

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 18-02 Natural Resources
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Shugar	Williamson

SUMMARY ANALYSIS

The bill revises policies relating to Florida's natural resources including, but not limited to:

- Modifying the funding allocations currently identified in the Florida Forever Act by consolidating the allocations from nine categories to three categories: land acquisition, Florida Communities Trust, and the Rural and Family Lands Protection Program. Each category would receive 33 1/3 percent of the funding received for the Florida Forever Program.
- Removing the authorization to use Florida Forever funding for capital improvement projects, water resource development projects, and land management.
- Consolidating all land acquisition into one category, including acquisition projects selected by the Acquisition and Restoration Council; acquisitions identified on water management districts' (WMDs) priority lists; acquisitions of inholdings and additions to state parks, state forests, lands managed by the Fish and Wildlife Conservation Commission, and greenways and trails; and land acquisition grants under the Florida Recreation and Development Assistance Program.
- Requiring annual dedicated funding for Florida Forever from the Land Acquisition Trust Fund (LATF) beginning in fiscal year 2019-2020.
- Prioritizing eligible Comprehensive Everglades Restoration Plan (CERP) projects for funding under the LATF to prioritize Phase I and Phase II of the C-43 Reservoir above other CERP projects.
- Requiring counties, municipalities, and water management districts (WMDs) to deposit any proceeds generated from the disposal of conservation lands acquired with state funds in the appropriate state trust fund.
- Requiring WMDs to deposit any revenue generated from the use of conservation lands purchased with state funds into a separate agency trust fund to be used to support future land management activities.
- Authorizing the Department of Environmental Protection (DEP) and the Department of Agriculture and Consumer Services to assist local governments in implementing local rural-lands-protection easement programs.
- Exempting certain local governments from the comprehensive plan requirement to develop and maintain a water facilities work plan.
- Clarifying operation provisions of the C-51 reservoir project and providing waiver of repayment from the water storage facility revolving loan fund;
- Requiring regional water supply authorities to provide annual status reports to WMDs on water resource development projects for inclusion in the consolidated WMD annual report.
- Requiring the Department of Transportation to coordinate with WMDs, DEP, and local governments to redirect stormwater from road projects for beneficial use, if feasible.
- Requiring public water systems and domestic wastewater systems to develop an asset management plan (AMP) and create a reserve fund to implement AMP.

The bill appears to have an indeterminate fiscal impact on the state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Forever

Present Situation

The Florida Forever Program seeks to purchase environmentally sensitive lands to protect natural resources, avoid degradation of water resources, improve recreational opportunities, and preserve wildlife habitat.¹ The state may issue up to \$5.3 billion in Florida Forever bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for:

- Restoration, conservation, recreation, water resource development, or historical preservation; and
- Capital improvements² to lands and water areas that accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.³

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever program. The Department of Environmental Protection (DEP) administers the Florida Forever Trust Fund. The Florida Forever Trust Fund receives its funding from the Land Acquisition Trust Fund (LATF).⁴ DEP must distribute revenues from the Florida Forever Trust Fund in accordance with the Florida Forever Act.

Each year, at least 1 ½ percent of the cumulative total of funds deposited into the Florida Forever Trust Fund must be made available for the purposes of management, maintenance, and capital improvements, and for associated contractual services, for conservation and recreation lands acquired with funds deposited into the LATF or the former Preservation 2000 or Florida Forever programs.⁵ The Board of Trustees of the Internal Improvement Trust Fund (BOT)⁶ must reserve up to one-fifth of those funds for interim management of acquisitions and for associated contractual services to ensure the conservation and protection of natural resources on project sites and to allow limited public recreational use of lands.⁷ Further, managing agencies may use up to one-fourth of these funds to control and remove nonnative, invasive species on public lands.⁸

¹ Section 259.105(2), F.S.

² Section 259.03(3), F.S., defines a “capital improvement” or capital project expenditure” to mean those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of the Land Conservation Program. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities’ signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas.

³ Section 215.618(1)(a), F.S.; s. 259.03(6), F.S., defines a water resource development project to mean a project eligible for Florida Forever funding that increases the amount of water available to meet the needs of natural systems and the citizens of the state by enhancing or restoring aquifer recharge, facilitating the capture and storage of excess flows in surface waters, or promoting reuse.

⁴ Section 259.1051, F.S.

⁵ Section 259.032(9)(b), F.S.

⁶ Section 253.001, F.S., provides that the BOT holds state lands in trust for the use and benefit of the people of Florida; s. 253.02(1), F.S., provides that the BOT consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture; The BOT may acquire, sell, transfer, and administer state lands in the manner consistent with chapters 253 and 259, F.S.

⁷ Section 259.032(9)(d), F.S.

⁸ Section 259.032(9)(e), F.S.

Florida Forever Projects

Florida Forever is Florida's conservation and recreation lands acquisition program, a blueprint for conserving natural resources and renewing Florida's commitment to conserve the state's natural and cultural heritage.⁹ The Acquisition and Recreation Council (ARC),¹⁰ with the assistance of the Florida Natural Area Inventories and several state agencies, evaluates applications for acquisition projects under the Florida Forever Program and provides recommendations to BOT on the projects to pursue.¹¹ To be considered for acquisition under the Florida Forever Program, the project must contribute to the achievement of the following goals:

- Enhance the coordination and completion of land acquisition projects;
- Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state;
- Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state;
- Increase natural resource-based public recreational and educational opportunities;
- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources; or
- Increase the amount of open space available in urban areas.¹²

Further, ARC must consider the following factors when reviewing project applications to determine whether the project:

- Meets multiple goals described above;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- Has funding sources that are identified and assured through at least the first two years of the project;
- Contributes to the solution of water resource problems on a regional basis;
- Has a significant portion of its land area in imminent danger of development, in imminent danger of losing its significant natural attributes or recreational open space, or in imminent danger of subdivision which would result in multiple ownership and make acquisition of the project costly or less likely to be accomplished;
- Implements an element from a plan developed by an ecosystem management team;
- Is one of the components of the Everglades restoration effort;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple, including but not limited to, tax incentives, mitigation funds, or other revenues; the purchase of development rights, hunting rights, agricultural or silvicultural rights, or mineral rights; or obtaining conservation easements or flowage easements; and
- Is a joint acquisition, either among public agencies, nonprofit organizations, or private entities, or by a public-private partnership.¹³

⁹ DEP, *Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/florida-forever-0> (last visited January 18, 2018).

¹⁰ Section 259.035(1), F.S., provides that the ARC is a 10-member board established to assist the BOT to review the recommendations and plans for state-owned lands. Four members are appointed by the Governor, one member is appointed by the Secretary of DEP, one member is appointed by the Director of the Florida Forest Service, two members are appointed by the Executive Director of the Fish and Wildlife Conservation Commission (FWC), one member is appointed by the Secretary of the Department of State, and one member is appointed by the Commissioner of Agriculture.

¹¹ Sections 259.105 (8), (14), and (15), F.S.

¹² Section 259.105(4), F.S.

¹³ Section 259.105(9), F.S.

Using its established criteria, ARC develops a priority list of applications submitted. An affirmative vote of at least five members of ARC is required to place a proposed project on the priority list. ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.¹⁴ Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural, less-than-fee, partnerships, greater than 85 percent complete, and critical historical.¹⁵ ARC ranks the projects within each category from highest to lowest priority.

ARC presents the priority list to the BOT.¹⁶ Florida Forever projects may only be implemented if the BOT approves ARC's recommendations to acquire the particular parcel.¹⁷ While the BOT may remove projects from the priority list, the BOT may not add or rearrange projects on the priority list.¹⁸

The Division of State Lands within DEP prepares an annual work plan based on the priority list developed by ARC. This work plan outlines the specific projects and acquisitions within projects that DEP will seek to acquire with Florida Forever funds available for that fiscal year.¹⁹ Currently, there are 43 projects, totaling approximately 1.4 million acres, in the work plan.²⁰

Water Management District Projects

Water management districts (WMDs) may acquire real property to conserve and protect water and water-related resources.²¹ Each WMD must develop a five-year work plan that identifies projects necessary to promote reclamation, storage, or recovery of water and other properties or activities that would assist in meeting the goals of Florida Forever.²² DEP must submit the WMDs report on acquisitions to the BOT along with the recommendations from ARC for Florida Forever projects.²³

Florida Communities Trust and Stan Mayfield Working Waterfronts Program Projects

Florida Communities Trust (FCT) assists communities to protect important natural resources, provide recreational opportunities, and preserve Florida's traditional working waterfronts through the competitive criteria in the Parks and Open Space Florida Forever Grant Program and the Stan Mayfield Working Waterfronts Florida Forever Grant Program. These local land acquisition grant programs provide funding to local governments and eligible non-profit organizations to acquire land for parks, open space, greenways, and projects supporting Florida's seafood harvesting and aquaculture industries.²⁴ From the funds available to the FCT and used for land acquisition, local governments must match funds at least 75 percent on a dollar-for-dollar basis.²⁵

¹⁴ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited January 18, 2018).

