HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 723 Everglades Protection Area
SPONSOR(S): Busatta Cabrera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	17 Y, 0 N	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

The Everglades/Florida Bay system covers approximately two million acres in South Florida and contains the largest subtropical wetland in the United States. Historically, the Everglades covered over seven million acres of South Florida, and water flowed down the Kissimmee River into Lake Okeechobee, then south through the Everglades to the Florida Bay. The present Everglades system has been subdivided by the construction of canals, levees, roads, and other facilities because of efforts to drain the wetland for agriculture, development, and flood control. As a result, the Everglades is less than half the size it was a century ago, and connections between the central Everglades and adjacent transitional wetlands have been lost. This separation and isolation can impair the Everglades' wildlife communities and the sustainability of the ecosystem.

Every city and county is required to create and implement a comprehensive plan to guide future development. A local government's comprehensive plan outlines the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. Comprehensive plans and plan amendments are subject to review by other state and local governmental entities. Most comprehensive plan amendments follow the Expedited State Review process. However, plan amendments that are in an area of critical state concern, propose a rural land stewardship area, or propose a sector plan or an amendment to an adopted sector plan, as well as other specified amendments, must follow the State Coordinated Review process. New plans for newly incorporated municipalities must also follow the State Coordinated Review process. Plan amendments adopted by local governments that qualify as small-scale development amendments are authorized to follow a small-scale review process, which only requires one public hearing and a compliance determination from the state land planning agency before becoming effective.

The bill requires plans and plan amendments that apply to any land within, or within two miles of, the Everglades Protection Area (EPA) to:

- Follow the State Coordinated Review process;
- Be reviewed by the Department of Environmental Protection (DEP), within 30 days of receipt, which must determine whether the plan or plan amendment adversely impacts the EPA or statutory Everglades restoration and protection objectives; and
- Include written notice from DEP stating the plan or plan amendment does not adversely impact the EPA or Everglades protection and restoration.

The bill prohibits a proposed amendment impacting property located within, or within two miles of, the EPA from being considered a small-scale development amendment.

The bill may have an insignificant negative fiscal impact on DEP that can be absorbed within existing resources and an indeterminate negative fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Everglades/Florida Bay System

The Everglades/Florida Bay system covers approximately two million acres in South Florida and contains the largest subtropical wetland in the United States. The area consists of a vast sawgrass marsh dotted with tree islands and interspersed with wet prairies and aquatic sloughs.[1]

Historically, the Everglades covered over seven million acres of South Florida, and water flowed down the Kissimmee River into Lake Okeechobee, then south through the Everglades to the Florida Bay.[2] The present Everglades system has been subdivided by the construction of canals, levees, roads, and other facilities because of efforts to drain the wetland for agriculture, development, and flood control. As a result, the Everglades is less than half the size it was a century ago, and connections between the central Everglades and adjacent transitional wetlands have been lost. This separation and isolation can impair the Everglades' wildlife communities and the sustainability of the ecosystem.[3]

To address these issues, the Legislature passed the Everglades Forever Act (EFA) in 1994.[4] The EFA established long-term goals to restore and protect the Everglades ecosystem and created the Everglades Protection Area (EPA), depicted in the figure below,[5] which is composed of the Water Conservation Areas[6] (WCA 1,[7] WCA 2A, WCA 2B, WCA 3A, and WCA 3B), and Everglades National Park, which also includes the Florida Bay.[8]

The EFA specified that the long-term water quality objective for the Everglades is to implement the optimal combination of source controls, stormwater treatment areas, advanced treatment technologies, and regulatory programs to ensure that all waters discharged to the EPA achieve water quality standards consistent with the EFA. To achieve these goals, the EFA required the Department of Environmental Protection (DEP) to:

- Restore and protect the Everglades ecological system;
- Authorize the South Florida Water Management District (SFWMD) to proceed expeditiously with implementation of Everglades restoration;
- Reduce excessive levels of phosphorus;
- Pursue comprehensive and innovative solutions to the issues of water quality, water quantity, hydroperiod, and invasions of nonnative species that affect the Everglades ecosystem;
- Expedite plans and programs for improving water quantity reaching the Everglades; and
- Achieve the water quality goals of the Everglades program through implementation of stormwater treatment areas and best management practices.[9]

