) in a timely manner. Requires the district to purchase certain lands at a 2:1 mitigation ratio for the use of certain other lands. Allows use of public lands as part of the Project only for treating waters not coming from the EAA. Authorizing the SFWMD to limit the ad valorem expenditures in the Okeechobee Basin. Requires the district to hire qualified displaced agricultural workers to construct the STAs. Provides specific schedule of dates for the design and construction of STAs 1 through 6. Requires each special district, to the

extent funds are available, to complete certain modifications and to divert its discharges as described in the Project. Provides that the Project shall be operated to improve the hydroperiod of the EAA and to maximize the water quantity available. Directs water conservation practices and reuse measures to be implemented, whenever possible. Specifies activities that are included within term "water supply management". Recognizes that the Project redirects waters currently lost to tide. Directs a 28% average annual increase in water supply to the Everglades Protection Area. Requires the Project to be operated according to the conceptual design document to increase inflows and water quantity, and improve hydroperiod. Requires reductions of flows from BMPs to be replaced and specifies how this replacement will be done. Requires the district to coordinate its water supply and hydroperiod with the Federal Government. Requires the DEP and the district to use their best efforts in seeking certain amendments to expand the federal Central and Southern Florida Flood Control Project. Requires DEP and the district to make certain other requests to the federal government. Retains applicable law related to reservations and allocations of water. Removes STAs 3/4 from the "Toe of the Boot".

Requires the SFWMD and the DEP to evaluate available water quality data for specific areas and to initiate a research and monitoring program to determine the effectiveness of the STAs and BMPs. Provides a detailed list of items to be included in the research and monitoring program. Requires the research and monitoring program to be completed by December 2001. Requires the district to write an interim report to be submitted the Governor and Legislature by January 1, 1999. Provides a detailed list of items to be included in the interim report and requires several workshops and public hearings to be held. Prohibits the construction of STAs 3/4 until 90 days after the interim report is released. Requires the DEP to submit an annual report beginning January 1, 2000, which summarizes specific data and findings to the Governor and Legislature.

Requires the DEP and the district, by December, 1998 to complete research to establish a phosphorus criterion and to evaluate existing water quality standards, and to adopt a rule by December 31, 2003. Provides a method to arrive at a phosphorus criterion if the specified dates are not met. Requires the DEP and the district to establish discharge limits which must be met before applicants can receive discharge permits. Provides a method to arrive at the discharge limits. Provides a method to be used in evaluating other water quality standards.

Requires the district to implement a water quality monitoring program to evaluate the effectiveness of the BMPs in complying with state water quality standards and restoring and maintaining existing beneficial uses. Provides a list of items to be included in the water quality monitoring program. Requires certain administrative rules related to BMPs to remain in effect for certain purposes and authorizes certain rules to be updated. Provides that permittees who fully comply with the permit conditions of the BMP rules and have made all required payments under the Everglades Program will not have to meet additional water quality measures before December 31, 2006, except under certain circumstances. Requires all permits issued after December 31, 2006 to meet additional water quality standards and prohibits any permittee's discharge to cause any violation of water quality standards in the Everglades Protection Area. Provides specific annual average loadings for the C-139 Basin and directs the department and district to evaluate the quality of the discharge coming from the basin. Requires the L-28, L-28 Tieback, and Feeder Basins within the Western Basins to implement appropriate BMPs considering how the lands are used.

Requires the district to establish a biological monitoring network throughout the Everglades Protection Area and to prepare a survey of exotic species at least biennially and requires the district to maintain a program to control and remove the exotic species. Provides a method for developing a priority list for eradicating exotic species.