¹⁵ Section 259.105(17), F.S.

¹⁶ Section 259.105(14), F.S.

¹⁷ Section 259.105(16), F.S.

¹⁸ Section 259.105(14), F.S.

¹⁹ Section 259.105(17), F.S.

²⁰ DEP, *Focused on Florida's Future, Florida Forever Program*, p. 7, presentation before the Senate Appropriations Subcommittee on the Environment and Natural Resources (Oct. 25, 2017), available at:

<https://www.flsenate.gov/Committees/Show/AEN/Meeting%20Packet/3992> (last visited January 18, 2018).

²¹ Section 373.139, F.S.

²² Sections 373.199(2) and (3), F.S.

²³ Section 373.199(7), F.S.

²⁴ DEP, *Florida Communities Trust Home*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/florida-communities-trust-fct-home> (last visited January 18, 2018); *see also* s. 380.507, F.S.

²⁵ Section 259.105(3)(c), F.S.

Florida Recreation Development Assistance Program Projects

Florida Recreation Development Assistance Program Projects (FRDAP) is a competitive, reimbursement grant program. FRDAP provides financial assistance for acquisition or development of land for public outdoor recreation. Eligible participants include all county governments, municipalities, and other legally created local governmental entities with the responsibility for providing outdoor recreational sites and facilities for the public.²⁶ Local governments may submit three applications a year. The most any one project may receive is \$200,000.²⁷

State Parks Projects

The Division of Recreation and Parks (DRP) within DEP manages 175 parks covering 800,000 acres and 100 miles of beaches.²⁸ DRP may acquire in the name of the state any property, real or personal, by purchase, grant, devise, condemnation, donation, or otherwise. In DRP's judgement, this property must be necessary or proper toward the administration of the purposes of the parks.²⁹ DRP must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions. DRP may acquire proposed additions if DRP identified them within the original project boundary, adopted management plan, or management prospectus. If the proposed acquisition does not meet those criteria, ARC must approve the proposed acquisition.³⁰

Florida Forest Service Projects

The Florida Forest Service (FFS) within the Department of Agriculture and Consumer Services (DACS) manages 37 state forests consisting of over a million acres of forest for multiple purposes including timber, recreation, and wildlife habitat.³¹ FFS may acquire lands suitable for state forest purposes by gift, donation, contribution, purchase, or otherwise and may enter into agreements with the federal government or other agencies for acquiring by gift, purchase, or otherwise such lands as are suitable and desirable for state forests.³² FFS must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions. FFS may acquire proposed additions if FFS identified them within the original project boundary, the adopted management plan, or the management prospectus. If the proposed acquisition does not meet FFS criteria, then ARC must approve the proposed acquisition.³³

Fish and Wildlife Conservation Commission Projects

Wildlife management areas (WMAs) are public lands managed or cooperatively managed with other government agencies by the Fish and Wildlife Conservation Commission (FWC) for the enjoyment of anglers, hunters, wildlife viewers, and boaters.³⁴ FWC, with the approval of the Governor, may acquire in the name of the state lands and waters suitable for the protection and propagation of game, fish, nongame birds, or fur-bearing animals, or game farms for hunting purposes, by purchase, lease, gift, or

²⁶ DEP, *Florida Recreation Development Assistance Program*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/florida-recreation-development-assistance-program/> (last visited January 18, 2018).

²⁷ Section 375.075(3), F.S.

²⁸ DEP, *Division of Recreation and Parks*, <https://floridadep.gov/parks> (last visited January 18, 2018).

²⁹ Section 258.007(1), F.S. DRP's ability to use condemnation is limited to parks within its jurisdiction on July 1, 1980, and may not exceed 40 acres or 10 percent of the total acreage of the park, whichever is less.

³⁰ Section 259.105(3)(1), F.S.

³¹ DACS, *Florida Forest Service*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service> (last visited January 18, 2018); DACS, *Our Forests*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests> (last visited January 18, 2018).

³² Section 589.07, F.S.

³³ Section 259.105(3)(1), F.S.

³⁴ FWC, *What are Wildlife Management Areas?*, <http://myfwc.com/viewing/recreation/wmas/> (last visited January 18, 2018).

otherwise to be known as state game lands.³⁵ FWC must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions. FWC may acquire proposed additions if it identified them within the original project boundary, adopted management plan, or management prospectus. If the proposed acquisition does not meet those criteria, ARC must approve the proposed acquisition.³⁶

Florida Greenways and Trails Program Projects

The Office of Greenways and Trails (OGT) within DRP provides statewide leadership and coordination to establish, expand, and promote the Florida Greenways and Trails System (FGT).³⁷ FGT is a statewide system of greenways and trails that consists of individual and networks of greenways and trails designated by DEP as part of the statewide system.³⁸ DEP may acquire land by gift or purchase or any lesser interest in land, including easements, for purposes of greenways and trails.³⁹ The Florida Greenways and Trails Council (Council) recommends lands for acquisition based on ranking criteria developed by DEP. DEP's Secretary either approves the Council's recommendations or modifies them.⁴⁰ OGT must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions.⁴¹ OGT is exempt from the evaluation and selection procedures developed by ARC.⁴²

Rural and Family Lands Protection Program Projects

The Rural and Family Lands Protection Program (RFLPP) within DACS is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements. The program meets three needs:

- Protects valuable agricultural lands from conversion to other uses;
- Creates easement documents that work together with agricultural production to ensure sustainable agricultural practices and reasonable protection of the environment without interfering with agricultural operations in such a way that could put the continued economic viability of these operations at risk; and
- Protects natural resources, not as the primary purpose, but in conjunction with economically viable agricultural operations.⁴³

DACS adopted rules that established an application process; a process and criteria for setting priorities for use of funds to achieve the purposes of the program and giving preference to ranch and timber lands managed using sustainable practices; an appraisal process; and a process for title review and compliance and approval of the rules by the BOT.⁴⁴

Florida Forever Act

The proceeds from cash payments or bonds issued under the Florida Forever Act must be deposited into the Florida Forever Trust Fund, minus the costs of issuing and the costs of funding reserve

³⁵ Section 379.2222, F.S.

³⁶ Section 259.105(3)(1), F.S.

³⁷ DEP, *Office of Greenways and Trails*, <https://floridadep.gov/parks/ogt> (last visited January 18, 2018).

³⁸ Section 260.014, F.S.

³⁹ Section 260.015(1), F.S.

⁴⁰ Section 260.016(2), F.S.; rules 62S-1.300(7) and (8), F.A.C.

⁴¹ Section 259.105(3)(1), F.S.

⁴² Section 260.015(1)(c), F.S.

⁴³ DACS, *Rural and Family Lands Protection Program*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/Land-Planning-and-Administration-Section/Rural-and-Family-Lands-Protection-Program2> (last visited January 18, 2018); s. 570.71(1), F.S.

⁴⁴ Section 570.71(10), F.S.; ch. 5I-7, F.A.C.

