

CHAPTER 99-143

Committee Substitute for Committee Substitute for Senate Bill No. 1672

An act relating to water resources; creating s. 373.1501, F.S.; providing definitions; providing legislative findings and intent; providing for acquisition of certain lands by eminent domain; requiring land to be acquired in accordance with state condemnation law; authorizing the South Florida Water Management District to act as local sponsor of the Central and Southern Florida Flood Control Project for specified project features; providing for oversight by the Department of Environmental Protection; requiring specified compliance by the South Florida Water Management District; providing requirements for development of project components; requiring the Department of Environmental Protection and the water management district to pursue implementation of certain project modifications; providing requirements for expedited summary hearing procedures; amending s. 373.026, F.S.; requiring the department to approve project components; providing an effective date.

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

Section 1. Section 373.1501, Florida Statutes, is created to read:

373.1501 South Florida Water Management District as local sponsor.—

(1) As used in ss. 373.1501 and 373.026(8), the term:

(a) “C-111 Project” means the project identified in the Central and Southern Florida Flood Control Project, Real Estate Design Memorandum, Canal 111, South Dade County, Florida.

(b) “Department” means the Department of Environmental Protection.

(c) “District” means the South Florida Water Management District.

(d) “Kissimmee River Restoration Project” means the project identified in the Project Cooperation Agreement between the United States Department of the Army and the South Florida Water Management District dated March 22, 1994.

(e) “Project” means the Central and Southern Florida Project.

(f) “Project Component” means any structural or operational change, resulting from the restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.

(g) “Restudy” means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the Federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation

by the South Florida Water Management District is authorized by this section. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.

(h) “Water Preserve Areas” means those areas located only within Palm Beach and Broward counties that are designated as Water Preserve Areas, as approved by the South Florida Water Management District Governing Board on September 11, 1997.

(i) “Ten Mile Creek Project” means the Ten Mile Creek Water Preserve Area identified in the Central and Southern Florida Ecosystem Critical Project Letter Report dated April 13, 1998.

(2) The Legislature finds that the restudy is important for restoring the Everglades ecosystem and sustaining the environment, economy, and social well-being of South Florida. It is the intent of the Legislature to facilitate and support the restudy through a process concurrent with Federal Government review and Congressional authorization. Nothing in this section is intended in any way to limit federal agencies or Congress in the exercise of their duties and responsibilities. It is further the intent of the Legislature that all project components be implemented through the appropriate processes of this chapter and be consistent with the balanced policies and purposes of this chapter, specifically s. 373.016.

(3) The Legislature declares that the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project are in the public interest, for a public purpose, and necessary for the public health and welfare. The governing board of the district is empowered and authorized to acquire fee title or easement by eminent domain for the limited purposes of implementing the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project. Any acquisition of real property, including by eminent domain, for those objectives constitutes a public purpose for which it is in the public interest to expend public funds. Notwithstanding any provision of law to the contrary, such properties shall not be removed from the district’s plan of acquisition, and the use of state funds for these properties is authorized. In the absence of willing sellers, any land necessary for implementing the projects in this subsection shall be acquired in accordance with state condemnation law pursuant to chapters 73 and 74.

(4) The district is authorized to act as local sponsor of the project for those project features within the district as provided in this subsection and subject to the oversight of the department as further provided in s. 373.026. The district may:

(a) Act as local sponsor for all project features previously authorized by Congress;

(b) Continue data gathering, analysis, research, and design of project components, participate in preconstruction engineering and design documents for project components, and further refine the Comprehensive Plan

of the restudy as a guide and framework for identifying other project components;

(c) Construct pilot projects that will assist in determining the feasibility of technology included in the Comprehensive Plan of the restudy; and

(d) Act as local sponsor for project components.

(5) In its role as local sponsor for the project, the district shall comply with its responsibilities under this chapter and implement project components through appropriate provisions of this chapter. In the development of project components, the district shall:

(a) Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs;

(b) Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project;

(c) Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination:

1. The district shall convene a preapplication conference with all state and federal agencies with applicable regulatory jurisdiction;

2. State agencies with applicable regulatory jurisdiction shall participate in the preapplication conference and provide information necessary for the district's determination; and

3. The district shall request that federal agencies with applicable regulatory jurisdiction participate in the preapplication conference and provide information necessary for the district's determination;

(d) Consistent with chapter 373, the purposes for the restudy provided in the Water Resources Development Act of 1996, and other applicable federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment.

(e) Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are minimized.

(6) The department and the district shall expeditiously pursue implementation of project modifications previously authorized by Congress or the Legislature, including the Everglades Construction Project. Project components should complement and should not delay project modifications previously authorized.

(7) Notwithstanding any provision of this section, nothing herein shall be construed to modify or supplant the authority of the district or the department to prevent harm to the water resources as provided in this chapter.

(8) Final agency action with regard to any project component subject to s. 373.026(8)(b) shall be taken by the department. Actions taken by the district pursuant to s. 373.1501(5) shall not be considered final agency action. Any petition for formal proceedings filed pursuant to ss. 120.569 and 120.57 shall require a hearing under the summary hearing provisions of s. 120.574, which shall be mandatory. The final hearing under this section shall be held within 30 days after receipt of the petition by the Division of Administrative Hearings.

Section 2. Subsection (8) of section 373.026, Florida Statutes, is amended to read:

373.026 General powers and duties of the department.—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(8)(a) Provide such coordination, cooperation, or approval necessary to the effectuation of any plan or project of the Federal Government in connection with or concerning the waters in the state. Unless otherwise provided by state or federal law, the department shall, subject to confirmation by the Legislature, have the power to approve or disapprove such federal plans or projects on behalf of the state. If such plan or project is for a coastal inlet, the department shall first determine the impact of the plan or project on the sandy beaches in the state. If the department determines that the plan will have a significant adverse impact on the sandy beaches, the department may not approve the plan or project unless it is revised to mitigate those impacts.

(b) To ensure to the greatest extent possible that project components will go forward as planned, the department shall collaborate with the district in the restudy. Before any project component is submitted to Congress for authorization or receives an additional appropriation of state funds, the department must approve, or approve with amendments, each project component within 60 days following formal submittal of the project component to the department. Department approval shall be based upon a determination of the district's compliance with s. 373.1501(5). Once a project component is approved, all requests for an additional appropriation of state funds

needed to implement the project component shall be submitted to the department and such requests shall be included in the department's annual request to the Governor.

(c) Notwithstanding paragraph (b), the use of state funds for land purchases from willing sellers is authorized for projects within the district's approved 5-year plan of acquisition pursuant to s. 373.59.

(d) The Executive Office of the Governor, pursuant to its duties under s. 373.536(5) to approve or disapprove, in whole or in part, the budget of each water management district, shall review all proposed expenditures for project components in the district's budget.

~~(e)~~(b) The department, subject to confirmation by the Legislature, shall act on behalf of the state in the negotiation and consummation of any agreement or compact with another state or states concerning waters of the state.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor April 30, 1999.

Filed in Office Secretary of State April 30, 1999.