Renumbers subsection 373.4592(4), F.S., as 373.4592(5), F.S., and provides legislative intent that potential losses of land and product supply to farmers and processors is in the public interest and should be minimized. Provides a scheme for allowing producers or processors of agricultural commodities that own or operate lands for agricultural purposes which are designated for STAs or water retention to have priority in leasing certain lands belonging to the Trustees within the EAA. Elevates the priority of certain vegetable growers who own or farm lands designated for STAs or water retention, above the other agricultural farmers for purposes of leasing other available lands. Provides that the farmers who lease available lands may renew the leases for an additional 20 years. Provides that certain producers or processors of agricultural commodities outside the EAA, that farms lands designated to be used for STAs, have priority in leasing lands owned by any water management district in the areas where the farmers operate. Provides the district need only offset farmers for acres that are designated for STAs or water retention. Entitles the corporation that has contracted with the Department of Corrections to renew its lease for 20 years and allows it to use the land for producing sugar cane. Retains the Trustees authority to terminate leases under specified circumstances. Deletes provisions authorizing the Board of Trustees of the Internal Improvement Trust Fund and the district to entering into cooperative agreements with property owners to exchange certain lands subject to condemnation, for state-owned lands.

Creates subsection 373.4592(6), F.S. to require owners of properties which are assessed agricultural for tax purposes, or on which commercial agricultural activities take place, to obtain an agricultural discharge permit between the years 1994 through 2013. Authorizes, but does not require the SFWMD to grant such permits by rule. Prohibits discharges of water from agricultural lands without an agricultural discharge permit and the proper payment of fees, except in the case of an emergency. Specifies who is liable for the payment of fees. Provides a schedule of fees for an agricultural discharge permit. Provides formula to determine the EAA farms that qualify for fee reductions based on BMP performance (also called incentive credits). Prohibits incentive credits from reducing the annual per-acre discharge permit fee below \$23.50, but allows credits to be applied to future years. Provides that EAA farms may also to be eligible for the \$23.50 annual per-acre discharge permit fee, if they meet certain annual phosphorous-load reductions or if they achieve a 50 ppb concentration of phosphorus in the agricultural water discharge. Suspends the discharge fee in the event that any governmental entity takes actions that stops or suspends a discharge permitholder from discharging agricultural waters.

Authorizes the deferment of fee payments under certain circumstances for vegetable farmers. Specifies that vegetable farmers only be assessed the minimum annual fee but requires them to employ BMPs set forth in department rule 40E-63, F.A.C.

Authorizes the district to levy and enforce the discharge permit fees in the same manner as other non-ad valorem assessments. Requires the district to negotiate an alternative method for the 1994 taxable year to accommodate the shortened year.

Deletes subsection 373.4592(5), F.S., authorizing the district to create stormwater utilities and to adopt stormwater utility fees. Deletes provisions authorizing the district to establish or set aside funds to acquire and operate certain stormwater management systems. Deletes provisions authorizing the district to create stormwater management system benefit areas within the EAA and to levy assessments to certain property owners within the areas benefitted. Deletes provisions related to the methods for determining the amount of such assessments on each property owner. Deletes provisions providing Legislative intent that property owners who contribute to the need for stormwater management systems are deemed to benefit from such systems.

Creates subsection 373.4592(7), F.S., to related to permits. Authorizes the district to begin construction of the Everglades Construction Project according to the certain specifications, prior to any final agency action on any permit and prior to Intent to Issue. Requires the DEP to issue a 5 year permit to construct the Everglades Construction Project if certain criteria are met. Authorizes the STAs to discharge into the Everglades Protection Area if they are approved by the DEP and operated according to specific criteria listed in this section. Provides procedures for modifying the Everglades Construction Project. Encourages the district to pursue superior technologies for reducing phosphorus and authorizes the department to issue a permit modification if the technology meets certain criteria. Requires the district to modify the projects if they do not achieve the design objectives. Requires the district to apply for a permit for structures that are not included within the Everglades Construction Project and provides items to be included in the permit application. Provides deadlines by which the DEP must issue these permits or renewals thereof. Deletes references to the SWIM plan and any permits issued pursuant to it.

Deletes subsections 373.4592(6) and (7), F.S. related to interim permits, interim phosphorus concentration levels, elements of the SWIM plan and water quality standards, which have become obsolete in light of the new provisions contained in this bill.

Creates subsection 373.4592(8), F.S., related to long term compliance permits. Provides authority to the DEP and the district to take any action necessary to ensure appropriate water quality standards are met by December 2006. Requires permits after December 2003 to achieve applicable phosphorus criterion. Provides alternative permit in case the Everglades Construction Project does not meet state water quality standards.