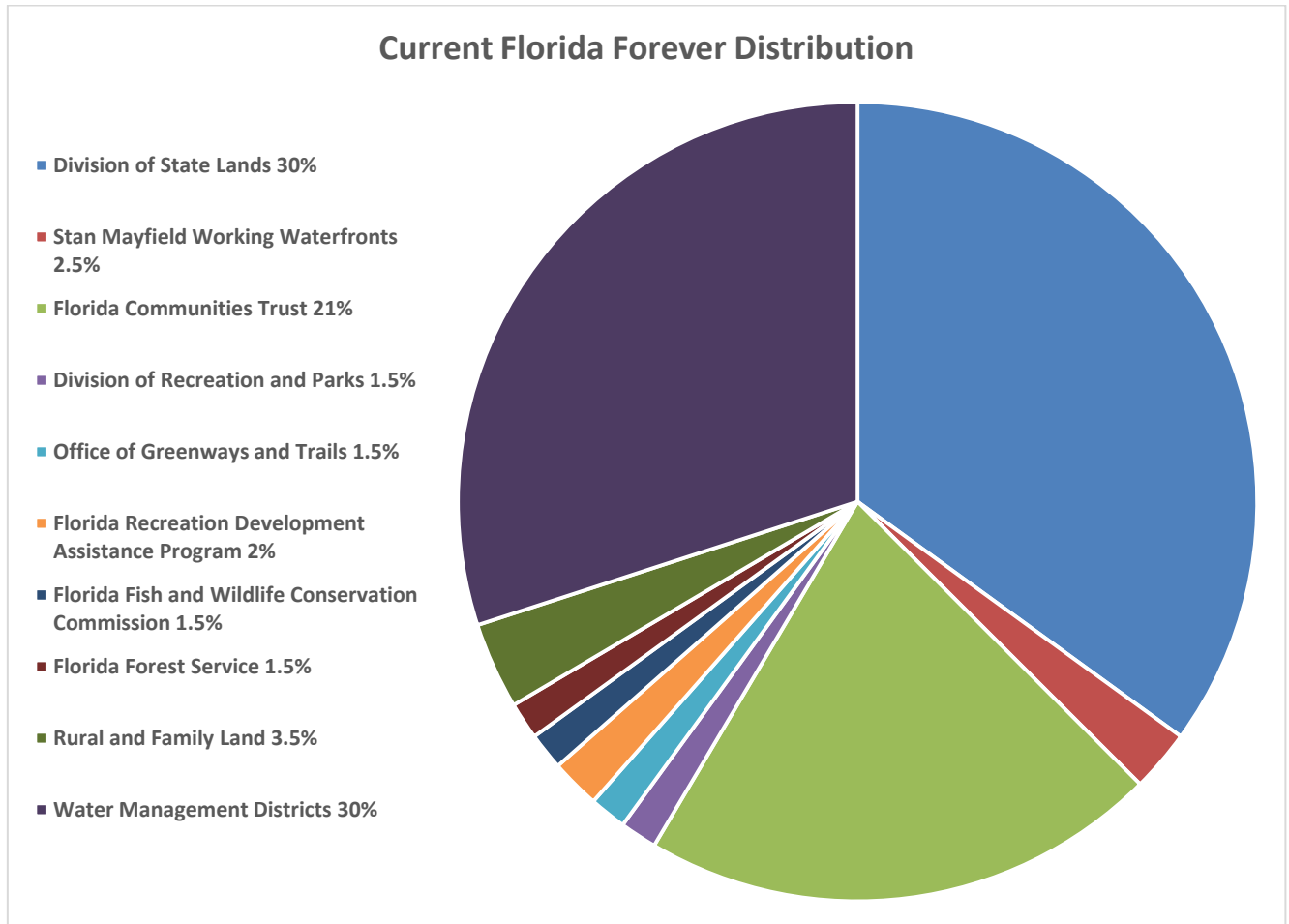
accounts and other costs associated with bonds.⁴⁵ DEP must distribute those proceeds in the following manner:

- Thirty percent to DEP for the acquisition of lands and capital project expenditures necessary to implement the WMDs' priority lists developed in their five-year work plans. WMDs must use a minimum of 50 percent of the total funds provided over the life of the Florida Forever Program for the acquisition of lands. The funds must be distributed to WMDs as follows: 35 percent to the South Florida WMD, 25 percent to the Southwest Florida WMD, 25 percent to the St. Johns River WMD, 7 ½ percent to the Suwannee River WMD, and 7 ½ percent to the Northwest Florida WMD.
- Thirty-five percent to DEP for the acquisition of lands and capital project expenditures under the Florida Forever Program. The funds for the Florida Forever Program must be spent as follows:
 - Increased priority should be given to those acquisitions that achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge;
 - At a minimum, 3 percent, and no more than 10 percent, of the funds allocated to the Florida Forever Program must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access; and
 - Beginning in the 2017-2018 fiscal year (FY) and continuing through the 2026-2027 FY, at least \$5 million must be spent on land acquisition within the Florida Keys Area of Critical State Concern.
- Twenty-one percent to DEP for use by FCT for purposes of the FCT Act and grants to local governments or nonprofit environmental organizations that are tax-exempt under s. 501(c)(3) of the United States Internal Revenue Code. FCT and the grant recipients must use those funds for the acquisition of community-based projects, urban open spaces, parks, and greenways to implement local government comprehensive plans. The funds for FCT must be spent as follows:
 - Emphasize funding projects in low-income or otherwise disadvantaged communities and projects that provide areas for direct water access and water-dependent facilities that are open to the public and offer public access by vessels to waters of the state, including boat ramps and associated parking and other support facilities;
 - At least 30 percent of the total allocation must be used in Standard Metropolitan Statistical Areas. One-half of that amount must be used in localities where the project site is located in built-up commercial, industrial, or mixed-use areas and functions to intersperse open spaces within congested urban core areas; and
 - No less than 5 percent must be used to acquire lands for recreational trail systems, provided that in the event these funds are not needed for such projects, they will be available for other trust projects.
- Two percent to DEP for grants under FRDAP.
- One and five-tenths percent to DEP for the purchase of inholdings and additions to state parks and for capital project expenditures. At a minimum, 1 percent, and no more than 10 percent, of the funds allocated to state parks must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.
- One and five-tenths percent to FFS to fund the acquisition of state forest inholdings and additions, the implementation of reforestation plans or sustainable forestry management practices, and for capital project expenditures. At a minimum, 1 percent, and no more than 10 percent, of the funds allocated for the acquisition of inholdings and additions for state forests may be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.
- One and five-tenths percent to FWC to fund the acquisition of inholdings and additions to lands managed by FWC. The acquisitions must be important to the conservation of fish and wildlife and for certain capital project expenditures. At a minimum, 1 percent, and no more than 10 percent, of the funds allocated to FWC may be spent on capital project expenditures identified

⁴⁵ Section 259.105(3), F.S.
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during the time of acquisition that meet land management planning activities necessary for public access.

- One and five-tenths percent to DEP for FGT to acquire greenways and trails or greenways and trail systems. At a minimum, 1 percent, and no more than 10 percent, of the funds allocated to FGT may be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.
- Three and five-tenths percent to DACS for the acquisition of agricultural lands through perpetual conservation easements and other perpetual less than fee techniques that achieve the objectives of the Florida Forever Program and RFLPP.
- Two and five-tenths percent to DEP for the acquisition of land and capital project expenditures necessary to implement the Stan Mayfield Working Waterfronts Program within FCT.⁴⁶



Effect of the Proposed Changes

The bill amends ss. 215.618(1)(a); 259.032(9)(b), (d), and (e); and 259.105(2)(a), (2)(e), (4)(c)3., (4)(d)2., and (6), F.S., to remove the authorization to use Florida Forever funds for improvements, land management, enhancement, restoration, water resource development projects, and capital improvement projects to focus Florida Forever on land acquisition. In addition, these activities are authorized and are typically funded directly from the LATF.

The bill amends s. 259.03, F.S., to remove the definitions of “capital improvement,” “capital project expenditure,” and “water resource development project” because those types of projects will no longer be funded through Florida Forever based on the changes in the bill.

⁴⁶ *Id.*

The bill amends s. 259.105(2)(a)9., F.S., to add connection of wildlife habitat with a wildlife crossing to the list of multiple benefits current and future Florida Forever acquisitions may provide. It also amends s. 259.105(4)(b)3., F.S., to add wildlife crossings to the criteria and numeric performance measures ARC must consider when evaluating projects that contribute to the goals of Florida Forever. These changes may require the BOT to amend chapter 18-24, F.A.C.

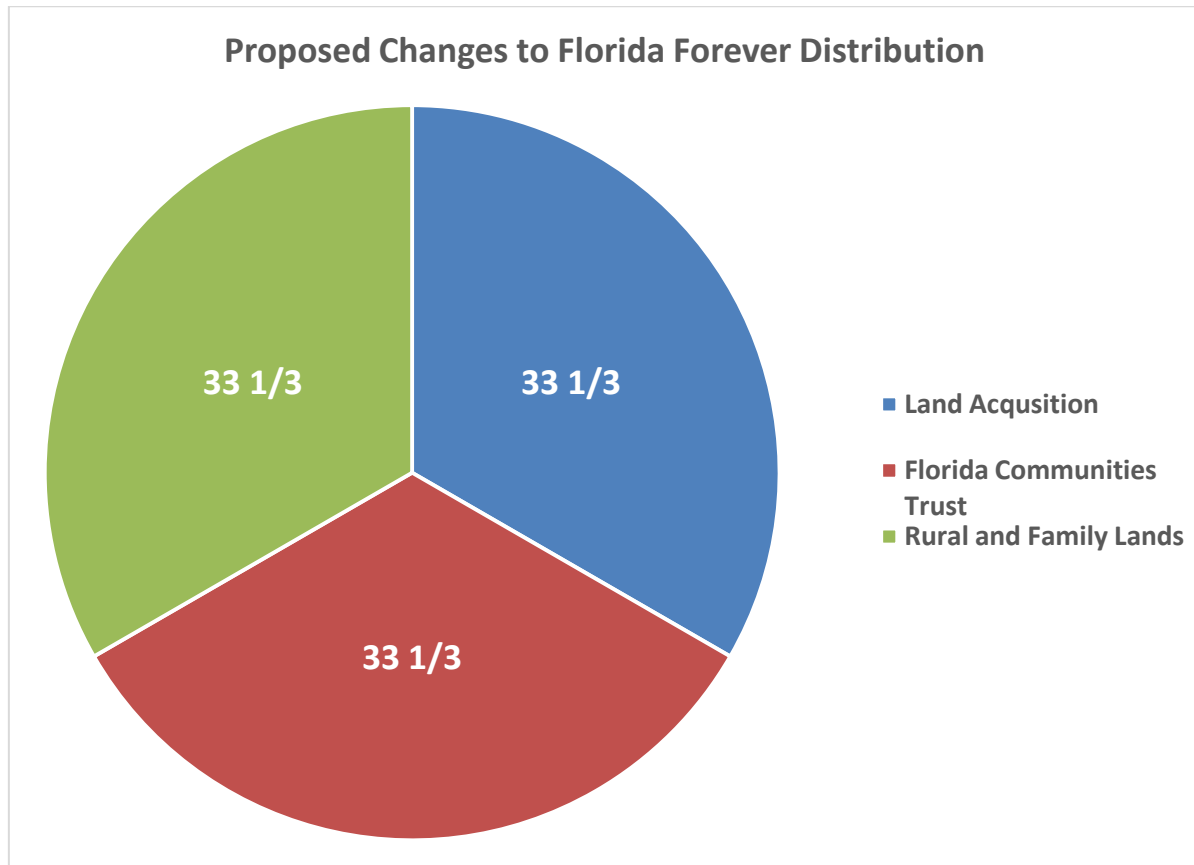
The bill amends s. 259.105(3), F.S., to consolidate the allocations identified in the Florida Forever Act into three categories: land acquisition, FCT, and RFLPP. Specifically, the bill:

