

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: SB 370

INTRODUCER: Senator Bradley and others

SUBJECT: Land Acquisition Trust Fund

DATE: November 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Favorable
2.			AEN	
3.			AP	

I. Summary:

SB 370 creates a statutory distribution from the Land Acquisition Trust Fund requiring \$100 million to be appropriated annually to the Florida Forever Trust Fund. Funds appropriated into the Florida Forever Trust Fund are required to be distributed in accordance with the Florida Forever Act.

II. Present Situation:

Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.¹ The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.² Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.³ The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.⁴

¹ Chapter 99-247, Laws of Fla.

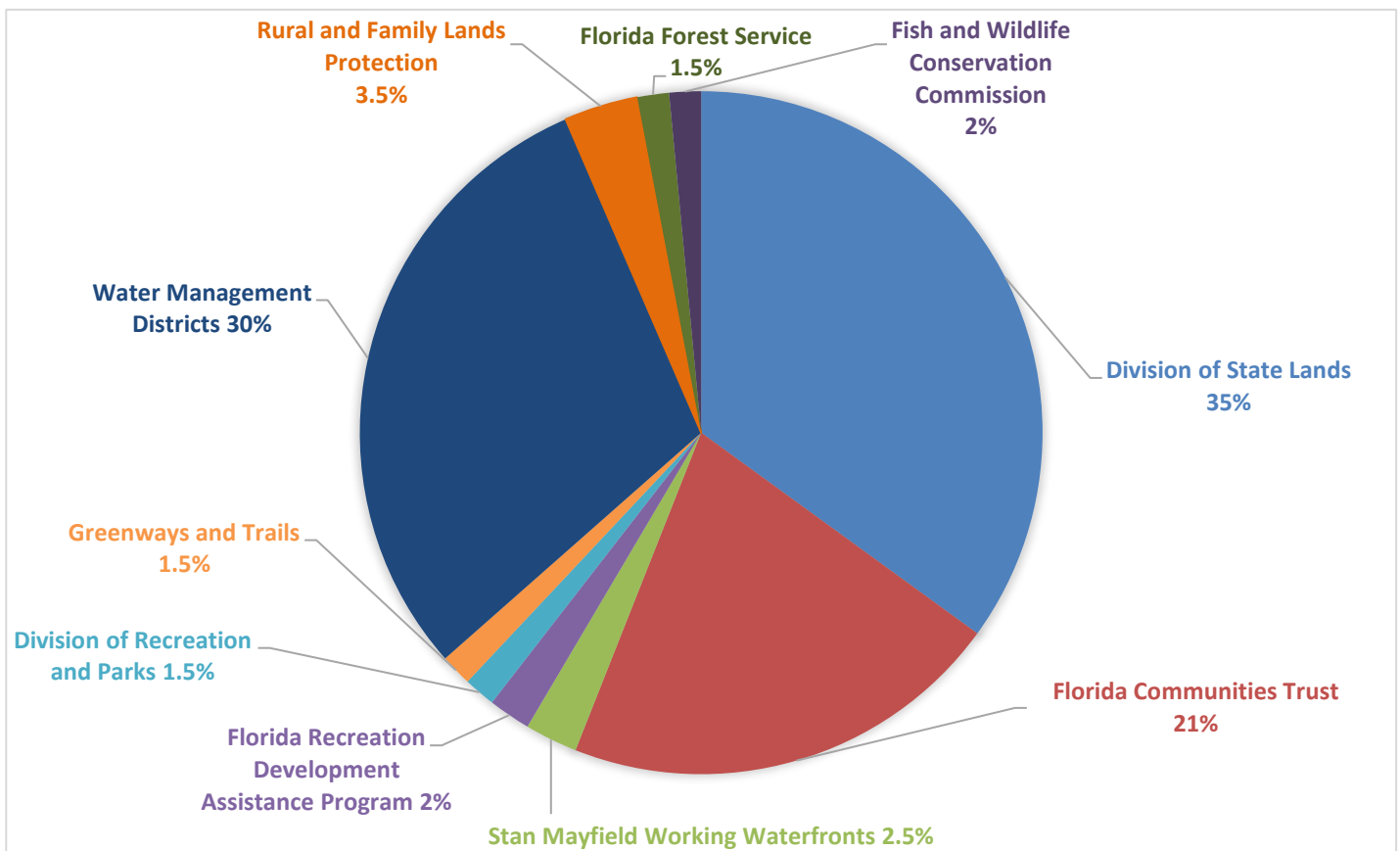
² Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2017), available at http://publicfiles.dep.state.fl.us/DSL/OES/FloridaForeverAnnualRpts/FLDEP_DSL_OES_FloridaForeverAnnualReport2017_20170920.pdf (last visited Oct. 31, 2017).

