

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB NRAC 09-02 Environmental Protection

SPONSOR(S): Natural Resources Appropriations Committee

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Natural Resources Appropriations Committee		Smith	Lachat
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

PCB 09-02 revises statutory provisions governing several trust funds and programs within the Department of Environmental Protection (DEP) and the Fish and Wildlife Conservation Commission (FWC). Specifically, the bill:

- Redistributes to the General Revenue Fund all of the revenues collected from the excise tax on documents that are currently distributed to the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection and the Marine Resources Conservation Trust Fund within the Fish and Wildlife Conservation Commission.
- Redirects \$6,300,000 to the General Revenue Fund from the Land Acquisition Trust Fund within DEP.
- Amends statutes governing the collection and distribution of the excise tax on documents to provide that amounts needed to pay debt service or to fund debt service or other amounts payable with respect to bonds issued before July 1, 2009, which are secured by revenues provided by affected subsection of statute shall be made available for these purposes. The bill prioritizes the payment of debt service on the Preservation 2000 Bonds, Florida Forever Bonds, and the Everglades Restoration Bonds issued prior to July 1, 2009, by making all documentary stamp revenues available to pay debt service in the event of a shortfall.
- Deletes the distribution of two-tenths of one percent of sales and use tax revenues into the Ecosystem Management and Restoration Trust Fund within DEP; therefore redirecting the revenue to the General Revenue Fund.
- Establishes a new solid waste disposal fee, and provides for the proceeds of the fee, less administrative costs, to be deposited into the General Revenue Fund.
- Terminates the Lake Okeechobee Preservation Trust Fund within the DEP, deleting cross-references regarding the trust fund.

This bill has a positive recurring fiscal impact on the General Revenue Fund of \$54,900,000 in fiscal year 2009-10, \$72,200,000 in fiscal year 2010-11, and \$82,200,000 in fiscal year 2011-12. The bill has a negative fiscal impact on the state trust funds of (\$44,500,000) in fiscal year 2009-10, (\$47,200,000) in fiscal year 2010-11, and (\$57,400,000) in fiscal year 2011-12. The bill conforms law to the House of Representatives' proposed fiscal year 2009-10 General Appropriations Act.

The bill has an effective date of July 1, 2009, except as otherwise provided.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Excise Tax on Documents

Present Situation:

Water Protection & Sustainability Program Trust Fund

Chapter 2005-289, LOF, created the Water Protection & Sustainability Program Trust Fund (WPSPTF) within the Department of Environmental Protection (DEP). Current law¹ provides for the following uses of funds deposited into the fund:

- Assistance to Water Management Districts for the implementation of alternative water supply programs as provided in s. 373.1961, F.S.;
- Best management practices and capital project expenditures for the total maximum daily loads programs in s. 403.067, F.S., associated with agricultural and nonagricultural nonpoint sources; and,
- Disadvantaged Small Community Wastewater Grant Programs as provided in s. 403.1838, F.S.

The excise tax on documents levied under chapter 201, F.S., provides revenue to the General Revenue Fund and various trust funds, including the WPSPTF in the DEP. Section 201.15, F.S., provides for the distribution of the revenues collected from the excise tax on documents. Pursuant to s. 201.15(1)(c)(2), F.S., after service charges and costs of administering the tax are deducted, each fiscal year the WPSPTF receives the lesser of 5.64% of tax revenues or \$80 million. The Revenue Estimating Conference has determined that the WPSPTF will receive \$11.84 million from documentary stamp tax collections in fiscal year 2008-09 and \$2.33 million in fiscal year 2009-10.²

¹ Section 403.890, F.S.

² Documentary Stamp Tax Collections and Distributions, March 13, 2009,

<http://edr.state.fl.us/conferences/docstamp/Doc%20Stamp%20Distribution%20Sheet%20March%202009.pdf>.

Marine Resources Conservation Trust Fund

Section 379.208, F.S., created the Marine Resources Conservation Trust Fund (MRCTF) within the Fish and Wildlife Conservation Commission and provides for the following uses of funds deposited into the fund:

- To reimburse the cost of activities authorized pursuant to the Fish and Wildlife Service of the United States Department of the Interior. The facilities must be involved in the actual rescue and full-time acute care veterinarian-based rehabilitation of manatees. The cost of activities includes, but is not limited to, costs associated with expansion, capital outlay, repair, maintenance, and operation related to the rescue, treatment, stabilization, maintenance, release, and monitoring of manatees. Moneys distributed through the contractual agreement to each facility for manatee rehabilitation must be proportionate to the number of manatees under acute care rehabilitation; the number of maintenance days medically necessary in the facility; and the number released during the previous fiscal year. The commission may set a cap on the total amount reimbursed per manatee per year;
- For training on the care, treatment, and rehabilitation of marine mammals at the Whitney Laboratory and the College of Veterinary Medicine at the University of Florida;
- For program administration costs of the agency; and
- Funds not distributed in any 1 fiscal year must be carried over for distribution in subsequent years.