- Consolidates funding allocations for land acquisition for Florida Forever projects selected by ARC; the purchase of inholdings for lands managed by DEP, FWC, and FFS; and FRDAP grants into one allocation receiving 33 $\frac{1}{3}$ percent of the funding. FRDAP grants will not require review and approval by ARC.
- Removes funding allocations for acquisitions identified on WMDs' priority lists; acquisition of inholdings and additions to state parks, state forests, and lands managed by FWC; and greenways and trails. These projects will still be eligible to receive funding through the priority list developed by ARC.
- Increases the funding allocation for FCT projects from 21 percent to 33 $\frac{1}{3}$ percent and consolidates the Stan Mayfield Working Waterfronts Program into this allocation.
- Removes the requirement that allocations from FCT funding be used to fund projects in low-income or otherwise disadvantaged communities and projects that provide areas for direct water access and water-dependent facilities that are open to the public and offer public access by vessels to waters of the state.
- Removes the requirement that at least 30 percent of the allocations from FCT funding be used in Standard Metropolitan Statistical Areas.
- Removes the requirement that no less than 5 percent of allocations from FCT funding be used to acquire lands for recreational trail systems.
- Increases funding allocations for RFLPP from 3 $\frac{5}{10}$ percent to 33 $\frac{1}{3}$ percent and requires that DACS give higher priority to the acquisition of rural-lands-protection easements where local governments are willing to provide cost-share funding for the acquisition.
- Removes the authority for state parks, FFS, FWC, and OGT to create a list of acquisitions and inholdings based on the selection criteria established by ARC and acquire those lands if they are identified within the original project boundary, adopted management plan, or management prospectus. State parks, FFS, and FWC will now be required to seek approval through ARC to acquire such lands; however, this requirement will not apply to OGT.
- Removes specific appropriations for the 2016-2017 FY.

The bill repeals s. 259.105(11), F.S., to remove the requirement that each WMD receives a certain percentage of funds from the Florida Forever Trust Fund. It also amends s. 259.105(12), F.S., to prohibit WMDs from using Florida Forever funds to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas.

The bill amends s. 373.199(4)(h), F.S., to restrict the use of Florida Forever funds received by WMDs by providing that the funds may only be used to acquire land and pay associated land acquisition costs for projects identified in their annual work plans. WMDs must use other funding services to fund all other elements of their works plans.

The following graph represents the proposed changes to the Florida Forever distribution:



Land Acquisition Trust Fund

Present Situation

Article X, s. 28 of the Florida Constitution directs 33 percent of net revenues derived from existing excise tax on documents⁴⁷ to LATF for 20 years.⁴⁸ Funds from LATF must be used to:

- Finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for conservation lands; WMAs; lands that protect water resources and drinking water sources and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area; beaches and shores; outdoor recreation lands; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands;⁴⁹ and
- Pay the debt service on bonds.⁵⁰

Section 375.041, F.S., implements Art. X, s. 28 of the Florida Constitution by allocating the distribution of funds from LATF. First, LATF funds must be used to pay debt service or to fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds; and pay debt service, provide reserves, and pay rebate obligations and other amounts due with respect to

⁴⁷ The documentary stamp tax is imposed on documents that transfer interest in Florida real property and certain types of debt. Documents subject to the tax include deeds, bonds, corporate shares, notes and written obligations to pay money, and mortgages, liens, and other evidences of indebtedness. Sections 201.02, 201.07, and 201.08, F.S.

⁴⁸ FLA. CONST. art. X, s. 28(a).

⁴⁹ FLA. CONST. art. X, s. 28(b)(1).

⁵⁰ FLA. CONST. art. X, s. 28(b)(2).

Everglades restoration bonds.⁵¹ Next, of the funds remaining after the payments to fund debt service, but before funds may be appropriated, pledged, or dedicated for other uses:

- A minimum of the lesser of 25 percent or \$200 million must be appropriated annually for Everglades restoration projects;⁵²
- A minimum of the lesser of 7 ⁶/₁₀ percent or \$50 million must be appropriated annually for spring restoration, protection, and management projects;⁵³
- The sum of \$5 million must be appropriated each fiscal year through the 2025-2026 FY to the St. Johns River WMD for projects dedicated to the restoration of Lake Apopka;⁵⁴ and
- The sum of \$64 million must be appropriated and transferred to the Everglades Trust Fund for the 2018-2019 FY, and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project.⁵⁵

Finally, any remaining moneys in LATF not distributed as previously discussed must be appropriated for the purposes set forth in Art. X, s. 28 of the Florida Constitution.⁵⁶

C-43 Reservoir

The Comprehensive Everglades Restoration Plan (CERP) is the congressionally approved framework for restoring, protecting and preserving the water resources of central and southern Florida. CERP calls for the construction of the Caloosahatchee River (C-43) West Basin Storage Reservoir Project. The project will help store and manage basin runoff, as well as Lake Okeechobee regulatory discharges, to meet the needs of the Caloosahatchee Estuary during the wet and dry seasons by reducing the frequency of undesirable salinity ranges.⁵⁷

Effect of the Proposed Changes

The bill creates s. 375.041(3)(b)5., F.S., to establish the funding allocations for the Florida Forever Trust Fund for FYs 2019-2020 through 2035-2036. The bill also amends s. 375.041(3)(b)1., F.S., to require funding priority for the construction of the C-43 West Basin Storage Reservoir Project.⁵⁸

Conservation Lands

Revenue Generated from the Disposition of Conservation Lands

Present Situation

WMDs and local governments use a myriad of funding sources to purchase conservation lands. These funds may come from the state through the Florida Forever Program (or previously from Preservation 2000) or directly from the LATF. Funds for land acquisition may also come from taxes collected by the WMDs and local governments (ad valorem funds).⁵⁹

For the disposal of property, WMDs follow the procedures in s. 373.089, F.S., while the BOT must follow the procedures found in s. 253.0341, F.S., which include additional requirements to ensure the public's interest is protected. The requirements include a study and standard for determining lands to

⁵¹ Section 375.041(3)(a), F.S.

⁵² Section 375.041(3)(b)1., F.S.

⁵³ Section 375.041(3)(b)2., F.S.

⁵⁴ Section 375.041(3)(b)3., F.S.

⁵⁵ Section 375.041(3)(b)4., F.S.

⁵⁶ Section 375.041(4), F.S.

⁵⁷ South Florida WMD, *Quick Facts on Caloosahatchee River (C-43) West Basin Storage Reservoir*, https://www.sfwmd.gov/sites/default/files/documents/spl_calooos_c43_reservoir.pdf (last visited January 18, 2018).

⁵⁸ South Florida WMD, *C-43 Draft Financial and Construction Update*, available upon request from the Natural Resources & Public Lands Subcommittee.

⁵⁹ Section 373.503, F.S.

sell, ARC review, first rights of refusal to local governments and colleges, appraisal procedures, bid requirements, and the management and accounting of funds generated from disposition of lands.