³ Section 259.105, F.S.

⁴ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Oct. 31, 2017). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands*, available at http://fnai.org/PDF/Maacres_201702_FCL_plus_LTF.pdf (last visited Nov. 2, 2017) for a complete summary of the total amount of conservation lands in Florida.

Under Florida Forever, the issuance of up to \$5.3 billion in Florida Forever bonds⁵ is authorized 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 the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements⁶ to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.⁷

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever program. The Florida Forever Trust Fund is administered by the Department of Environmental Protection (DEP) who is required to distribute revenues from the Florida Forever Trust Fund in accordance with s. 259.105(3), F.S. That subsection sets forth the allocation of the proceeds of cash payments or bonds deposited into the Florida Forever Trust Fund and is depicted in the graph below.



⁵ As of January 2017, of the \$5.3 billion authorized for Florida Forever bonds, the state has issued \$2 billion.

⁶ As defined in s. 259.03, F.S., the terms “capital improvement” or capital project expenditure” when used in ch. 259, F.S. 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 this chapter. 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. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter.”

⁷ Section 215.618, F.S.

Division of State Lands – 35%

The Division of State Lands (DSL) within the DEP oversees the Florida Forever program, under which the state has protected over 737,117 acres of land purchased with \$2.9 billion in Florida Forever funds.⁸ Florida Forever projects and acquisitions are required to contribute to the achievement of one or more of the following program 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 wetlands 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.
- Increase the amount of open space available in urban areas.⁹

The Acquisition and Restoration Council (ARC) is a 10-member body that makes recommendations on the acquisition, management, and disposal of state-owned lands.¹⁰ The ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding. In evaluating each application, the ARC is required to consider whether the project:

- Meets multiple program goals.
- 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.
- 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 that would result in multiple ownership and make acquisition of the project more 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 Everglades restoration efforts.
- May be purchased at 80 percent of appraised value.
- May be acquired, in whole or in part, using alternatives to fee simple.
- Is a joint acquisition.¹¹

The ARC is required to give higher priority to: projects for which matching funds are available; project elements previously identified on an acquisition list which can be acquired at 80 percent

⁸ DEP, *Florida Forever Five Year Plan* (2017).

⁹ Section 259.105(4), F.S.

¹⁰ DEP, *Florida Forever Five Year Plan* (2017).

¹¹ Section 259.105(9), F.S.

or less of appraised value; projects that can be acquired in less than fee ownership; projects that contribute to improving the quality or quantity of surface water or groundwater; projects that contribute to improving the water quality and flow of springs; and projects for which the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.¹²

Using its established criteria, the ARC develops a priority list of applications submitted. An affirmative vote of at least five members of the ARC is required to place a proposed project on the priority list. The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.¹³ 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% complete, and critical historical.¹⁴ Projects are ranked within each category from highest to lowest priority.