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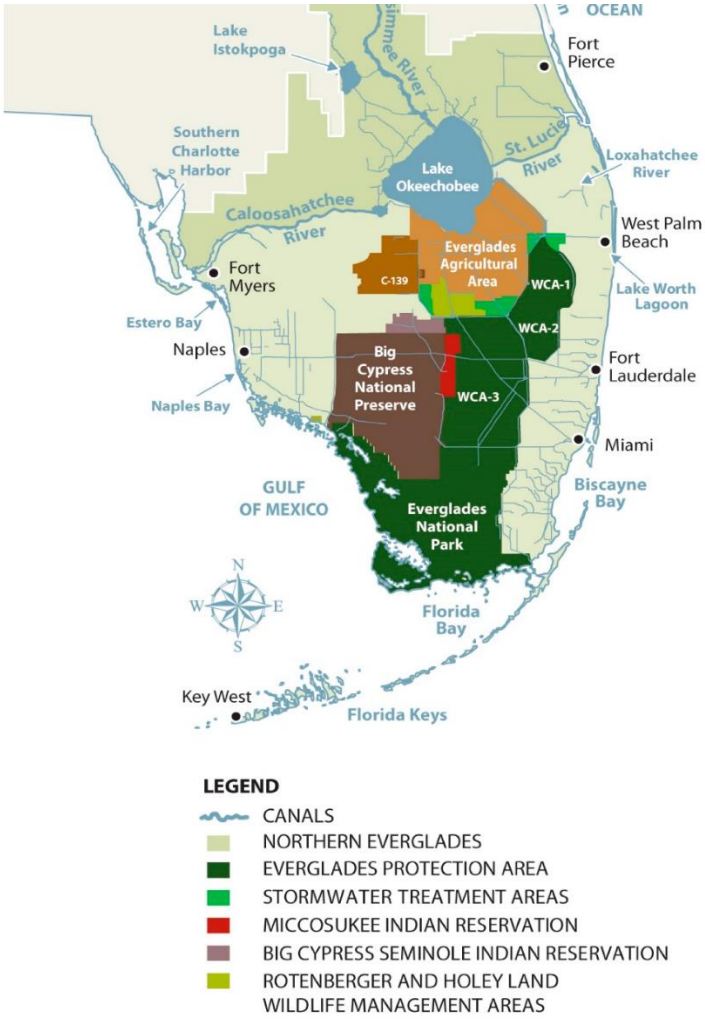
[1] South Florida Water Management District (SFWMD), *Everglades*, https://www.sfwmd.gov/our-work/everglades (last visited Jan. 19, 2024).
[2] *Id*.
[3] *Id*.
[4] Chapter 94-115, Laws of Fla.
[5] SFWMD, *2016 South Florida Environmental Report*, p. 3, *available at* https://issuu.com/southfloridawatermanagement/docs/2016_sfer_highlights_final?e=4207603/33817547 (last visited Jan. 19, 2024).
[6] The WCAs were designated primarily to receive flood waters from adjacent areas and store them for beneficial municipal, urban, and agricultural uses. Florida Fish and Wildlife Conservation Commission, *Everglades Water Conservation Areas*, https://myfwc.com/fishing/freshwater/sites-forecasts/s/everglades-water-conservation-areas/#:~:targetText=Palm%20Beach%2C%20Broward%20and%20Miami,in%20effect%20for%20the%20area (last visited Jan. 19, 2024).
[7] WCA 1 is also known as the Arthur R. Marshall Loxahatchee National Wildlife Refuge.
[8] Section 373.4592(2)(i), F.S.
[9] DEP, *Everglades Forever Act (EFA)*, *available at* https://floridadep.gov/eco-pro/eco-pro/content/everglades-forever-act-efa (last visited Jan. 19, 2024).