Pursuant to s. 201.15(1)(c)(5), F.S., after service charges and costs of administering the tax are deducted, each fiscal year the MRCTF within the FWC receives the lesser of .14% of tax revenues or \$2 million. The Revenue Estimating Conference has determined that the MRCTF will receive \$290,000 from documentary stamp tax collections in fiscal year 2008-09 and \$60,000 in fiscal year 2009-10.³

Land Acquisition Trust Fund

Section 375.041, F.S., creates the Land Acquisition Trust Fund (LATF) within the Department of Environmental Protection and provides for the following uses of funds deposited into the fund:

- Moneys on deposit shall be first applied to pay the rentals due under lease-purchase agreements or to meet debt service requirements of revenue bonds issued pursuant to s. 375.051, F.S.; provided, however, that debt service on Save Our Coast bonds shall not be paid from moneys transferred to the Land Acquisition Trust Fund pursuant to s. 259.032(2)(b), F.S;
- Any moneys in the Fund which are not pledged for rentals or debt service may be expended from time to time to acquire land, water areas, and related resources and to construct, improve, enlarge, extend, operate, and maintain capital improvements and facilities in accordance with the plan; and
- In addition to the uses allowed above, for the 2008-2009 fiscal year, moneys in the Fund are authorized for transfer to the Ecosystem Management and Restoration Trust Fund for grants and aids to local governments for water projects as provided in the General Appropriations Act. This paragraph expires July 1, 2009.

Pursuant to s. 201.15(2), F.S., after service charges and costs of administering the tax are deducted, each fiscal year the LATF receives the lesser of 7.6% of tax revenues or \$84.9 million. The Revenue Estimating Conference has determined that the LATF will receive \$75.42 million from documentary stamp tax collections in fiscal year 2008-09 and \$57.44 million in fiscal year 2009-10.⁴

Effects:

Beginning with the 2009-2010 fiscal year, the bill redistributes to the General Revenue Fund all of the revenues collected from the excise tax on documents that are currently distributed to the WPSPTF and

³ *Id.*

⁴ *Id.*

the MRCTF. Beginning with the 2009-10 fiscal year, the bill redirects \$6,300,000 million to the General Revenue Fund from the LATF within the DEP, and the remainder will be paid into the State Treasury to the credit of the Land Acquisition Trust Fund.

This bill amends s. 201.15, F.S., to provide that all costs of the collection and enforcement of excise tax on documents and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts relating to bonds issued before July 1, 2009, secured by revenues distributed pursuant to subsection (1), after distributions are made pursuant to subsection (1). The section also is amended to provide that if amounts necessary to pay debt service or other amounts payable with respect to Preservation 2000 Bonds, Florida Forever Bonds, or Everglades Restoration Bonds issued prior to July 1, 2009, exceed the amounts distributable pursuant to subsection (1), all moneys distributable pursuant to the section shall be made available for said purposes; however, amounts distributable pursuant to subsections (2), (3)(b), (4), (5), (9)(a) or (10) will not be available for such purposes to the extent such moneys are necessary to pay debt service on bonds secured by revenues provided in those subsections.

Sales Tax

Present Situation:

Tax Distribution

Chapter 212, F.S., imposes a state sales and use tax of six percent on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles. Tax collections are deposited by the Department of Revenue (department) in the General Revenue Fund and into a variety of trust funds benefiting state agencies and local governments. Section 212.20, F.S., governs the distribution by the department of tax revenues collected under the provisions of chapter 212, F.S.

Ecosystem Management and Restoration Trust Fund

Chapter 2004-104, LOF, creates the Ecosystem Management and Restoration Trust Fund within the Department of Environmental Protection and provides for the following uses of funds deposited into the fund:

- The planning and implementation of programs for the management and restoration of ecosystems;
- Implementation of surface water improvement and management plans and programs under ss. 373.451 - 373.4595, F.S.;
- Restoration of polluted areas of the state to their condition before pollution occurred or otherwise enhance pollution-control activities;
- Restoration or rehabilitation of injured or destroyed coral reefs;
- To recover moneys as a result of actions against any person for a violation of chapter 373, F.S.; and
- To address erosion control, beach preservation, beach restoration and beach nourishment.

