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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2017	.	
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The Committee on Appropriations (Simmons) recommended the following:

1 **Senate Substitute for Amendment (920390) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Emergency rehabilitation of the Central and
7 Southern Florida Project for Flood Control and Other Purposes.-

8 (1) As used in this section, the term:

9 (a) "A-1 and A-2 lands" means the approximately 31,000
10 acres in Compartment A acquired pursuant to the March 1999



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11 Talisman Exchange and Purchase and Sale Agreement.

12 (b) "CERP" has the same meaning as the term "comprehensive
13 plan" as defined in s. 373.470, Florida Statutes.

14 (c) "Corps of Engineers" or "Corps" means the United States
15 Army Corps of Engineers.

16 (d) "C&SF" means the Central and Southern Florida Project
17 for Flood Control and Other Purposes.

18 (e) "C&SF agreement" means the agreement entered into
19 between the state and the Federal Government to operate the
20 C&SF.

21 (f) "Department" means the Department of Environmental
22 Protection.

23 (g) "Dike" means the Herbert Hoover Dike.

24 (h) "District" means the South Florida Water Management
25 District.

26 (i) "DSADS" means the Dam Safety Action Decision Summary
27 for the Herbert Hoover Dike compiled by the Corps of Engineers.

28 (j) "Everglades Agricultural Area" or "EAA" has the same
29 meaning as in s. 373.4592, Florida Statutes.

30 (k) "EAA Storage Reservoir" means the above-ground
31 reservoir located in the Everglades Agricultural Area, which is
32 included in the comprehensive plan as defined in s.

33 373.470(2)(b), Florida Statutes, and subsequently modified by
34 the project implementation reports approved pursuant to s.
35 601(b)(1)(D)(i) of Pub. L. No. 106-541, December 11, 2000.

36 (l) "Interim LORS08 Schedule" means the 2008 Lake
37 Okeechobee Interim Regulation Schedule approved by the Corps on
38 April 28, 2008.

39 (m) "Modification study" means the Corps of Engineers



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40 evaluation known as the Herbert Hoover Dike Dam Safety
41 Modification Study.

42 (2) The Legislature finds that the dike, a major component
43 of the C&SF, is designated by the Corps of Engineers as meeting
44 Dam Safety Classification Level 1, the highest risk designation
45 used by the Corps. Because of the instability of the dike, the
46 Corps implemented the Interim LORS08 Schedule, a lower lake
47 schedule, while dike repairs were completed. The Interim LORS08
48 Schedule has resulted in regular releases of significant amounts
49 of lake water into the St. Lucie River and Caloosahatchee River
50 systems to reduce pressure on the dike. These releases, combined
51 with local basin runoff, have resulted in significant negative
52 impacts to public health, water supply, property, and the
53 environment for residents throughout South Florida. Furthermore,
54 the current critical state of the dike presents significant risk
55 of major injury, loss of life, property destruction, and
56 environmental damage for communities and other interests near
57 Lake Okeechobee. These negative impacts can be ameliorated with
58 the expeditious completion of the dike repairs and
59 implementation of a new lake regulation schedule. Therefore,
60 given the inadequate response of the Corps to these known risks
61 and the significant and unacceptable potential for harm to the
62 state and its residents, the Legislature finds that an emergency
63 situation exists in the C&SF which the state must address
64 immediately.

65 (3) The district is directed to immediately attempt to
66 negotiate with the Corps of Engineers to develop an
67 intergovernmental agreement to reduce the discharges of water
68 from Lake Okeechobee and expedite the rehabilitation of the dike



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69 and any other work in order to comply with the purposes and
70 intent of the C&SF agreement. As part of the agreement, the
71 district shall negotiate with the Corps to:

72 (a) Revise and expedite the Modification Study and DSADS in
73 support of the directives in paragraphs (b) and (c);

74 (b) Materially rehabilitate, repair, improve, and
75 strengthen the dike on an expedited schedule so as to reach
76 substantial completion on or before July 1, 2021. This expedited
77 rehabilitation, repair, improvement, and strengthening shall be
78 implemented, as deemed reasonable by the district and the Corps
79 given the complexity of the project and the significant risks of
80 further delay, in such a manner as to accomplish all of the
81 goals of the C&SF, including, but not limited to, protecting the
82 residents of this state and limiting the harmful discharges of
83 water from Lake Okeechobee; and

84 (c) Ensure that the Corps of Engineers' release of lake
85 water into the St. Lucie River and Caloosahatchee River systems
86 is executed only as part of a schedule jointly developed with
87 input from the district.