The priority list is presented to the Governor and the Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (BOT).¹⁵ The BOT is responsible for acting on the ARC's recommendations by approving the acquisition of each parcel.¹⁶ While the BOT is authorized to remove projects from the priority list, the BOT may not add or rearrange projects on the priority list.¹⁷

The DSL prepares an annual work plan based on the priority list developed by the ARC, which outlines the specific projects and acquisitions within projects that will be negotiated for purchase with Florida Forever funds available for that fiscal year for land acquisition.¹⁸ Currently, there are 43 projects, totaling approximately 1.4 million acres, in the work plan.¹⁹

At least \$5 million of the funds allocated to the DSL under Florida Forever, beginning in the 2017-2018 Fiscal Year and continuing through the 2026-2027 Fiscal Year, are required to be spent on land acquisition within the Florida Keys Area of Critical State Concern.²⁰

Water Management Districts – 30%

The state is divided into five water management districts (WMDs), which are responsible for the administration of water resources at a regional level. Each WMD is required to develop a Florida Forever 5-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 the Florida Forever program.²¹ Each project identified must contribute to the achievement of the

¹² Section 259.105(10), F.S.

¹³ DEP, *Frequently Asked Questions about Florida Forever*.

¹⁴ Section 259.105(17), F.S.

¹⁵ Section 259.105(14), F.S.

¹⁶ DEP, *Florida Forever Five Year Plan* (2017).

¹⁷ Section 259.105(14), F.S.

¹⁸ Section 259.105(17), F.S.

¹⁹ DEP, *Focused on Florida's Future, Florida Forever Program*, 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 Oct. 31, 2017).

²⁰ Section 259.105(3)(b), F.S.

²¹ Section 373.199, F.S.

Florida Forever goals and be evaluated in accordance with the specific criteria and numeric performance measures developed by the ARC.²² By March 1 of each year, each WMD is required to report to the DEP on acquisitions completed during the year together with modifications or additions to its 5-year work plan, including:

- A description of land management activity for each property or project area owned by the WMD.
- A list of any lands surplus and the amount of compensation received.
- The progress of funding, staffing, and resource management of every project funded pursuant to Florida Forever for which the district is responsible.²³

The DEP is required to submit each WMD's 5-year work plan to the BOT together with the ARC's project list.²⁴ Pursuant to s. 259.105(11), F.S., Florida Forever funds provided to the WMDs are allocated as follows:

- Thirty-five percent to the South Florida WMD.
- Twenty-five percent to the Southwest Florida WMD.
- Twenty-five percent to the St. Johns River WMD.
- Seven and one-half percent to the Suwannee River WMD.
- Seven and one-half percent to the Northwest Florida WMD.

Florida Communities Trust – 21%

The Florida Communities Trust (FCT) is a multi-faceted program that assists communities in protecting important natural resources, providing recreational opportunities and preserving the state's traditional working waterfronts through grant programs.²⁵ The FCT is governed by a five-member board that includes the Secretary of the DEP or his or her designee and four members of the public appointed by the Governor. From the funds available to the FCT and used for land acquisition, 75 percent is required to be matched by local governments on a dollar-for-dollar basis.²⁶

The Parks and Open Space grant program provides funding to local governments and eligible non-profit organizations for acquisition of community-based parks, open space, and greenways that further outdoor recreation and natural resource protection needs identified in a local government's comprehensive plan. As of June 2017, more than 92,400 acres have been preserved statewide, leveraging \$839 million of state dollars for a total of \$1.56 billion used to acquire such lands.²⁷

Stan Mayfield Working Waterfronts – 2.5%

The FCT administers the Stan Mayfield Working Waterfront program, which provides funding to acquire parcels of land used directly for commercially harvesting marine organisms or

²² Section 259.105(4), F.S.

²³ Section 373.199, F.S.

²⁴ *Id.*

²⁵ DEP, *Florida Communities Trust Annual Report Fiscal Year 2016-2017*, 3 (Sept. 30, 2017) available at https://floridadep.gov/sites/default/files/FCT_16-17_Annual_Report_FINAL_DRAFT_0.pdf (last visited Oct. 30, 2017).

²⁶ Section 259.105(3)(c), F.S.

²⁷ DEP, *FCT Parks and Open Space Program Overview*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/fct-parks-and-open-space-program-overview> (last visited Oct. 30, 2017).

saltwater products. Such projects include piers, wharves, docks, and other facilities operated to provide waterfront access to licensed commercial fishermen, aquaculturists, or business entities. The funds may also be used for the acquisition of land for exhibitions, demonstrations, educational venues, civic events, and other purposes to promote and educate the public about the economic, cultural, and historic heritage of the state's traditional working waterfronts, including marketing events for the seafood and aquaculture industries.

