

By Senator Simmons

9-00547B-17

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1 A bill to be entitled
2 An act relating to the Central and Southern Florida
3 Project for Flood Control and Other Purposes; defining
4 terms; providing legislative findings; directing the
5 South Florida Water Management District to take
6 control of discharges of water from Lake Okeechobee
7 and take a leadership role in the rehabilitation of
8 the Herbert Hoover Dike; directing the district to
9 request that the United States Army Corps of Engineers
10 revise a study and summary and to rehabilitate,
11 repair, improve, and strengthen the Herbert Hoover
12 Dike; specifying a deadline for implementation;
13 requiring the district to ensure that the release of
14 lake water is executed only as part of a specified
15 schedule; requiring the district to set a goal of
16 increasing lake storage up to a specified amount to
17 reduce certain discharges; providing an extension;
18 requiring the district to take all steps necessary to
19 accomplish specified dike improvements under certain
20 circumstances; directing the district to request the
21 Corps of Engineers to jointly develop a general
22 reevaluation report for the Comprehensive Everglades
23 Restoration Plan (CERP) with the purpose of increasing
24 storage in the authorized Everglades Agricultural Area
25 Storage Reservoir on A-1 and A-2 lands; clarifying
26 that the development of this report does not preclude
27 the implementation of approved CERP project
28 components; specifying that implementation of the plan
29 developed in the report is subject to congressional
30 authorization and adherence with all other state and
31 federal CERP project procedures; specifying that the
32 state does not waive sovereign immunity for torts

9-00547B-17

2017816__

33 relating to the dike or project; providing that moneys
34 expended for specified purposes by the district or
35 another state agency in excess of state financial
36 obligations are an interest-free loan or advance to
37 the Federal Government; requiring the district to seek
38 recovery of such moneys; authorizing certain costs to
39 be funded using Florida Forever bond proceeds under
40 certain circumstances; providing legislative findings;
41 specifying how such bond proceeds must be deposited;
42 specifying how recovered funds are to be used;
43 providing an effective date.

44
45 WHEREAS, federal participation in flood control efforts,
46 while not previously a function of the Federal Government, began
47 after the disastrous hurricanes of 1926 and 1928, with states
48 requesting assistance from the Federal Government and with the
49 enactment of the River and Harbor Act of 1930, and

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

53 WHEREAS, in 1949, the State of Florida established a
54 partnership with the United States Government to implement the
55 C&SF, and

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

58 WHEREAS, the C&SF is a function of state and federal
59 authorization, and initiation of the project was premised on the
60 State of Florida's partnership with the Federal Government, and

61 WHEREAS, all title to the easements and rights-of-way upon

9-00547B-17

2017816__

62 which the C&SF structures operate belongs to the state, and

63 WHEREAS, while the United States Army Corps of Engineers
64 and the South Florida Water Management District work jointly to
65 operate and maintain the C&SF, the Corps maintains its
66 decisionmaking responsibility for the C&SF and operates and
67 maintains the levees, channels, locks, and control works of the
68 St. Lucie Canal, Lake Okeechobee, and Caloosahatchee River and
69 the main spillways of C&SF's water conservation areas only under
70 the partnership terms with the state, and

71 WHEREAS, the United States Eleventh Circuit Court of
72 Appeals in 2013 ruled that "[d]espite the Corps exercising
73 control over these systems, either directly or by issuing
74 regulations to the SFWMD, the project is a function of state
75 authorization. The federal government's initiation of the
76 project was premised on the State of Florida's permission; all
77 title to the easements and rights-of-way upon which the C&SF
78 Project structures operate belong to the State of Florida; and
79 the United States Army Corps of Engineers administers the C&SF
80 Project pursuant to an agreement between the United States and
81 the State of Florida," and

82 WHEREAS, the State of Florida, therefore, has the ultimate
83 right of decisionmaking regarding this partnership between the
84 United States and the state, and when the United States Army
85 Corps of Engineers' conduct, as a result of the funding
86 limitations imposed upon it, is jeopardizing the life, safety,
87 welfare, economy, and environment of this state, the state, by
88 virtue of its ultimate contractual right of control of the C&SF
89 and its inherent constitutional right to protect its residents,
90 may direct and assist the Corps to make revisions of the

9-00547B-17

2017816__

91 operations within the C&SF, and

92 WHEREAS, the United States Eleventh Circuit Court of
93 Appeals has further held that the authorized purposes of the
94 C&SF Project include absorbing water for flood control,
95 maintaining water supplies for agriculture, restoring hydrologic
96 conditions in the Everglades National Park, ensuring water
97 quality, and maintaining fish, wildlife, and marsh vegetation,
98 and