88
89 As part of the negotiations conducted pursuant to this
90 subsection, the district is authorized to require that provision
91 be made for adequate assurances from the Corps that funds
92 advanced will be repaid by the Corps, or on the Corps' behalf.
93 However, if circumstances are such that an advancement of funds
94 is necessary to address an emergency situation relating to the
95 goals and directives of this act, the district may advance funds
96 without such assurances.

97 (4) If the district is unable to reach an agreement by



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98 October 1, 2017, to, at a minimum, meet the objectives provided
99 in paragraphs (3) (a), (b), and (c), the district is authorized,
100 if it deems such action necessary and appropriate to satisfy the
101 objectives of this section, to immediately declare the rights of
102 the state to ultimately control discharges of water from Lake
103 Okeechobee and to assume a leadership role in the rehabilitation
104 of the dike and any other work in order to comply with the
105 purposes and intent of the C&SF agreement. As part of its
106 leadership role, the district may request the Corps of Engineers
107 to meet the objectives provided in paragraphs (3) (a), (b), and
108 (c). If the Corps refuses or fails to take action on this
109 request, or refuses or fails to achieve the objectives provided
110 in paragraphs (3) (a), (b), and (c), the district is authorized
111 to take all steps necessary to accomplish such action or achieve
112 such objectives itself. The district is also authorized to
113 extend the time period for reaching an agreement with the Corps
114 pursuant to this subsection for a reasonable period of time if
115 the district determines that the parties are negotiating in good
116 faith and are nearing an agreement.

117 (5) In the process of rehabilitation, repair, improvement,
118 and strengthening of the dike, the district shall set a goal of
119 adding up to an additional 1.25 feet of short-term water storage
120 capacity above that provided by the current Interim LORS08
121 Schedule to Lake Okeechobee in order to reduce the need for
122 high-volume release of lake water into the St. Lucie River and
123 Caloosahatchee River systems to ensure that the maximum stage
124 does not exceed 18.5 feet NGVD, taking into consideration all
125 relevant circumstances, including the ecology of the lake.

126 (6) If the district determines that it or the Corps of



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127 Engineers is unable, after due diligence, to accomplish the
128 substantial completion of the work specified in subsection (3)
129 on or before July 1, 2021, the district may, upon application to
130 the department and good cause shown, obtain extensions of time
131 in increments of up to 1 year in order to attain, as
132 expeditiously as reasonably possible, substantial completion of
133 the dike rehabilitation, repair, improvement, and strengthening.

134 (7) (a) The district is directed to request that the Corps
135 of Engineers jointly develop with the district a general
136 reevaluation report for CERP with the purpose of increasing
137 storage and providing water quality treatment within the
138 boundary of the A-1 and A-2 lands in the authorized EAA Storage
139 Reservoir to achieve a total storage capacity of a minimum of
140 240,000 acre feet and up to a maximum of 360,000 acre-feet, if
141 practicable, on such lands. The development of the General
142 Reevaluation Report must be consistent with CERP, the Master
143 Implementation Sequencing Plan required under 33 C.F.R. s.
144 385.30, and the Integrated Delivery Schedule adopted by the
145 United States Army Corps of Engineers, dated December 2016. The
146 development of the general reevaluation report does not preclude
147 implementation of the remaining CERP project components
148 authorized as part of the Central Everglades Planning Process.
149 All recommended modifications to the EAA Storage Reservoir on
150 A-1 and A-2 lands must include sufficient water quality
151 treatment features within the A-1 and A-2 lands to meet state
152 water quality standards in the Everglades Protection Area.
153 Implementation of the recommended plan in the general
154 reevaluation report is subject to congressional authorization
155 and adherence to all other state and federal CERP project



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156 procedures.

157 (b) The district may not exercise eminent domain for the
158 purpose of implementing the EAA Storage Reservoir or any of the
159 provisions of this subsection.

160 (8) Notwithstanding s. 768.28, Florida Statutes, the state,
161 for itself and for its agencies and subdivisions, does not waive
162 sovereign immunity for torts arising from the implementation of
163 this section. Such torts include, but are not limited to, those
164 arising from the failure or breach of the dike, operation of the
165 dike, or impacts related to the failure, breach, or operation of
166 the dike or other C&SF project-related structures repaired,
167 replaced, or operated pursuant to this section.

168 (9) (a) Any moneys expended by the district or another state
169 agency to comply with this section in excess of existing state
170 obligation under the C&SF agreement are declared by this state
171 to be an interest-free loan or advance to the United States. The
172 district shall seek recovery of these moneys as authorized by
173 law. Funds recovered pursuant to this subsection shall be used
174 by the district solely for the purposes of this section.