If a WMD sells conservation lands, with the exception of lands purchased with Preservation 2000 or Florida Forever funds, it is unclear where the proceeds of the sale must go. Beginning July 1, 2015, the BOT must deposit proceeds from any sale of conservation lands into the LATF.⁶⁰ This requirement arguably may not apply to WMDs because the statute directing the use of the disposition funds only mentions the BOT. The BOT, WMDs, and local governments must deposit any revenues generated from the disposal of lands acquired with Preservation 2000 funds into the Florida Forever Trust Fund within DEP.⁶¹ WMDs cannot use any revenue derived from disposition of Preservation 2000 or Florida Forever lands for any purpose, except for the purchase of other lands meeting the criteria specified for the selection of WMD lands in s. 373.139, F.S., or payment of debt service on revenue bonds or notes issued by the WMD to undertake capital projects or other projects allowed by the Florida Constitution.⁶² Further, the BOT and WMDs may not surplus or exchange lands if the effect of the sale or exchange would cause all or any portion of the interest on any revenue bonds issued to lose their tax-exempt status.⁶³

It appears that at least one WMD improperly used funds from the disposition of conservation lands for purposes not authorized by statute. Further, some WMDs do not appear to be keeping proper records for the use and disposition of funds for conservation lands.⁶⁴

Effect of the Proposed Changes

The bill creates ss. 125.35(4) and (5), 166.0452, and 373.089(10) and (11), F.S., to require counties, municipalities, and WMDs to deposit proceeds from the sale of surplus conservation lands purchased with Florida Forever funds before July 1, 2015, into the Florida Forever Trust Fund. The bill also requires counties, municipalities, and WMDs to deposit proceeds from the sale of surplus conservation lands purchased with funds from the state on or after July 1, 2015, into the LATF. When counties, municipalities, or WMDs purchase conservation lands with state funds other than those from LATF or a land acquisition trust fund created to implement s. 28, Art. X of the Florida Constitution, counties, municipalities, and WMDs must deposit the proceeds from the sale into the fund from which they purchased the lands. If counties, municipalities, or WMDs bought the conservation land with multiple revenue sources, counties, municipalities, and WMDs must deposit an amount based on the percentage of state funds used for the original purchase.

The bill also relocates the provision prohibiting WMDs from surplus or exchanging lands in certain instances from s. 373.139(6), F.S., to s. 373.089(9), F.S.

Revenue Generated from the Use of Conservation Lands Purchased with State Funding

Present Situation

Several WMDs generate revenue from the use of conservation lands purchased with state funds, including timber sales, hunting, and recreation. All state agencies must return revenues generated through multiple-use management or compatible secondary use management of their lands to the lead managing agency. The lead managing agency may only use these funds to pay for management activities on conservation, preservation, and recreation lands under the agency's jurisdiction. In addition, the agency must segregate such revenue in an agency trust fund to remain available to the

⁶⁰ Section 253.0341(13), F.S.

⁶¹ Section 259.101(5)(c), F.S.

⁶² Section 373.139(6), F.S.

⁶³ Sections 215.618(6), 253.0341(15), and 373.139(6), F.S.

⁶⁴ State of Florida Auditor General, *Operational Audit Report NO. 2017-215, Suwannee River Water Management District* (June 2017), available at: https://flauditor.gov/pages/pdf_files/2017-215.pdf (last visited January 18, 2018).

agency in subsequent fiscal years to support land management activities.⁶⁵ It appears at least one WMD has used funds derived from the use of conservation lands purchased with state funding for purposes unrelated to land management, and the WMD did not segregate the revenue into the appropriate trust funds.⁶⁶

Effect of the Proposed Changes

The bill creates s. 373.1391(7), F.S., to require revenue generated through management or compatible secondary use management of district conservation lands purchased with state funds be returned to the WMD responsible for such management. It requires the WMD to use such revenue to pay for management activities on all conservation, preservation, and recreation lands under the district's jurisdiction. In addition, the WMD must segregate such revenue in a district trust fund and such revenue must remain available to the district in subsequent fiscal years to support land management activities.

Local Rural Conservation Easement Programs

Present Situation

As previously discussed, the Rural and Family Lands Protection Program (RFLPP) within DACS is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements. Local governments may conduct similar programs within their jurisdictions to facilitate the preservation of agricultural lands through acquisition of development rights.⁶⁷ These types of programs provide several benefits including:

- Protecting important farmland while keeping the land in private ownership and on local tax rolls;
- Creating a flexible property interest that can be tailored to meet the needs of individual farmers and ranchers and unique properties;
- Providing land owners with several tax benefits including income, estate, and property tax reductions;⁶⁸ and
- Helping farmers and ranchers transfer their operations to the next generation.⁶⁹

Effect of the Proposed Changes

The bill creates ss. 253.0251(8) and 570.76(9), F.S., authorizing DEP and DACS to provide assistance to local governments administering their own rural-lands-protection easement program. DEP may provide technical support to review applications for inclusion in the local government's rural-lands-protection easement program; serve as the acquisition agent for the local government using the procedures it uses for the RFLPP; facilitate real estate closings; and monitor compliance with the conservation easements. DACS may provide technical support to review applications for inclusion in the local governments' rural-lands-protection easement program and monitor compliance with the conservation easements. The departments may not use any state funds to assist in the purchase of such easements or pay any acquisition costs. The local government must compensate the departments for their services and the departments and local government must document the agreement for assistance in a memorandum of agreement. The local government holds title to the conservation easement acquired on its behalf.

⁶⁵ Sections 253.036 and 259.032(9)(c), F.S.

⁶⁶ State of Florida Auditor General, *Operational Audit Report NO. 2017-215, Suwannee River Water Management District* (June 2017), available at: https://flauditor.gov/pages/pdf_files/2017-215.pdf (last visited January 18, 2018).

⁶⁷ See Miami-Dade County, *Purchase of Development Rights*, <http://www.miamidade.gov/business/agriculture-purchase-development-rights.asp> (last visited January 18, 2018).

⁶⁸ See s. 193.501, F.S.

⁶⁹ Farmland Information Center, *Agricultural Conservation Easements*, available at:

http://www.farmlandinfo.org/sites/default/files/Agricultural_Conservation_Easements_AFT_FIC_01-2016.pdf (last visited January 18, 2018).

Comprehensive Plan Water Facilities Work Plan

Present Situation

Local governments are required to include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element in their comprehensive plan, correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area.⁷⁰

The element must describe the problems and needs and the general facilities that will be required for solution of the problems and needs, including correcting existing facility deficiencies. It must address coordinating the extension of, or increase in the capacity of, facilities to meet future needs while maximizing the use of existing facilities and discouraging urban sprawl; conserving potable water resources; and protecting the functions of natural groundwater recharge areas and natural drainage features.⁷¹ The element must also identify traditional water supply projects, alternative water supply projects, conservation, and reuse necessary to meet the water needs within the local government's jurisdiction. It must include a work plan, covering at least a 10-year planning period, for building public, private, and regional water supply facilities, including development of alternative water supplies, which are identified as necessary to serve existing and new development (water facilities work plan). Local governments must update the work plan at least every five years within 18 months after a WMD approves an updated regional water supply plan.⁷²

A local government that does not own, operate, or maintain its own water supply facilities, including, but not limited to, wells, treatment facilities, and distribution infrastructure, and is served by a public water utility with a permitted allocation of greater than 300 million gallons per day is not required to:

- Amend its comprehensive plan in response to an updated regional water supply plan; or
- Maintain a work plan if any such local government's usage of water constitutes less than one percent of the public water utility's total permitted allocation.

However, the local government must cooperate with and provide relevant data to any local government or utility provider that provides services within its jurisdiction, and keep its general sanitary sewer, solid waste, potable water, and natural groundwater aquifer recharge element updated.

Rural Area of Opportunity

A rural area of opportunity (RAO) is a rural community,⁷³ or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster that presents a unique economic development opportunity of regional impact.⁷⁴ The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay, and Immokalee; and

⁷⁰ Section 163.3177(6)(c), F.S.

⁷¹ Section 163.3177(6)(c)2., F.S.

⁷² Section 163.3177(6)(c)3., F.S.

⁷³ Section 288.0656(2)(e), defines a "rural community" to mean: a county with a population of 75,000 or fewer; a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer; a municipality within a county meeting the definition of rural community; an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors and verified by the Department of Economic Opportunity (DEO). Population must be determined in accordance with the most recent official estimate pursuant to s. 186.901, F.S.

⁷⁴ Section 288.0656(2)(d), F.S.

- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.⁷⁵

Effect of the Proposed Changes

The bill amends s. 163.3177(6)(c)3., F.S., to exempt a local government that is designated as a RAO, and that does not own, operate, or maintain its own water supply facilities, including, wells, treatment facilities, and distribution infrastructure, from developing or maintaining a water facilities work plan.