Rural and Family Lands Protection Program – 3.5%

The Rural and Family Lands Protection Program within the DACS is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements.²⁸ The purpose of the program is to promote and improve wildlife habitat; protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds; perpetuate open space on lands with significant natural areas; or protect agricultural lands threatened by conversion to other uses.²⁹ Under the program, lands must be acquired pursuant to a priority ranking process developed by the DACS, the DEP, the WMDs, the Department of Economic Opportunity, and the FWC.³⁰ Preference must be given to ranch and timberlands that are managed using sustainable practices.³¹ To date, 38 acquisitions have been approved, totaling 39,200 acres.³²

Florida Recreation Development Assistance Program – 2%

The Florida Recreation Development Assistance Program within the DEP provides grants to qualified local governmental entities to acquire or develop land for public outdoor recreation purposes. The maximum grant that may be awarded for each project application is \$200,000 in state funds.³³ The DEP has developed a competitive project selection process designed to maximize outdoor recreation for the public. The selection criteria ranks projects, in part, based on the extent to which the project would implement outdoor recreation goals, objectives, and priorities specified in the state comprehensive outdoor recreation plan and the extent to which the project would provide priority resource or facility needs in the region, as specified in the state comprehensive outdoor recreation plan.³⁴

Florida Greenways and Trails Program – 1.5%

The Office of Greenways and Trails (OGT) within the DEP provides a comprehensive process to identify, prioritize, connect, promote, and coordinate the implementation of a statewide system of connected greenways and trails. The program serves to integrate natural and human environments using greenways and trails to tie communities together by linking features such as

²⁸ Department of Agriculture and Consumer Services (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 Oct. 31, 2017).

²⁹ Section 570.71, F.S.

³⁰ See Fla. Admin Code Ch. 5I-7.

³¹ Section 570.71, F.S.

³² DACS, *The Florida Forever Act, 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 Oct. 31, 2017).

³³ Section 375.075, F.S.

³⁴ *Id.*

parks, open spaces, historic sites, and residential areas. The Florida Greenways and Trails Council recommends lands for acquisition based on ranking criteria developed by the DEP and is not subject to the ranking criteria developed by the ARC.³⁵

Division of Recreation and Parks – 1.5%

The Division of Recreation and Parks (DRP) within the DEP administers Florida's Park Service, which consists of 174 state parks, trails and historic sites spanning 800,000 acres and 100 miles of beaches.³⁶ The DRP is authorized to use Florida Forever funds to purchase inholdings and additions to state parks and for capital expenditure project expenditures.³⁷ At a minimum, 1 percent, and no more than 10 percent, must be spent on capital project expenditures identified during the time of acquisition which meet land management planning activities necessary for public access.³⁸ The DRP must develop and utilize a priority acquisition list based on the specific criteria and numeric performance measures developed by the ARC for acquisitions under the Florida Forever program.³⁹

Florida Forest Service – 1.5%

The Florida Forest Service (FFS) within the DACS manages 37 state forests, totaling over one million acres.⁴⁰ The FFS is authorized to acquire lands, suitable for state forest purposes, by gift, donation, contribution, purchase, or otherwise and is authorized to enter into an agreement with the Federal Government, or other agency, for acquiring by gift, purchase, or otherwise, such lands as are, in the judgment of the FFS, suitable and desirable for state forests.⁴¹ The FFS may use Florida Forever funds for the acquisition of state forest inholdings and additions, the implementation of reforestation plans or sustainable forestry management practices, and for capital project expenditures.

Fish and Wildlife Conservation Commission – 1.5%

The Fish and Wildlife Conservation Commission (FWC) exercises the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.⁴² The FWC is authorized to acquire lands and waters suitable for the protection, improvement, and restoration of the state's wild animal life, freshwater aquatic life, and marine life resources.⁴³ Lands acquired must be managed for recreational and other multiple-use activities that do not impede the FWC's ability to perform its constitutional and statutory duties and responsibilities.⁴⁴ The FWC has a management interest in approximately 5.9 million acres of natural resource land in

³⁵ Section 260.015(1), F.S.