99 WHEREAS, the C&SF Project therefore clearly includes the
100 purpose of protecting the St. Lucie River and the Caloosahatchee
101 River and their estuaries from the destructive impacts of high-
102 volume discharges from Lake Okeechobee, and, consequently, in
103 protecting the Everglades and operating within the limitations
104 and parameters of the C&SF, the United States Army Corps of
105 Engineers and the State of Florida must not ignore these
106 critical environmental treasures, and

107 WHEREAS, the lives, safety, and livelihood of the state's
108 residents who live around Lake Okeechobee depend upon a properly
109 maintained water level, the strength and integrity of the
110 Herbert Hoover Dike, the protection of the Everglades and
111 endangered species in and surrounding the Everglades, the
112 protection of the St. Lucie River and Caloosahatchee River and
113 their estuaries, and the protection of agriculture and other
114 private property rights—all as provided by the applicable
115 statutes and agreements creating the C&SF—and these are not
116 mutually exclusive goals, but instead must be achieved together,
117 and

118 WHEREAS, the Herbert Hoover Dike, a component of the C&SF,
119 is an approximately 143-mile levee system surrounding Lake

9-00547B-17

2017816__

120 Okeechobee developed and built starting in 1930, as authorized
121 under the federal River and Harbor Act of 1930, to provide flood
122 protection and other development benefits to South Florida, and

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

125 WHEREAS, since at least the late 1980s, the United States
126 Army Corps of Engineers has been aware of significant structural
127 vulnerabilities in the dike due to slope instability, piping,
128 and seepage, and

129 WHEREAS, the United States Army Corps of Engineers, in its
130 June 2016 Environmental Impact Statement submitted pursuant to
131 its intended dike modifications, classified the dike as
132 "critically near failure or extremely high risk" and that "a
133 failure of the dike could result in human suffering, immense
134 property damage, destruction of the natural habitat, and loss of
135 human life," and

136 WHEREAS, despite this well-known and ongoing risk, due to
137 funding or other limitations, the United States Army Corps of
138 Engineers has been unable to timely and adequately rehabilitate
139 the dike, resulting in an unjustifiable, significant, and
140 intolerable risk of major injury, loss of life, property
141 destruction, and environmental damage for communities and other
142 interests near Lake Okeechobee, and

143 WHEREAS, the poor condition of the dike has resulted in
144 "seepage and internal erosion ... during high reservoir events,"
145 thus causing the United States Army Corps of Engineers in April
146 2008 to revise its prior discharge schedule, creating its
147 current interim Lake Okeechobee Regulation Schedule (LORS08),
148 which was intended to be a temporary schedule while dike repairs

9-00547B-17

2017816__

149 were completed, and which has caused significant and damaging
150 releases of polluted lake water into the St. Lucie River and
151 Caloosahatchee River systems, while diminishing water storage
152 and supply, and

153 WHEREAS, the National Academies of Sciences, Engineering,
154 and Medicine in 2016 published their report on the "Progress
155 Toward Restoring the Everglades: The Sixth Biennial Review,
156 2016," and

157 WHEREAS, "[t]he National Academies of Sciences,
158 Engineering, and Medicine established the Committee on
159 Independent Scientific Review of Everglades Restoration Progress
160 in 2004 in response to a request from the United States Army
161 Corps of Engineers ..., with support from the South Florida
162 Water Management District ..., and the U.S. Department of the
163 Interior ..., based on Congress's mandate in the Water Resources
164 Development Act of 2000," and

165 WHEREAS, as stated by the National Academies of Sciences,
166 Engineering, and Medicine, integrity issues and concerns that
167 led to the United States Army Corps of Engineers' Dam Safety
168 Modification Study also resulted in the new water discharge
169 regulation schedule that was designed to limit high water levels
170 in the lake and thereby reduce the risk of catastrophic levee
171 failure until substantial progress is made in the dike
172 rehabilitation, and

173 WHEREAS, the National Academies of Sciences, Engineering,
174 and Medicine state that the Interim LORS08 Schedule implemented
175 in April 2008 lowered the maximum stage from 18.5 feet to 17.25
176 feet (National Geodetic Survey Vertical Datum), resulting in a
177 significant loss of water storage and supply, and

9-00547B-17

2017816__

178 WHEREAS, the United States Army Corps of Engineers'
179 implementation of its dike modifications is not expected to be
180 completed before fiscal year 2025 at the earliest, depending on
181 funding, and

182 WHEREAS, the National Academies of Sciences, Engineering,
183 and Medicine state that the United States Army Corps of
184 Engineers' future lake discharge schedule is critically
185 important to future Comprehensive Everglades Restoration Plan
186 (CERP) decisions regarding storage north and south of the lake,
187 and that the "adoption of the LORS 2008 schedule, intended to
188 reduce life safety risks in light of structural problems with
189 the Herbert Hoover Dike ... alone reduced potential storage by
190 564,000 [acre-feet]," and