C-51 Reservoir Project

Present Situation

The C-51 reservoir project is a water storage facility⁷⁶ located in western Palm Beach County south of Lake Okeechobee consisting of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities and provide environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.⁷⁷

The C-51 reservoir project consists of Phase I and Phase II. Phase I will provide approximately 14,000 acre-feet of water storage and will hydraulically connect to the South Florida WMD's L-8 Flow Equalization Basin. Phase II will provide approximately 46,000 acre-feet of water storage, for a total increase of 60,000 acre-feet of water storage.⁷⁸

If state funds are appropriated for Phase I or Phase II, the South Florida WMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to providing relief to the Lake Worth Lagoon; water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and any water received from Lake Okeechobee may not be available to support consumptive use permits.⁷⁹

Phase I may be funded by appropriation or through the water storage facility revolving loan fund. Phase II may be funded by the issuance of Florida Forever bonds, through the water storage facility revolving loan fund, as a project component of the CERP, or through the Everglades Trust Fund.⁸⁰

Water Storage Facility Revolving Loan Fund

The state, through DEP, must provide funding assistance to local governments or water supply entities for the development and construction of water storage facilities⁸¹ to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems. DEP may make loans, provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for water storage facilities approved by DEP. Local governments or water supply entities may borrow funds made available and may pledge any revenues or other adequate security available to them to repay any funds borrowed. DEP may award loan amounts for up to 75 percent of the costs of planning, designing, constructing, upgrading, or replacing water resource infrastructure or facilities,

⁷⁵ DEO, RAO, <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited January 17, 2018).

⁷⁶ Section 373.475, F.S.

⁷⁷ Section 373.4598(9)(a), F.S.

⁷⁸ Section 373.4598(9)(b), F.S.

⁷⁹ Section 373.4598(9)(d), F.S.

⁸⁰ Section 373.4598(9)(e), F.S.

⁸¹ Section 373.475(2)(b), F.S., defines water storage facility.

whether natural or manmade, including the acquisition of real property for water storage facilities.⁸² The minimum amount of a loan is \$75,000 and the term of the loan may not exceed 30 years.⁸³

Effect of the Proposed Changes

The bill amends s. 373.4598(9)(d), F.S., and provides that if state funds are appropriated for Phase I or Phase II, the South Florida WMD, to the extent practicable, must operate Phase I or Phase II to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to maximizing the reduction of harmful discharges to the Lake Worth Lagoon. However, the operation of Phase I must be in accordance with any operation and maintenance agreement adopted by the South Florida WMD, water made available by Phase I or Phase II must be used for natural systems in addition to any permitted amounts for water supply issued in accordance with executed capacity allocation agreements, and water received from Lake Okeechobee must solely be available to support consumptive use permits if the use is in accordance with rules of the applicable restricted allocation area.

The bill allows the South Florida WMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and to request DEP to waive repayment of all or a portion of the loan issued under the water storage facility revolving loan fund. The bill allows DEP to authorize such waiver if, at its determination, it has received reasonable value for the waiver.

Regional Water Supply Authorities

Present Situation

Municipalities, counties, and special districts are encouraged to create regional water supply authorities (RWSA) or multijurisdictional water supply entities to develop, recover, store, and supply water for county or municipal purposes that will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas.⁸⁴ RWSAs are created by interlocal agreement, and are reviewed and approved by DEP to ensure the agreement will be in the public interest. Currently, there are four RWSAs in Florida: Tampa Bay Water (formerly known as the West Coast RWSA), Peace River/Manasota RWSA, Withlacoochee RWSA, and Walton/Okaloosa/Santa Rosa Regional Utility Authority.⁸⁵

Water Resource Development and Funding

WMDs take the lead in identifying and implementing water resource development⁸⁶ projects, and are responsible for securing necessary funding for regionally significant water resource development projects, including regionally significant projects that prevent or limit adverse water resource impacts, avoid competition among water users, or support the provision of new water supplies in order to meet a MFL or to implement a recovery or prevention strategy or water reservation.⁸⁷

WMDs are required to include in their annual budget submittals the amount of funds for each water resource development project in the annual funding plan of the WMD's five-year Water Resource Development Work Program (Work Program).⁸⁸

⁸² Section 373.475(3)(a)-(b), F.S.

⁸³ Section 373.475(7), F.S.

⁸⁴ Sections 373.707(1)(c) and 373.713(1), F.S.

⁸⁵ DEO, *Water Supply Planning*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/water-supply-planning> (last visited January 15, 2018).

⁸⁶ Section 373.019(24), F.S., defines water resource development.

⁸⁷ Sections 373.705(1)(a), and (2)(b), F.S.

⁸⁸ Section 373.705(3)(b)1., F.S.; s. 373.536(6)(a)4., F.S., is the Work Program.

Water Supply Development and Funding

Local governments, RWSAs, and government-owned and privately owned water utilities are the lead in securing funding for and implementing water supply development⁸⁹ projects.⁹⁰ Generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit, and water supply development projects should continue to be paid for through local funding sources.⁹¹

Water supply development projects that are consistent with regional water supply plans (RWSP) and that meet one or more of the following criteria must receive priority consideration for state or WMD funding assistance:

- Supports establishment of a dependable, sustainable supply of water that is not otherwise financially feasible;
- Provides substantial environmental benefits, but requires assistance to be economically competitive; or
- Significantly implements reuse, storage, recharge, or conservation of water that contributes to the sustainability of regional water sources.⁹²

Additionally, if a water supply development project meets one of the criteria previously mentioned and meets one or more of the following criteria then the project must be given first consideration for state or WMD funding assistance: brings about replacement of existing sources aiding in the implementation of an MFL; implements reuse assisting in the elimination of a domestic wastewater ocean outfall; or reduces or eliminates the adverse effects of competition between legal users and the natural system.⁹³

Water supply development must be conducted in coordination with the WMD regional water supply plan and water resource development.⁹⁴

Consolidated WMD Annual Report

By March 1, each WMD must prepare and submit to DEP, the Governor, and the Legislature a consolidated WMD annual report on the management of water resources.⁹⁵ Among the requirements of the consolidated WMD, annual report is the inclusion of the Work Program.⁹⁶

The Work Program must describe the WMD's implementation strategy and include an annual funding plan for each of the five years included in the Work Plan for the water resource and water supply development components of each approved RWSP developed or revised. The Work Program must address all the elements of the water resource development component in the WMD's RWSPs, as well as the water supply projects proposed for WMD funding and assistance.⁹⁷

Polk Regional Water Cooperative and Annual Report

In 2016, Polk County and 15 municipalities within the county entered into an interlocal agreement to create a RWSA known as the Polk Regional Water Cooperative (cooperative).⁹⁸ In 2017, HB 573

⁸⁹ Section 373.019(26), F.S., F.S., defines water supply development.

⁹⁰ Sections 373.705(1)(b), and (2)(c), F.S.

⁹¹ Sections 373.705(2)(c), F.S.

⁹² Section 373.705(4)(a), F.S.

⁹³ Section 373.705(4)(b), F.S.

⁹⁴ Section 373.705(2)(d), F.S.

⁹⁵ Section 373.036(7)(a), F.S.

⁹⁶ Section 373.036(7)(b)5., F.S.

⁹⁷ Section 373.536(6)(a)4., F.S.

⁹⁸ Polk Regional Water Cooperative, *Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative*, [http://www.prwcwater.org/docs/default-source/documents/prwc-charter-\(formation-interlocal-agreement\).pdf?sfvrsn=ffb00418_4](http://www.prwcwater.org/docs/default-source/documents/prwc-charter-(formation-interlocal-agreement).pdf?sfvrsn=ffb00418_4) (last visited January 15, 2018).

passed requiring the cooperative to prepare a comprehensive annual report for water resource projects it identified for state funding consideration.⁹⁹ The cooperative must submit its comprehensive annual report by December 1, 2017, and annually thereafter, to the Governor, Legislature, DEP, and appropriate WMDs.¹⁰⁰ Additionally, the cooperative must coordinate annually with the appropriate WMD to submit a status report on projects receiving priority state funding for inclusion in the consolidated WMD annual report.¹⁰¹

Effect of the Proposed Changes

The bill amends s. 373.713, F.S., and requires RWSAs to coordinate annually with the appropriate WMD to submit a status report on water resource development projects receiving state funding for inclusion in the consolidated WMD annual report.

Stormwater Management

Present Situation

Stormwater is generated from rain events that produce drainage and runoff, which is the flow of rainfall over land or impervious surfaces (e.g., paved streets, parking lots, rooftops) that does not soak into the ground.¹⁰² The National Pollutant Discharge Elimination System (NPDES) Stormwater Program regulates discharges of stormwater from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities, and industrial activities. The United States Environmental Protection Agency (EPA) developed the NPDES stormwater permitting program in two phases. Phase I, promulgated in 1990, addresses large and medium MS4s¹⁰³ and certain categories of industrial activity, one of which is large construction activity that disturbs five or more acres of land. Phase II, promulgated in 1999, addresses additional sources, including MS4s not regulated under Phase I, and small construction activity disturbing between one and five acres.¹⁰⁴ In October 2000, the EPA authorized DEP to implement the NPDES stormwater permitting program in all areas of the state, except tribal lands.¹⁰⁵

Department of Transportation

Stormwater discharges from the Department of Transportation's (DOT) projects and facilities are regulated under multiple water pollution control programs, including the NPDES stormwater permitting program. DOT operates both Phase I and Phase II MS4s throughout the state.¹⁰⁶

State, Regional, and Local Stormwater Management Plans and Programs

DEP, WMDs, and local governments are responsible for the development of mutually compatible stormwater management programs.¹⁰⁷ DEP is required to include goals in the water resource implementation rule for the proper management of stormwater.¹⁰⁸ WMDs are required to establish district and, where appropriate, watershed or drainage basin stormwater management goals, that are

⁹⁹ Ch. 2017-111, Laws of Fla.; s. 373.463(1), F.S.