Comprehensive Plans and Plan Amendment Process

In 1985, the Florida Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.[10] A local government's comprehensive plan outlines the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.[11]

Comprehensive plans and plan amendments are subject to review by other state and local governmental entities. Most plan amendments are required to follow the Expedited State Review process. However, plan amendments that are in an area of critical state concern, propose a rural land stewardship area, or propose a sector plan or an amendment to an adopted sector plan, as well as other specified amendments, must follow the State Coordinated Review process.[12] New plans for newly incorporated municipalities must also follow the State Coordinated Review process.

A proposed comprehensive plan or plan amendment is required, under both processes, to receive a public hearing by the local governing body before it may be transmitted for review. Before the local governing body may consider the proposal, the local planning board must first hold a public hearing at which it makes a recommendation to the local governing body on adoption of the plan or plan amendment.[13] The local governing body must then hold a public hearing to consider transmittal of the proposed plan or plan amendment. If a majority of the local governing body members present at the

[10] Chapter 85-55, Laws of Fla.
[11] *Id*.
[12] Section 163.3184(2)(c), F.S.
[13] Sections 163.3174(4)(a) and 163.3184(11), F.S.

hearing approve such transmittal, the plan or amendment must be transmitted within 10 working days to the following state and local governmental entities, known as reviewing agencies:[14]

- The state land planning agency, designated in statute as the Department of Commerce;[15]
- The appropriate regional planning council;
- The appropriate water management district;
- DEP;
- The Department of State;
- The Department of Transportation;
- For plan amendments relating to public schools, the Department of Education;
- For plans or plan amendments that affect certain military installations, the commanding officer of the affected military installation;
- For county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and
- For municipal plans and plan amendments, the county in which the municipality is located.[16]

The reviewing agencies and certain other government entities may provide comments to the local government regarding the plan or amendment. State agencies may only comment on important state resources and facilities that will be adversely impacted by the plan or plan amendment. Any comments provided by state agencies must provide specificity on how the plan or amendment will adversely impact an important state resource or facility and must identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts.[17] Under the Expedited State Review process, these comments must be provided directly to the local government within 30 days of receipt of the plan or plan amendment.[18] Alternatively, a State Coordinated Review requires agencies to provide comments to the Department of Commerce. The Department of Commerce then has a total of 60 days from receipt to provide the local government with a report detailing the state's objections, recommendations, and comments.[19]

In both processes, comments from each governmental entity must be limited to their statutory purview.[20] For example, DEP must limit its comments to the subjects of air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, and conservation easements; solid waste; water and wastewater treatment; and Everglades ecosystem restoration.[21]

After the local government receives the comments made by the reviewing agencies, whether directly from the agencies or through the report issued by the Department of Commerce, the local governing body must hold a second public hearing to approve or deny the plan or plan amendment.[22] The second public hearing must be conducted within 180 days after the agency comments are received. For most plan amendments, if a local government fails to adopt the plan amendment within 180 days, the plan amendment is deemed withdrawn. Unless otherwise specified, the 180-day requirement may be extended by agreement as long as notice is provided to the Department of Commerce and any affected person that provided comments on the plan amendment.[23]

After adopting a plan or plan amendment, the local government must transmit the plan or plan amendment to the Department of Commerce within 10 days of the second public hearing, and the Department of Commerce must notify the local government of any deficiencies with the plan

[14] Sections 163.3184(3)(b)1. and 163.3184(4)(c), F.S.
[15] Section 163.3164(44), F.S.; During the 2023 Legislative Session, the Legislature renamed the Department of Economic Opportunity as the Department of Commerce. Chapter 2023-173, section 10, L.O.F. Senate Bill 82 (2024), a reviser bill that has passed both chambers, updates all statutory references to the agency.
[16] Section 163.3184(1)(c), F.S.
[17] Sections 163.3184(3)(b)2. and 163.3184(4)(c), F.S.
[18] Section 163.3184(3)(b)2.
[19] Section 163.3184(4)(c)-(d), F.S.
[20] Section 163.3184(3)(b)3.-4., F.S.
[21] Section 163.3184(3)(b)4.a., F.S.
[22] Section 163.3184(11), F.S.
[23] Section 163.3184(3)(c), F.S.

amendment within five working days. For purposes of completeness, a plan or plan amendment must be deemed complete if it contains:

- A full, executed copy of the adoption ordinance or ordinances;
- In the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined and words deleted stricken with hyphens;
- In the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and
- A copy of any data and analyses the local government deems appropriate.[24]

The Department of Commerce then has either 31 days, under the Expedited State Review process, or 45 days, under the State Coordinated Review process, to determine whether the proposed comprehensive plan or plan amendment is in compliance with all relevant agency rules and laws.[25]

Under the Expedited State Review process, a plan amendment is considered effective on the 31st day after receipt of the adopted amendment from the local government. Under the State Coordinated Review process, the Department of Commerce must issue a notice of intent to find that the plan or plan amendment is either in compliance or not in compliance. The Department of Commerce must also post a copy of the notice of intent on the agency's website. The plan or plan amendment is considered effective upon publication of the notice of intent, unless administratively challenged.[26]

Small-Scale Development Amendments

Plan amendments adopted by local governments that qualify as small-scale development amendments are authorized to follow a small-scale review process.[27] An amendment may be considered a small-scale development amendment when:

- The proposed amendment involves a use of 10 acres or fewer;
- The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for site-specific small-scale development activity; and
- The property that is the subject of the proposed amendment is not located within an area of critical concern.[28]

Small-scale development amendments only require one public hearing and a compliance determination from the state land planning agency before becoming effective.[29]

Effect of the Bill

The bill requires comprehensive plans and plan amendments that apply to any land within, or within two miles of, the EPA to follow the State Coordinated Review process. As part of the review process for these plans and plan amendments, the bill also requires DEP to determine whether the plan or plan amendment adversely impacts the EPA or the Everglades restoration and protection objectives identified in s. 373.4592, F.S. DEP must provide a written determination to the state land planning agency and the local government within 30 days after receipt of the proposed plan or plan amendment. The determination must identify any adverse impacts and can be provided as part of the agency's comments.

The bill further requires DEP to work in coordination with the state land planning agency and the local government to identify any planning strategies or measures the local government could include to eliminate or mitigate any adverse impacts to the EPA or Everglades restoration and protection. If DEP determines that any portion of the plan or plan amendment will adversely impact the EPA or Everglades restoration and protection objectives, the local government must modify that portion of the

[24] *Id*.
[25] Sections 163.3184(3) and 163.3184(4), F.S.
[26] *Id*.
[27] Section 163.3184(2)(b), F.S.
[28] Section 163.3187(1), F.S.
[29] Section 163.3187, F.S.

proposed plan or plan amendment to include planning strategies or measures to eliminate or mitigate such adverse impacts before adopting the proposed plan or plan amendment. If the local government does not modify that portion of the plan or plan amendment, the proposed plan or plan amendment may not be adopted.

If a plan or any plan amendment that applies to any land within, or within two miles of, the EPA is adopted at its second public hearing, the bill requires the local government to transmit such plan or amendment to DEP, in addition to the Department of Commerce, within 10 working days after the second public hearing.

The bill requires the state land planning agency, when determining compliance of a plan or plan amendment, to limit its objections to the objections raised in the review of planning strategies or measures adopted.

The bill prohibits a proposed amendment impacting property that is located within, or within two miles of, the EPA from being considered a small-scale development amendment. The bill requires that, within 10 days after the adoption of a small-scale development amendment, a county whose boundaries include any portion of the EPA, and all municipalities within the county, must transmit a copy of the amendment to the state land planning agency for recordkeeping purposes.

The bill specifies that a site-specific text change that relates directly to, and is adopted simultaneously with, a small-scale future land use map amendment may be included in a small-scale development amendment.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3184, F.S., related to comprehensive plans and plan amendments.

Section 2. Amends s. 163.3187, F.S., related to procedures for small-scale development amendments.

Section 3. Amends s. 420.615, F.S., to conform a cross-reference.

Section 4. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact on DEP because DEP will be required to expend more agency resources on the review of local government comprehensive plans and plan amendments that impact the EPA or an area within two miles of the EPA. DEP currently reviews these plans and plan amendments, so the fiscal impact can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on local governments that propose comprehensive plans or plan amendments impacting the EPA or an area within two miles of the

EPA if such local governments have to expend additional resources to comply with the State Coordinated Review process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.