191 WHEREAS, the National Academies of Sciences, Engineering,
192 and Medicine concluded and recommended that "[t]he process to
193 revise the Lake Okeechobee regulation schedule should be
194 initiated as soon as possible in parallel with the Herbert
195 Hoover Dike modifications to inform near-term project planning
196 involving water storage north and south of the lake. The large
197 impacts on water storage with just modest changes in the lake
198 regulation schedule suggest that Lake Okeechobee is a central
199 factor in future considerations of water storage. Decisions made
200 on the future regulation schedule will affect storage needs both
201 north and south of the lake and overall restoration outcomes and
202 costs.... Expediting the revision to the lake regulation
203 schedule would also ensure that the process is complete
204 (including a required dam safety risk assessment) so that the
205 new schedule can be put into place as soon as the Herbert Hoover
206 Dike repairs are determined to be sufficient to sustain higher

9-00547B-17

2017816__

207 water levels, thereby expediting ecological benefits to the
208 northern estuaries. Once other storage elements are constructed,
209 the lake schedule will likely need to be revisited to optimize
210 its operations considering the additional storage features," and

211 WHEREAS, in making its decisions, apparently due to funding
212 or other limitations, the United States Army Corps of Engineers
213 has not been able to adequately respond to the tragic and
214 destructive consequences of its high-volume discharges into both
215 the St. Lucie River and Caloosahatchee River, their estuaries,
216 and the communities surrounding those invaluable rivers and
217 estuaries, and

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

223 WHEREAS, the state, which has the ownership and ultimate
224 right of control over the C&SF to protect its residents, the
225 environment, and the public health, safety, and welfare, has a
226 right and obligation to alter the management, construction, and
227 maintenance of the dike and the C&SF overall to reduce the risks
228 of continuing harm to its residents and the environment, NOW,
229 THEREFORE,

230

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

232

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

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

9-00547B-17

2017816__

236 (a) "A-1 and A-2 lands" means the approximately 31,000
237 acres in Compartment A acquired pursuant to the March 1999
238 Talisman Exchange and Purchase and Sale Agreement.

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

241 (c) "Corps of Engineers" or "Corps" means the United States
242 Army Corps of Engineers.

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

245 (e) "C&SF agreement" means the agreement entered into
246 between the state and the Federal Government to operate the
247 C&SF.

248 (f) "Department" means the Department of Environmental
249 Protection.

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

251 (h) "District" means the South Florida Water Management
252 District.

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

255 (j) "Interim LORS08 Schedule" means the 2008 Lake
256 Okeechobee Interim Regulation Schedule approved by the Corps on
257 April 28, 2008.

258 (k) "Modification Study" means the Corps of Engineers
259 evaluation known as the Herbert Hoover Dike Dam Safety
260 Modification Study.

261 (2) The Legislature finds that the dike, a major component
262 of the C&SF, is designated by the Corps of Engineers as meeting
263 Dam Safety Classification Level 1, the highest risk designation
264 used by the Corps. Because of the instability of the dike, the

9-00547B-17

2017816__

265 Corps implemented the Interim LORS08 Schedule, a lower lake
266 schedule, while dike repairs were completed. The Interim LORS08
267 Schedule has resulted in regular releases of significant amounts
268 of lake water into the St. Lucie River and Caloosahatchee River
269 systems to reduce pressure on the dike. These releases, combined
270 with local basin runoff, have resulted in significant negative
271 impacts to public health, water supply, property, and the
272 environment for residents throughout South Florida. Furthermore,
273 the current critical state of the dike presents significant risk
274 of major injury, loss of life, property destruction, and
275 environmental damage for communities and other interests near
276 Lake Okeechobee. These negative impacts can be ameliorated with
277 the expeditious completion of the dike repairs and
278 implementation of a new lake regulation schedule. Therefore,
279 given the inadequate response of the Corps to these known risks
280 and the significant and unacceptable potential for harm to the
281 state and its residents, the Legislature finds that an emergency
282 situation exists in the C&SF which the state must address
283 immediately.

284 (3) The district is directed to immediately declare the
285 rights of the state to ultimately control discharges of water
286 from Lake Okeechobee and assume a leadership role in the
287 rehabilitation of the dike and any other work in order to comply
288 with the purposes and intent of the C&SF agreement. By July 1,
289 2017, the district shall request the Corps of Engineers to:

290 (a) Revise the Modification Study and DSADS in support of
291 the directives in paragraphs (b) and (c);

292 (b) Materially rehabilitate, repair, improve, and
293 strengthen the dike on an expedited schedule so as to reach

9-00547B-17

2017816__

294 substantial completion on or before July 1, 2020. This expedited
295 rehabilitation, repair, improvement, and strengthening shall be
296 implemented, as deemed reasonable by the district given the
297 complexity of the project and the significant risks of further
298 delay, in such a manner as to accomplish all of the goals of the
299 C&SF, including, but not limited to, protecting the residents of
300 this state and limiting the harmful discharges of water from
301 Lake Okeechobee; and

302 (c) Ensure that the Corps of Engineers' release of lake
303 water into the St. Lucie River and Caloosahatchee River systems
304 is executed only as part of a schedule approved by the district.