¹⁰⁰ Section 373.463(2), F.S.

¹⁰¹ Section 373.463(3), F.S.; *See* s. 373.036(7), F.S., for the consolidated WMD annual report.

¹⁰² Rule 62-624.200(12), F.A.C.; DEP, *NPDES Stormwater Program*. <https://floridadep.gov/water/stormwater> (last visited January 16, 2018).

¹⁰³ Rules 62-624.200(4) and (7), F.A.C., define large and medium municipal separate storm sewer system, respectively.

¹⁰⁴ DEP, *NPDES Stormwater Program*. <https://floridadep.gov/water/stormwater>; DEP, *EPA Federal Regulations*, <https://floridadep.gov/water/stormwater/content/epa-federal-regulations> (last visited January 16, 2018).

¹⁰⁵ Section 403.0885, F.S.; DEP, *EPA Federal Regulations*, <https://floridadep.gov/water/stormwater/content/epa-federal-regulations> (last visited January 16, 2018).

¹⁰⁶ DOT, *NPDES Storm Water*, http://www.fdot.gov/maintenance/NPDES_StormWater.shtm (last visited January 16, 2018).

¹⁰⁷ Section 403.0891, F.S.

¹⁰⁸ Section 403.0891(1), F.S.

consistent with the goals adopted by the state and with plans adopted pursuant to the Surface Water Improvement and Management Act (SWIM).¹⁰⁹ In developing their stormwater management programs, local governments must consider the water resource implementation rule, WMD stormwater management goals, plans approved pursuant to the SWIM, and technical assistance information provided by WMDs. Local governments are encouraged to consult with WMDs, DOT, and DEP before adopting or updating their comprehensive plan or public facilities report, whichever is applicable.¹¹⁰

DEP, in coordination and cooperation with WMDs and local governments, must conduct a continuing review of the costs of stormwater management systems¹¹¹ and the effect on water quality and quantity and fish and wildlife values. DEP, WMDs, and local governments must use the review for planning purposes and to establish priorities for watersheds and stormwater management systems, which require better management and treatment of stormwater with emphasis on the costs and benefits of needed improvements to stormwater management systems to better meet needs for flood protection and protection of water quality, and fish and wildlife values.¹¹² The results of the review must be maintained by DEP and WMDs and be provided to appropriate local governments or other parties on request.¹¹³

Altamonte Springs-FDOT Integrated Reuse and Stormwater Treatment

A partnership between the City of Altamonte Springs, DOT, DEP, and the St. Johns River WMD provided a multi-faceted funding approach, bringing the Altamonte Springs-FDOT Integrated Reuse and Stormwater Treatment (A-FIRST) to fruition. This \$11.5 million stormwater and reclaimed water management project will provide up to 4.5 million gallons of water to the City of Altamonte Springs and the City of Apopka.¹¹⁴ The project captures stormwater from Interstate 4 and redirects it to the City of Altamonte Springs' reclaimed water system for use as irrigation. The City of Altamonte Springs sends any of its remaining water to the City of Apopka.¹¹⁵

Effect of Proposed Changes

The bill creates s. 403.0891(7), F.S., and requires DOT to coordinate with DEP, WMDs, and local governments to determine whether it is economically feasible to use stormwater resulting from road construction projects for the beneficial use of providing alternative water supplies, including, but not limited to, directing stormwater to reclaimed water facilities or water storage reservoirs. If it is determined that beneficial use of such stormwater is economically feasible, then such use must be implemented. The bill allows DEP, in consultation with DOT, to adopt rules to implement the provisions regarding beneficial uses of stormwater from DOT road construction projects.

Drinking Water and Domestic Wastewater Utilities Asset Management

Present Situation

Renewing and replacing drinking water and domestic wastewater infrastructure is an ongoing task. Asset management can help a utility maximize the value of its capital as well as its operations and maintenance dollars. Asset management provides utility managers and decision makers with critical information on capital assets and timing of investments. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and

¹⁰⁹ Section 403.0891(2), F.S.

¹¹⁰ Section 403.0891(3), F.S.

¹¹¹ Section 403.031(16), F.S., defines stormwater management system.

¹¹² Section 403.0891(4), F.S.

¹¹³ Section 403.0891(5), F.S.

¹¹⁴ DEP, *Regional Water Supply Planning 2016 Annual Report*, pg. 22,

<https://floridadep.gov/sites/default/files/FINAL%20Regional%20Water%20Supply%20Planning%202016%20Status%20Annual%20Report.pdf> (last visited January 15, 2018).

¹¹⁵ City of Altamonte Springs, *A-FIRST*, <http://www.altamonte.org/index.aspx?NID=699> (last visited January 15, 2018).

developing plans to maintain, repair, and replace assets and to fund these activities.¹¹⁶ The EPA provides guidance and reference manuals for utilities to aid in developing asset management plans (AMPs).¹¹⁷ Many states, including Florida, provide financial incentives for the development and implementation of an AMP when requesting funding under the State Revolving Fund (SRF) or other state funding mechanism.¹¹⁸

State Revolving Loan Fund Asset Management Incentives

There are currently two SRF programs, the Clean Water SRF created under the Clean Water Act and the Drinking Water SRF created under the Safe Drinking Water Act. A SRF is a fund administered by a state to provide low interest loans for investments in drinking water and domestic wastewater infrastructure and implementation of nonpoint source pollution control and estuary protection projects. A SRF receives its initial capital from federal grants and state contributions, and then revolves through the repayment of principal and earned interest on outstanding loans.¹¹⁹

DEP administers both SRF programs.¹²⁰ With respect to AMPs,¹²¹ development of such plans are incentivized through priority scoring,¹²² reduction of interest rates,¹²³ principal forgiveness for financially disadvantaged small communities,¹²⁴ and eligibility for small community wastewater facilities grants.¹²⁵

The AMP must be adopted by ordinance or resolution and written procedures must be in place that implement the plan in a timely manner. The AMP must include:

- Identification of all assets within the project sponsor's system;
- An evaluation of the current age, condition, and anticipated useful life of each asset;
- The current value of the assets and the cost to operate and maintain all assets;
- A capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life;
- An analysis of funding needs;
- An analysis of population growth and wastewater or stormwater flow projections and drinking water use projections, as applicable, for the sponsor's planning area, and a model, if applicable, for impact fees;
- Commercial, industrial and residential rate structures and the establishment of an adequate funding rate structure;
- A threshold rate set to ensure the proper operation of the utility, if the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility; and
- A plan to preserve the assets; renewal, replacement, and repair of the assets as necessary, and a risk-benefit analysis to determine the optimum renewal or replacement time.¹²⁶

¹¹⁶ EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited January 16, 2018).

¹¹⁷ EPA, *Asset Management: A Best Practices Guide*, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF>; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems*, (May 2014) https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited January 16, 2018).

¹¹⁸ EPA, *State Asset Management Initiatives*, (August 2012), https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited January 16, 2018).

¹¹⁹ EPA, *Fed Funds for Water and Wastewater Utilities*, <https://www.epa.gov/fedfunds/epa-state-revolving-funds> (last visited January 16, 2018); DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited January 16, 2018).

¹²⁰ Sections 403.1835(10), and 403.8532(9), F.S.; ch. 62-503, and 62-552, F.A.C.; DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited January 16, 2018).

¹²¹ Rules 62-503.200(3), and 62-552.200(2), F.A.C., define an AMP.

¹²² Rule 62-503.300(e), F.A.C.

¹²³ Rules 62-503.300(5)(b)1., 62-503.700(7), 62-552.300(6)(c)1., and 62-552.700(7), F.A.C.

¹²⁴ Rules 62-503.500(4), and 552.300(2)(b)4., F.A.C.

¹²⁵ Rules 62-505.300(d), and 62-505.350(5)(c), F.A.C.

¹²⁶ Rules 62-503.700(7), and 62-552.700(7), F.A.C.