Currently, in any fiscal year, the greater of \$500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, F.S., or 5 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b), F.S., are deposited in monthly installments into the General Revenue Fund. Two-tenths of one percent is transferred into the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects. The Revenue Estimating Conference has determined that the Ecosystem Management and Restoration Trust Fund will receive \$37.1 million from the proceeds of taxes collected in fiscal year 2008-09 and \$35.8 million in fiscal year 2009-10.⁵

⁵ General Revenue Fund Financial Outlook Statement, March 13, 2009, <http://edr.state.fl.us/conferences/generalrevenue/grout1.pdf>.

Effects:

This bill amends s. 212.20, F.S., to delete the distribution of two-tenths of one percent transfer into the Ecosystem Management and Restoration Trust Fund. The distribution of 5 percent to the General Revenue Fund is increased to 5.2 percent of all the other taxes and fees imposed pursuant to this chapter to ensure all subsequent distributions after s. 212.20(6)(d)(1), F.S., are unaffected. The Revenue Estimating Conference has determined that the Ecosystem Management and Restoration Trust Fund will receive \$35.8 million from the proceeds of taxes collected in fiscal year 2009-10, therefore redirecting the revenue to the General Revenue Fund.

Solid Waste Disposal Fee

Present Situation:

There are three major methods utilized to manage municipal solid waste (MSW) in the state: landfilling, waste-to-energy (WTE), and waste reduction/recycling. As of January 1995, the state had 105 landfills, 74 of which are lined Class 1 landfills which receive at least 20 tons per day of solid waste. The state's current waste-to-energy plant capacity is 18,156 tons per day, making Florida the state with the most WTE capacity in the nation. Waste reduction/recycling includes the 38 composting facilities operating in 23 counties throughout the state. The number of recycling facilities is unknown since a state permit is not required.

From 1990 to 1994 there was a decrease in the amount of waste placed in Florida's landfills, while the amount of waste processed by recycling and waste-to-energy facilities increased. In 1990 and 1991 landfills processed a larger proportion of waste in coastal counties than the recycling and waste-to-energy facilities combined. In 1994 2.2 percent more of the coastal counties' total waste was processed by recycling facilities than by landfills. In coastal counties the amount of waste processed by waste-to-energy plants has been slowly increasing since 1990. By 1994 almost 30 percent of the waste generated in coastal counties was processed by waste-to-energy plants.

The processing of MSW in non-coastal counties has followed a trend similar to that of the coastal counties. However, landfills still remain the dominant form of waste disposal in non-coastal counties, with over half of the waste going to landfills, although the amount of waste recycled in non-coastal counties has more than tripled. Waste-to-energy facilities have been less popular in non-coastal counties, which processed less than 4 percent of their waste between 1990 and 1994.⁶

The following is information on previous amounts of waste and descriptions of the types of landfills in Florida⁷:

Florida Municipal Solid Waste (MSW) Landfilled (2004-2007)				
Year	2004	2005	2006	2007
Population	17,514,904	17,918,227	18,349,132	18,680,367
Landfill Tonnage*	19,139,385	23,471,344	22,742,125	19,279,171

* Does not include Waste to Energy or recycling tonnage.

DEP estimates that the 2005 MSW landfilled tonnage includes some (possibly up to 10%) hurricane disposal tonnage.

⁶ http://www.pepps.fsu.edu/FACT/sec_A/mun.html.

⁷ Email from Department of Environmental Protection, Division of Waste, Director Mary Jean Yon, March 22, 2009.

Issue: Landfill Disposal Surcharge Fee

Facility Type	Facility Count	Type of Waste Received
Class I Landfill	52	Solid waste including household and commercial garbage. Statute and rules prohibit the following from being disposed in Class I landfills: hazardous waste, biomedical waste, lead-acid batteries, used oil, yard trash, white goods (old appliances), non-containerized liquids, or whole waste tires.
Class III Landfill	44	Yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department of Environmental Protection that are not expected to produce leachate which poses a threat to public health or the environment.
Construction & Demolition Debris Facilities	118	Discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, gypsum wallboard, and lumber. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project, as well as clean cardboard, paper, plastic, wood, and metal scraps from a construction project.
Land Clearing Debris Disposal Facilities	92	Rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project.