305 (4) In the process of rehabilitation, repair, improvement,
306 and strengthening of the dike, the district shall set a goal of
307 adding up to an additional 2 feet of water storage capacity
308 above that provided by the current Interim LORS08 Schedule to
309 Lake Okeechobee in order to reduce the need to release lake
310 water into the St. Lucie River and Caloosahatchee River systems,
311 so that maximum discharges are not required until the water
312 level of the lake reaches 19.0 feet NGVD.

313 (5) If the district determines that it or the Corps of
314 Engineers is unable, after due diligence, to accomplish the
315 substantial completion of the work specified in subsection (3)
316 on or before July 1, 2020, the district may, upon application to
317 the department and good cause shown, obtain an extension of time
318 of up to 1 year to attain substantial completion of the dike
319 rehabilitation, repair, improvement, and strengthening.

320 (6) If the Corps of Engineers refuses or fails to take
321 action consistent with this section, or refuses or fails to
322 achieve the objectives of this section, the district shall take

9-00547B-17

2017816__

323 all steps necessary to accomplish such action or achieve such
324 objectives itself.

325 (7) The district is directed to request the Corps of
326 Engineers jointly develop a general reevaluation report for CERP
327 with the purpose of increasing storage in the authorized
328 Everglades Agricultural Area Storage Reservoir on A-1 and A-2
329 lands to a total of 240,000 to 360,000 acre-feet and to provide
330 required water quality treatment. The development of the general
331 reevaluation report does not preclude implementation of the
332 remaining CERP project components authorized as part of the
333 Central Everglades Planning Process. All recommended
334 modifications to the Everglades Agricultural Area Storage
335 Reservoir on A-1 and A-2 lands must include sufficient water
336 quality treatment to meet state water quality standards.
337 Implementation of the recommended plan in the general
338 reevaluation report is subject to congressional authorization
339 and adherence to all other state and federal CERP project
340 procedures.

341 (8) Notwithstanding s. 768.28, Florida Statutes, the state,
342 for itself and for its agencies and subdivisions, does not waive
343 sovereign immunity for torts arising from the implementation of
344 this section. Such torts include, but are not limited to, those
345 arising from the failure or breach of the dike, operation of the
346 dike, or impacts related to the failure, breach, or operation of
347 the dike or other C&SF project-related structures repaired,
348 replaced, or operated pursuant to this section.

349 (9) Any moneys expended by the district or another state
350 agency to comply with this section in excess of existing state
351 obligation under the C&SF agreement are declared by this state

9-00547B-17

2017816__

352 to be an interest-free loan or advance to the United States. The
353 district shall seek recovery of these moneys as authorized by
354 law.

355 (10) (a) Pursuant to s. 11(e), Article VII of the State
356 Constitution, state bonds are authorized under this section to
357 finance or refinance the acquisition and improvement of land,
358 water areas, and related property interests and resources for
359 the purposes of conservation, outdoor recreation, water resource
360 development, restoration of natural systems, and historic
361 preservation. In accordance with s. 17, Article X of the State
362 Constitution, funds deposited into the Everglades Trust Fund may
363 be expended for the purposes of conservation and protection of
364 natural resources in the Everglades Protection Area and the
365 Everglades Agricultural Area.

366 (b) Any costs related to this section, including, but not
367 limited to, the costs for land acquisition, construction, and
368 operation and maintenance, may be funded using proceeds from
369 Florida Forever bonds issued under s. 215.618, Florida Statutes,
370 as authorized under that section. The Legislature determines
371 that the authorization and issuance of such bonds is in the best
372 interest of the state and determines that the provisions of this
373 section should be implemented. Notwithstanding any other
374 provision of law, proceeds from the sale of such bonds, less the
375 costs of issuance, the costs of funding reserve accounts, and
376 other costs with respect to the bonds, up to \$1 billion in bond
377 proceeds in the 2017-2018 fiscal year shall be deposited to the
378 Everglades Trust Fund for dike rehabilitation, repair,
379 improvement, and strengthening pursuant to subsection (4).

380 (c) The district shall use funds recovered pursuant to

9-00547B-17

2017816__

381 subsection (9) solely for the purposes of this section.

382 Section 2. This act shall take effect upon becoming a law.