175 (10) The Legislature finds that aquifer storage and
176 recovery (ASR) wells are an integral part of CERP and the
177 primary CERP project component designed to manage Lake
178 Okeechobee levels and high discharges to the estuaries and
179 address other C&SF purposes. Subject to the appropriation of
180 funds by the Legislature, the district is directed to
181 immediately begin planning and to construct and operate on lands
182 owned by the district on the effective date of this act a
183 minimum of 40 ASR wells consistent with the findings in the May
184 2015 report entitled "Central and South Florida Project,



185 Comprehensive Everglades Restoration Plan, Final Technical Data
186 Report, Aquifer Storage and Recovery Regional Study.”

187 Section 2. For the 2017-2018 fiscal year, the sum of \$64
188 million in recurring funds, and for the 2018-2019 through 2020-
189 2021 fiscal years, the sum of \$100 million, annually, in
190 recurring funds, is appropriated from the Land Acquisition Trust
191 Fund to the South Florida Water Management District for the
192 purpose of implementing section 1 of this act.

193 Section 3. This act shall take effect upon becoming a law.
194

195 ===== T I T L E A M E N D M E N T =====

196 And the title is amended as follows:

197 Delete everything before the enacting clause
198 and insert:

199 A bill to be entitled
200 An act relating to the Central and Southern Florida
201 Project for Flood Control and Other Purposes; defining
202 terms; providing legislative findings; directing the
203 South Florida Water Management District to attempt to
204 negotiate an agreement with the United States Army
205 Corps of Engineers to reduce discharges of water from
206 Lake Okeechobee and expedite the rehabilitation of the
207 Herbert Hoover Dike, to revise and expedite a certain
208 study and a certain summary, to rehabilitate, repair,
209 improve, and strengthen the dike, and to ensure that
210 the release of lake water is executed only as part of
211 a specified schedule; authorizing the district, as
212 part of such negotiations, to seek certain assurances
213 from the Corps before advancing funds unless the



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214 advancing of funds is necessary to address an
215 emergency; directing the district to declare its right
216 to take control of discharges of water from Lake
217 Okeechobee and take a leadership role in the
218 rehabilitation of the dike under certain conditions;
219 authorizing the district to take steps necessary to
220 meet specified objectives if the Corps of Engineers
221 refuses or fails to take specified action, or refuses
222 or fails to achieve specified objectives; providing
223 for extensions to reach an agreement; requiring the
224 district to set a goal of increasing lake storage up
225 to a specified amount to reduce certain high-volume
226 discharges; providing for extensions; directing the
227 district to request the Corps of Engineers to jointly
228 develop a general reevaluation report for the
229 Comprehensive Everglades Restoration Plan (CERP) with
230 the purpose of increasing storage in the authorized
231 Everglades Agricultural Area Storage Reservoir on A-1
232 and A-2 lands consistent with certain plans and a
233 schedule; clarifying that the development of this
234 report does not preclude the implementation of
235 approved CERP project components; specifying that
236 implementation of the plan developed in the report is
237 subject to congressional authorization and adherence
238 with all other state and federal CERP project
239 procedures; prohibiting the district from exercising
240 imminent domain; specifying that the state does not
241 waive sovereign immunity for torts relating to the
242 dike or project; providing that moneys expended for



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243 specified purposes by the district or another state
244 agency in excess of state financial obligations are an
245 interest-free loan or advance to the United States;
246 requiring the district to seek recovery of such
247 moneys; specifying how recovered funds are to be used;
248 providing an exception in certain emergency
249 situations; providing a legislative finding; subject
250 to the appropriation of funds, directing the district
251 to immediately construct and operate a specified
252 minimum number of aquifer storage and recovery wells
253 that are consistent with the findings in a specified
254 report; providing appropriations; providing an
255 effective date.

256
257 WHEREAS, federal participation in flood control efforts,
258 while not previously a function of the Federal Government, began
259 after the disastrous hurricanes of 1926 and 1928, with states
260 requesting assistance from the Federal Government and with the
261 enactment of the River and Harbor Act of 1930, and

262 WHEREAS, the Central and Southern Florida Project for Flood
263 Control and Other Purposes (C&SF) was developed pursuant to the
264 federal Flood Control Act of 1948, and

265 WHEREAS, in 1949, the State of Florida established a
266 partnership with the United States Government to implement the
267 C&SF, and

268 WHEREAS, the State of Florida provided significant funds,
269 lands, and other contributions to the C&SF, and

270 WHEREAS, the C&SF is a function of state and federal
271 authorization, and initiation of the project was premised on the