Water and Wastewater Utility Reserve Fund

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit. The PSC was required to adopt rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for PSC authorization before disbursements are made from the fund.¹²⁷

An applicant that requests approval to create a utility reserve fund must provide a capital improvement plan,¹²⁸ or an AMP prepared by the Florida Rural Water Association,¹²⁹ to the PSC.¹³⁰ The request may be a stand-alone application or in conjunction with an application for rate increase.¹³¹

Domestic Wastewater Treatment Facility Renewal Operating Permit

Domestic wastewater treatment plant operating permits are issued for a term of five years.¹³² An applicant may request renewal of an operation permit for a term of up to 10 years for the same fee and under the same conditions as a five-year permit and must be issued the permit if:

- The treatment facility is not regulated under the NPDES program;
- The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program;
- The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by EPA, DEP, or an approved local program;
- The treatment facility has operated under an operation permit for five years and, for at least the preceding two years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;
- DEP has reviewed the discharge monitoring reports required by DEP rule and is satisfied that the reports are accurate;
- The treatment facility has generally met water quality standards in the preceding two years, except for violations attributable to events beyond the control of the treatment plant or its operator (e.g., destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur); and
- DEP or an approved local program has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.¹³³

Effect of the Proposed Changes

The bill creates s. 403.892, F.S., relating to AMPs and reserve funds for public water systems and domestic wastewater treatment systems. The bill provides legislative findings regarding the public

¹²⁷ Ch. 2016-226, Laws of Fla.; s. 367.081(2)(c), F.S.; *See* r. 25-30.444, F.A.C., for the adopted rule.

¹²⁸ Rule 25-30.444(2)(e), F.A.C., provides a list of requirements for inclusion in the capital improvement plan.

¹²⁹ The Florida Rural Water Association is a nonprofit, non-regulatory professional association that assists water and wastewater systems with water and wastewater operations; Florida Rural Water Association, *Home*, <http://www.frwa.net/> (last visited January 16, 2018).

¹³⁰ Rules 25-30.444(2)(e) and (m), F.A.C.

¹³¹ Rule 25-30.444(2), F.A.C.; *See* ss. 367.081(2)(a), 367.0814, or 367.0822, F.S., for rate increases.

¹³² Section 430.087(1), F.S.; r. 62-620.320(8), F.A.C.

¹³³ Section 403.087(3), F.S.

health and natural resource benefits of developing and implementing AMPs for public water system and domestic wastewater treatment system assets. The findings include the necessity of establishing and properly funding a reserve fund to ensure the timely implementation of an AMP.

The bill requires each public water system¹³⁴ and domestic wastewater treatment system to develop an AMP by August 1, 2022, and create a reserve fund to implement the AMP in a cost effective and timely manner. Annually thereafter on August 1, each public water system and domestic wastewater treatment system must post on its website the implementation status of the AMP and reserve fund and must provide a report regarding such information to DEP. The bill requires a public water system or domestic wastewater treatment system to demonstrate that it is adequately implementing its AMP and has appropriate reserves in place in its reserve fund to be eligible for state funding.

The bill defines a domestic wastewater treatment system to mean any plant or other works used to treat, stabilize, or hold domestic wastes, including pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal. Domestic wastewater treatment systems do not include onsite sewage treatment and disposal systems, as defined in s. 381.0065, F.S.

The bill requires DEP to adopt rules by July 1, 2019, establishing AMP requirements that include, but are not limited to, identification of each asset; evaluation of the current age, condition, and useful life of each asset; a risk-benefit analysis to determine the optimum renewal or replacement time of each asset; and a list of renewal projects with projected timeframes for completion and estimated costs.

The bill amends s. 403.087(3), F.S., adding the timely implementation of the AMP as criteria for a domestic wastewater treatment facility to be eligible for a 10-year permit.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.35, F.S., relating to county authorized to sell real and personal property and to lease real estate.

Section 2. Amends s. 163.3177, F.S., relating to required and optional elements of a comprehensive plan.

Section 3. Creates s. 166.0452, F.S. relating to disposition of municipal conservation land purchased with state funds.

Section 4. Amends s. 215.618, F.S., relating to bonds for acquisition and improvement of land, water areas, and related property interests and resources.

Section 5. Amends s. 253.0251, F.S., relating to alternatives for fee simple acquisition for conservation and recreation lands.

Section 6. Amends s. 259.03, F.S., relating to definitions used for the Florida Forever program.

Section 7. Amends s. 259.032, F.S., relating to conservation and recreation lands.

Section 8. Amends s. 259.105, F.S., relating to the Florida Forever Act.

Section 9. Amends s. 373.089, F.S., relating to sale or exchange of lands, or interests or rights in lands by WMDs.

Section 10. Amends s. 373.139, F.S., relating to acquisition of real property by WMDs.

¹³⁴ Section 403.852(2), F.S., defines a public water system.

- Section 11. Amends s. 373.1391, F.S., relating to management of real property by WMDs.
- Section 12. Amends s. 373.199, F.S., relating to Florida Forever WMD Work Plan.
- Section 13. Amends s. 373.4598, F.S., relating to the C-51 reservoir project.
- Section 14. Amends s. 373.713, F.S., relating to RWSAs.
- Section 15. Amends s. 375.041, F.S., relating to the LATF.
- Section 16. Amends s. 403.087, F.S., relating to permits for domestic wastewater treatment facilities.
- Section 17. Amends s. 403.0891, F.S., relating to state, regional and local stormwater management plans and programs.
- Section 18. Creates s. 403.892, F.S., relating to an AMP and reserve fund.
- Section 19. Amends s. 570.76, F.S., relating to DACS powers and duties.
- Section 20. Amends s. 20.3315, F.S., conforming cross references.
- Section 21. Amends s. 253.027, F.S., conforming cross references.
- Section 22. Amends s. 253.034, F.S., conforming cross references.
- Section 23. Amends s. 259.035, F.S., conforming cross references.
- Section 24. Amends s. 259.037, F.S., conforming cross references.
- Section 25. Amends s. 380.510, F.S., conforming cross references.
- Section 26. Amends s. 570.715, F.S., conforming cross references.
- Section 27. Amends s. 589.065, F.S., conforming cross references.
- Section 28. Provides a statement of legislative findings.
- Section 29. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector for water supply entities receiving waivers of loan repayment under the water storage facility revolving loan fund for the C-51 reservoir project.

The bill may have a negative fiscal impact on private sector entities that own and operate public water systems and domestic wastewater systems due to the requirement to develop and implement an AMP and reserve fund for their public water systems and domestic wastewater systems.

D. FISCAL COMMENTS:

The bill establishes the funding allocations for the Florida Forever Trust Fund for FYs 2019-2020 through 2035-2036.

The bill may have a positive fiscal impact on DEP and DACS by authorizing those agencies to provide assistance to local governments administering their own rural-lands-protection easement program for a fee. In addition, it may have a positive fiscal impact on those local governments choosing to seek assistance from the departments when administering their own rural-lands-protection easement program, because DEP and DACS may assist the local governments in more efficiently operating their program.

The bill may have a negative fiscal impact on counties, municipalities, and WMDs that do not currently return proceeds from the sale of surplus conservation lands purchased with state funds to the proper state trust fund. In addition, the bill may have a negative fiscal impact on WMDs by requiring the districts to deposit any revenue generated from the use of conservation lands purchased with state funds into a separate agency trust fund used to support future land management activities. WMDs will no longer be able to use such funds for other district activities.

The bill may have a positive fiscal impact on the South Florida WMD by prioritizing construction of the C-43 reservoir project.

The bill may have a negative fiscal impact on state agencies and local governments that own and operate public water systems and domestic wastewater systems due to the requirement that they develop and implement an AMP and reserve fund for their public water systems and domestic wastewater systems. The bill also requires a public water system or domestic wastewater system to demonstrate that it is adequately implementing its AMP and has appropriate reserves in place in its reserve fund to be eligible for state funds. Remote state facilities, such as Department of Corrections facilities, own and operate public water systems and domestic wastewater systems that are subject to the requirements as do local governments.

The bill may have a positive fiscal impact on those local governments designated as a RAO by exempting them from the requirement to develop or maintain a water facilities work plan.

The bill may have a negative fiscal impact on local governments who are a RWSA due to the requirement that such local governments coordinate annually with the appropriate WMD to submit a status report on water resource development projects receiving state funding for inclusion in the consolidated WMD annual report.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to develop and implement AMPs for public water supply systems and domestic wastewater systems that are local government owned. An exception may apply because the bill provides a legislative finding of important state interest and the bill appears to apply to similarly situated persons in that state agencies and local governments both most comply with the requirement. In addition, an exception would apply if the bill passes by a two-thirds vote of the membership since it also includes a legislative finding of important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill allows DEP, in consultation with DOT, to adopt rules to implement beneficial uses of stormwater from DOT road construction projects.

The bill requires DEP to adopt rules establishing AMP requirements by July 1, 2019. The rules also must establish requirements for the annual report on AMP implementation and provides requirements that the report must meet.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.