There are currently 35 states that have landfill disposal surcharges. Florida does not have a landfill disposal surcharge fee.

Effects:

Beginning January 1, 2010, this bill imposes a (tipping) fee of \$1.25 per ton on any owner of a permitted solid waste facility for each ton of solid waste disposed at such facility. The fee will be assessed on the solid waste collector entity at the disposal site. The Department of Revenue, which will administer, collect, and enforce the fee, will deduct amounts necessary to pay the costs of the collection and enforcement of the fee, but administrative costs may not exceed 3 percent of the total revenues collected. All proceeds remaining after the deduction of costs shall be paid into the State Treasury to the credit of the General Revenue Fund. The Department of Revenue is authorized to adopt rules and prescribe and publish such forms as are necessary to administer this section and establish audit procedures and assess delinquent fees.

Estimated revenue of \$25 million is generated from 7.5 million households. The Revenue Estimating Conference has determined that the General Revenue Fund will receive \$25 million from the fees collected in fiscal year 2009-10.⁸

⁸ Revenue Estimating Conference, March 27, 2009, <http://edr.state.fl.us/conferences/revenueimpact/Impact2009worksheet.pdf>.

Termination of Trust Funds within the Department of Environmental Protection

Present Situation:

The Lake Okeechobee Protection Trust Fund, authorized by s. 373.45952, F.S., provides funds to restore and protect Lake Okeechobee and downstream receiving waters. The projected cash balance at the end of fiscal year 2008-09 is \$130,000.

Effects:

The bill terminates the Lake Okeechobee Protection Trust Fund, FLAIR number 37-2-890, within the Department of Environmental Protection, and deletes cross references regarding the trust fund.

All current balances remaining in the Lake Okeechobee Protection Trust Fund are transferred to the General Revenue Fund. The projected cash balance for the Lake Okeechobee Protection Trust Fund at the end of fiscal year 2008-09 is \$130,000.

B. SECTION DIRECTORY:

- Section 1. Amends s. 201.15, F.S., to remove provisions authorizing the distribution of a specified amount of the proceeds from excise tax documents to the Water Protection and Sustainability Program and the Marine Resources Conservation Trust Fund; provide for the distribution of a specified amount of the of the proceeds from excise tax on documents to the General Revenue Fund; remove obsolete provisions, and provide priority for amounts necessary to cover debt service for bonds issued prior to July 1, 2009.
- Section 2. Amends paragraph (d) of subsection (6) of s. 212.20, F.S., to remove provisions directing the distribution of a specified amount of the proceeds from sales tax to the Ecosystem Management and Restoration Trust Fund.
- Section 3. Creates s. 403.7062, F.S., to provide for a solid waste disposal fee; provide for collection of the fee and distribution of the proceeds; authorizes the Department of Revenue to adopt rules; and provides for an effective date of January 1, 2010.
- Section 4. Terminates the Lake Okeechobee Protection Trust Fund within the Department of Environmental Protection.
- Section 5. Amends paragraph (a) of subsection (5) of s. 11.45, F.S., relating to definitions; duties; authorities; reports; rules; to remove conforming cross-references due to the termination of the Lake Okeechobee Protection Trust Fund.
- Section 6. Amends paragraph (b) of subsection (2) of s. 202.18, F.S., relating to the allocation and disposition of tax proceeds; to remove conforming cross-references due to the termination of the Lake Okeechobee Protection Trust Fund.
- Section 7. Amends subsection (3) of s. 218.245, F.S., relating to revenue sharing; apportionment; to remove conforming cross-references due to the termination of the Lake Okeechobee Protection Trust Fund.
- Section 8. Amends subsections (5), (6), and (7) of s. 218.65, F.S., relating to emergency distribution; to remove conforming cross-references due to the termination of the Lake Okeechobee Protection Trust Fund.
- Section 9. Amends subsection (6) of s. 288.1169, F.S., relating to International Game Fish Association World Center facility; to remove conforming cross-references due to the termination of the Lake Okeechobee Protection Trust Fund.

Section 10. Repeals s. 373.45952, F.S., relating to the creation of the Lake Okeechobee Protection Trust Fund.