272 State of Florida's partnership with the Federal Government, and
273 WHEREAS, all title to the easements and rights-of-way upon
274 which the C&SF structures operate belongs to the state, and
275 WHEREAS, while the United States Army Corps of Engineers
276 and the South Florida Water Management District work jointly to
277 operate and maintain the C&SF, the Corps maintains its
278 decisionmaking responsibility for the C&SF and operates and
279 maintains the levees, channels, locks, and control works of the
280 St. Lucie Canal, Lake Okeechobee, and Caloosahatchee River and
281 the main spillways of C&SF's water conservation areas only under
282 the partnership terms with the state, and
283 WHEREAS, the United States Eleventh Circuit Court of
284 Appeals in 2013 ruled that "[d]espite the Corps exercising
285 control over these systems, either directly or by issuing
286 regulations to the SFWMD, the project is a function of state
287 authorization. The federal government's initiation of the
288 project was premised on the State of Florida's permission; all
289 title to the easements and rights-of-way upon which the C&SF
290 Project structures operate belong to the State of Florida; and
291 the United States Army Corps of Engineers administers the C&SF
292 Project pursuant to an agreement between the United States and
293 the State of Florida," and
294 WHEREAS, the State of Florida, therefore, has the ultimate
295 right of decisionmaking regarding this partnership between the
296 United States and the state, and when the United States Army
297 Corps of Engineers' conduct, as a result of the funding
298 limitations imposed upon it, is jeopardizing the life, safety,
299 welfare, economy, and environment of this state, the state, by
300 virtue of its ultimate contractual right of control of the C&SF



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301 and its inherent constitutional right to protect its residents,
302 may direct and assist the Corps to make revisions of the
303 operations within the C&SF, and

304 WHEREAS, the United States Eleventh Circuit Court of
305 Appeals has further held that the authorized purposes of the
306 C&SF Project include absorbing water for flood control,
307 maintaining water supplies for agriculture, restoring hydrologic
308 conditions in the Everglades National Park, ensuring water
309 quality, and maintaining fish, wildlife, and marsh vegetation,
310 and

311 WHEREAS, the C&SF Project therefore clearly includes the
312 purpose of protecting the St. Lucie River and the Caloosahatchee
313 River and their estuaries from the destructive impacts of high-
314 volume discharges from Lake Okeechobee, and, consequently, in
315 protecting the Everglades and operating within the limitations
316 and parameters of the C&SF, the United States Army Corps of
317 Engineers and the State of Florida must not ignore these
318 critical environmental treasures, and

319 WHEREAS, the lives, safety, and livelihood of the state's
320 residents who live around Lake Okeechobee depend upon a properly
321 maintained water level, the strength and integrity of the
322 Herbert Hoover Dike, the protection of the Everglades and
323 endangered species in and surrounding the Everglades, the
324 protection of the St. Lucie River and Caloosahatchee River and
325 their estuaries, and the protection of agriculture and other
326 private property rights—all as provided by the applicable
327 statutes and agreements creating the C&SF—and these are not
328 mutually exclusive goals, but instead must be achieved together,
329 and



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330 WHEREAS, the Herbert Hoover Dike, a component of the C&SF,
331 is an approximately 143-mile levee system surrounding Lake
332 Okeechobee developed and built starting in 1930, as authorized
333 under the federal River and Harbor Act of 1930, to provide flood
334 protection and other development benefits to South Florida, and

335 WHEREAS, one of the central requirements of the C&SF is to
336 protect the structural integrity of the Herbert Hoover Dike, and

337 WHEREAS, since at least the late 1980s, the United States
338 Army Corps of Engineers has been aware of significant structural
339 vulnerabilities in the dike due to slope instability, piping,
340 and seepage, and

341 WHEREAS, the United States Army Corps of Engineers, in its
342 June 2016 Environmental Impact Statement submitted pursuant to
343 its intended dike modifications, classified the dike as
344 "critically near failure or extremely high risk" and that "a
345 failure of the dike could result in human suffering, immense
346 property damage, destruction of the natural habitat, and loss of
347 human life," and

348 WHEREAS, despite this well-known and ongoing risk, due to
349 funding or other limitations, the United States Army Corps of
350 Engineers has been unable to timely and adequately rehabilitate
351 the dike, resulting in an unjustifiable, significant, and
352 intolerable risk of major injury, loss of life, property
353 destruction, and environmental damage for communities and other
354 interests near Lake Okeechobee, and