Creates subsection 373.4592(9), F.S., to establish applicability of other laws and water quality standards. Provides limited circumstances where alternative methods for determining discharge limits are authorized. Provides a 50 ppb discharge limit under certain circumstances. Provides that if the Everglades Construction Project is unreasonably delayed, the district and the DEP may review the applicability of the BMPs and the fees.

Creates subsection 373.4592(10), F.S., to establish that nothing in this section is intended to alter the governmental authority and powers of the Seminole Tribe of Florida and to specify additional rights of the Seminole Tribe.

Renumbers subsection 373.4592(8), F.S. as subsection 373.4592(11), F.S. Halts the need for an annual SWIM report during the years the Everglades Program is in effect.

Creates subsection 373.4592(12), F.S., to direct the SFWMD to establish an Everglades Fund to be used for funding the Everglades Construction Project.

Section 2: Provides legislative intent that Alligator Alley (also known as State Highway 84 and federal Interstate Highway 75) has contributed to altering the water flows in the Everglades, has affected its ecological patterns, and that it is in the public interest to establish a system of tolls to help restore the natural resources values. Directs the Department of Transportation (DOT) to continue the system of tolls until December 31, 2004 and directs the DOT to use a portion of the toll collections to restore the natural values of the Everglades.

Section 3: Amends s. 298.22, F.S., to expand the list of circumstances under which the board of supervisors may condemn or acquire lands or property for district use.

Section 4: Repeals the short title of chapter 91-80, Laws of Florida (the Marjory Stoneman Douglas Everglades Protection Act).

Section 5: Appropriates \$500,000 from the Pollution Recovery Trust Fund and 10 positions for fiscal year 1994-1995 to the DEP for carrying out the provisions of this act.

Section 6: Provides this act shall become effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

This bill appropriates \$500,000 from the Pollution Recovery Trust Fund to the DEP and grants 10 positions for fiscal year 1994-1995 for carrying out the provisions of this act.

2. Recurring Effects:

Unavailable at this time.

3. Long Run Effects Other Than Normal Growth:

Unavailable at this time.

4. Total Revenues and Expenditures:

The SFWMD estimates that the Everglades Construction Project will cost approximately \$465 million and will take 11 years to complete. The Project will be paid as it is built. The Statement of Principles of July 1993 establishes a funding scheme that would the SFWMD to levy an additional .10 mil in the millage rate for ad valorem tax, generating approximately \$21.8 million per year cash flow. In addition, the state would be required to sell lands or otherwise contribute \$30 million. Unavailable at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Not available at this time.

2. Recurring Effects:

This bill provides no funds to the SFWMD for purposes of conducting the studies required of it alone or in conjunction with the DEP.

3. Long Run Effects Other Than Normal Growth:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. However, the agricultural interests within the EAA will be required to pay an annual minimum of \$23.50 per-acre as a discharge permit fee between the years of 1994 through 2013. Industry estimates that 470,000 acres would be subject to this fee, for a total annual cost to the industry, based on the minimum per-acre charge, of \$11,045,000. This base fee may be increased over the years, but never exceeds \$35 per-acre. Farmers following specific BMPs or reach the interim goal of discharges of 50 ppb will retain the \$23.50 fee.

In the Statement of Principles, the agricultural industry has agreed to pay up to \$322 million over 20 years to fund construction, research, monitoring, operating and maintenance and other incidental costs.

2. Direct Private Sector Benefits:

Indeterminate. However, to the extent that this bill reduces continued litigation over the issues surrounding the cleanup of the Everglades, the private sector should save significant amounts of money.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the mandates provision because it does not require counties or municipalities to expend funds to implement its provisions.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Some parties have noted this bill will go a long way in avoiding litigation on historically controversial issues. Other parties assert this bill is extremely cumbersome and will not provide the Everglades ecosystem with the immediate attention it deserves in order to restore it. In addition this document fails to provide any final standards of Everglades background water quality.

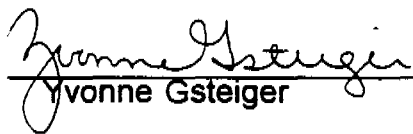
VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES:

Prepared by:

Staff Director:



Yvonne Gsteiger



John T. Mitchell