Section 11. Provides that this act shall take effect July 1, 2009, or as otherwise provided for in this bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>(FY 2009-10)</u>	<u>(FY 2010-11)</u>	<u>(FY 2011-12)</u>
Recurring:			
Excise Tax on Documents			
DEP WPSPTF Redirect			
GR	\$2,330,000	\$3,310,000	\$10,240,000
WPSTF	(\$2,330,000)	(\$3,310,000)	(\$10,240,000)
DEP LATF Redirect			
GR	\$6,300,000	\$6,300,000	\$6,300,000
LATF	(\$6,300,000)	(\$6,300,000)	(\$6,300,000)
FWC MRCTF Redirect			
GR	\$60,000	\$80,000	\$250,000
MRCTF	(\$60,000)	(\$80,000)	(\$250,000)
Sales Tax Distribution			
GR	\$35,800,000	\$37,500,000	\$40,600,000
DEP EMRTF	(\$35,800,000)	(\$37,500,000)	(\$40,600,000)
Solid Waste Disposal Fee			
GR	\$10,400,000	\$25,000,000	\$25,000,000
Total Recurring General Revenue	<u>\$54,890,000</u>	<u>\$72,180,000</u>	<u>\$82,350,000</u>
Total Trust Fund	<u>(\$44,490,000)</u>	<u>(\$47,180,000)</u>	<u>(\$57,350,000)</u>
Nonrecurring:			
Termination of LOPTF			
GR	\$130,000		
DEP LOPTF	(\$130,000)		

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The solid waste disposal (tipping) fee of \$1.25/ton will be assessed on the solid waste collector entity at the disposal site.

D. FISCAL COMMENTS:

This bill redistributes to the General Revenue Fund all of the revenues collected from the excise tax on documents that are currently distributed to the Water Protection and Sustainability Program Trust Fund (WPSPTF) and the Marine Resources Conservation Trust Fund (MRCTF). Currently, the WPSPTF would receive \$2.33 million from documentary stamp tax collections and the MRCTF would receive \$60,000 in fiscal year 2009-10.⁹ Beginning in fiscal year 2009-10, these revenues will be distributed into the General Revenue Fund. As a result, the bill reduces revenue for marine mammal care within the FWC; however remaining programs, such as the University of Florida's School of Veterinary Medicine will continue to be funded from vessel registration fees deposited into the Marine Resources Conservation Trust Fund.

The bill annually redirects \$6.3 million in documentary stamp tax collections from the Land Acquisition Trust Fund to the General Revenue Fund beginning in fiscal year 2009-10. This change has the effect of reducing funds available for acquiring coastal lands or to pay debt service on new bonds issues to acquire coastal lands and to develop and manage lands acquired with moneys from the Fund.

This bill deletes the distribution of two-tenths of one percent of sales and use tax revenue into the Ecosystem Management and Restoration Trust Fund; therefore redirecting the revenue to the General Revenue Fund. The distribution of 5 percent is increased to 5.2 percent for all the other taxes and fees imposed pursuant to chapter 212.20, F.S., to ensure all subsequent distributions are unaffected. The Revenue Estimating Conference determined that the Ecosystem Management and Restoration Trust Fund will receive \$37.1 million from the proceeds of taxes collected in fiscal year 2008-09 and \$35.8 million in fiscal year 2009-10.¹⁰ Beginning in fiscal year 2009-10, these revenues will be distributed into the General Revenue Fund. This change has the effect of reducing funds available for water quality improvement and water restoration projects.

The Revenue Estimating Conference projects revenues of \$25 million in fiscal year 2009-2010 for the new solid waste disposal fee.¹¹ However, House appropriation staff estimate that only \$10.4 million of revenue from this fee will be generated for fiscal year 2009-10 due to the implementation of this program. The proceeds from this solid waste disposal fee will be directed into the General Revenue Fund.

Due to the termination of the Lake Okeechobee Protection Trust Fund current balances remaining will be transferred to the General Revenue Fund, the projected cash balance at the end of fiscal year 2008-09 is \$130,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

⁹ Documentary Stamp Tax Collections and Distributions, March 13, 2009, <http://edr.state.fl.us/conferences/docstamp/Doc%20Stamp%20Distribution%20Sheet%20March%202009.pdf>.

¹⁰ General Revenue Fund Financial Outlook Statement, March 13, 2009, <http://edr.state.fl.us/conferences/generalrevenue/grout1.pdf>.

¹¹ *Id.*

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Department of Revenue to adopt rules and prescribe and publish such forms that are necessary to administer section 3 of this bill and establish audit procedures and assess delinquent fees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A.