355 WHEREAS, the poor condition of the dike has resulted in
356 "seepage and internal erosion ... during high reservoir events,"
357 thus causing the United States Army Corps of Engineers in April
358 2008 to revise its prior discharge schedule, creating its



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359 current interim Lake Okeechobee Regulation Schedule (LORS08),
360 which was intended to be a temporary schedule while dike repairs
361 were completed, and which has caused significant and damaging
362 releases of polluted lake water into the St. Lucie River and
363 Caloosahatchee River systems, while diminishing water storage
364 and supply, and

365 WHEREAS, the National Academies of Sciences, Engineering,
366 and Medicine in 2016 published their report on the "Progress
367 Toward Restoring the Everglades: The Sixth Biennial Review,
368 2016," and

369 WHEREAS, "[t]he National Academies of Sciences,
370 Engineering, and Medicine established the Committee on
371 Independent Scientific Review of Everglades Restoration Progress
372 in 2004 in response to a request from the United States Army
373 Corps of Engineers ..., with support from the South Florida
374 Water Management District ..., and the U.S. Department of the
375 Interior ..., based on Congress's mandate in the Water Resources
376 Development Act of 2000," and

377 WHEREAS, as stated by the National Academies of Sciences,
378 Engineering, and Medicine, integrity issues and concerns that
379 led to the United States Army Corps of Engineers' Dam Safety
380 Modification Study also resulted in the new water discharge
381 regulation schedule that was designed to limit high water levels
382 in the lake and thereby reduce the risk of catastrophic levee
383 failure until substantial progress is made in the dike
384 rehabilitation, and

385 WHEREAS, the National Academies of Sciences, Engineering,
386 and Medicine state that the Interim LORS08 Schedule implemented
387 in April 2008 lowered the maximum stage from 18.5 feet to 17.25



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388 feet (National Geodetic Survey Vertical Datum), resulting in a
389 significant loss of water storage and supply, and

390 WHEREAS, the United States Army Corps of Engineers'
391 implementation of its dike modifications is not expected to be
392 completed before fiscal year 2025 at the earliest, depending on
393 funding, and

394 WHEREAS, the National Academies of Sciences, Engineering,
395 and Medicine state that the United States Army Corps of
396 Engineers' future lake discharge schedule is critically
397 important to future Comprehensive Everglades Restoration Plan
398 (CERP) decisions regarding storage north and south of the lake,
399 and that the "adoption of the LORS 2008 schedule, intended to
400 reduce life safety risks in light of structural problems with
401 the Herbert Hoover Dike ... alone reduced potential storage by
402 564,000 [acre-feet]," and

403 WHEREAS, the National Academies of Sciences, Engineering,
404 and Medicine concluded and recommended that "[t]he process to
405 revise the Lake Okeechobee regulation schedule should be
406 initiated as soon as possible in parallel with the Herbert
407 Hoover Dike modifications to inform near-term project planning
408 involving water storage north and south of the lake. The large
409 impacts on water storage with just modest changes in the lake
410 regulation schedule suggest that Lake Okeechobee is a central
411 factor in future considerations of water storage. Decisions made
412 on the future regulation schedule will affect storage needs both
413 north and south of the lake and overall restoration outcomes and
414 costs.... Expediting the revision to the lake regulation
415 schedule would also ensure that the process is complete
416 (including a required dam safety risk assessment) so that the



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417 new schedule can be put into place as soon as the Herbert Hoover
418 Dike repairs are determined to be sufficient to sustain higher
419 water levels, thereby expediting ecological benefits to the
420 northern estuaries. Once other storage elements are constructed,
421 the lake schedule will likely need to be revisited to optimize
422 its operations considering the additional storage features," and

423 WHEREAS, in making its decisions, apparently due to funding
424 or other limitations, the United States Army Corps of Engineers
425 has not been able to adequately respond to the tragic and
426 destructive consequences of its high-volume discharges into both
427 the St. Lucie River and Caloosahatchee River, their estuaries,
428 and the communities surrounding those invaluable rivers and
429 estuaries, and

430 WHEREAS, the United States Army Corps of Engineers' high-
431 volume water releases into the St. Lucie River and
432 Caloosahatchee River systems have resulted in disastrous impacts
433 to public health, property, and the environment for residents
434 living along and near these river and estuary systems, and

435 WHEREAS, the state, which has the ownership and ultimate
436 right of control over the C&SF to protect its residents, the
437 environment, and the public health, safety, and welfare, has a
438 right and obligation to alter the management, construction, and
439 maintenance of the dike and the C&SF overall to reduce the risks
440 of continuing harm to its residents and the environment, NOW,
441 THEREFORE,