³⁶ DEP, *Division of Recreation and Parks*, <https://floridadep.gov/Parks> (last visited Oct. 31, 2017). The opening of Gilchrist Blue Springs State Park, the 175th Florida state park, was announced on November 1, 2017.

³⁷ Section 259.105(3)(e), F.S.

³⁸ *Id.*

³⁹ Section 259.105(3)(l), F.S.

⁴⁰ DACS, *State Forests*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests> (last visited Oct. 31, 2017).

⁴¹ Section 589.07, F.S.

⁴² FLA. CONST. art. IV, s. 9.

⁴³ Section 20.331, F.S.

⁴⁴ *Id.*

the state.⁴⁵ These lands, in part, include lands that are leased to the FWC and owned by the state and lands owned by the FWC. The FWC is authorized to use Florida Forever funds for the acquisition of inholdings and additions to lands they manage which are important to the conservation of fish and wildlife and for capital project expenditures. Through Florida Forever, the FWC has conserved 12,252 acres.⁴⁶

Land Acquisition Trust Fund

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for water and land conservation and restoration. The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from documentary stamp taxes be deposited into the Land Acquisition Trust Fund (LATF). Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; 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.⁴⁷

To implement Art. X, s. 28 of the State Constitution, the Legislature passed ch. 2015-229 Laws of Florida. This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes.
- Section 375.041, F.S., to designate the LATF within the Department of Environmental Protection (DEP) as the trust fund to serve as the constitutionally mandated depository for the required percentage of documentary stamp tax revenues.⁴⁸

Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically:

⁴⁵ Fish and Wildlife Conservation Commission (FWC), *Florida Forever Program – FWC Additions and Inholdings*, 3, 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 Oct. 31, 2017).

⁴⁶ *Id.* at 6.

⁴⁷ FLA. CONST. art. X, s. 28.

⁴⁸ Ch. 2015-229, s. 9, s. 50, Laws of Fla.

- First to payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds; and
- Then, to payments relating to debt service on bonds issued before February 1, 2009, by the South Florida Water Management District and the St. Johns River Water Management District.
- Then, before funds are authorized to be appropriated for other uses:
 - A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan,⁴⁹ or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. From these funds, the following specified distributions are required:
 - \$32 million annually through the 2023-2024 Fiscal Year for the Long-Term Plan;
 - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million annually through the 2025-2026 Fiscal Year for the CERP; and
 - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
 - A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for spring restoration, protection, and management projects; and
 - Five million annually through the 2025-2026 Fiscal Year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka.⁵⁰
 - Sixty-four million to the Everglades Trust Fund in the 2018-2019 Fiscal Year and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁵¹

The General Revenue Estimating Conference, in August of 2017, estimated that for the 2018-2019 Fiscal Year a total of \$2.62 billion would be collected in documentary stamp taxes. Thirty-three percent of the net revenues collected or approximately \$862.2 million must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution.⁵²

III. Effect of Proposed Changes:

SB 370 creates a statutory distribution from the Land Acquisition Trust Fund requiring \$100 million to be appropriated annually to the Florida Forever Trust Fund. In accordance with s. 259.105(3), F.S., the distribution must be allocated as follows:

- Division of State Lands - \$35 million.
- Water Management Districts - \$30 million.

⁴⁹ Note that the “Long-Term Plan” includes the Restoration Strategies Regional Water Quality Plan.

⁵⁰ Section 375.041, F.S.

⁵¹ *Id.*

⁵² Office of Economic and Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Executive Summary* (Aug. 2017) available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Sept. 5, 2017).

- Florida Communities Trust - \$21 million.
- Rural and Family Lands Protection Program - \$3.5 million.
- Stan Mayfield Working Waterfronts - \$2.5 million.
- Florida Recreation Development Assistance Program - \$2 million.
- Division of Recreation and Parks - \$1.5 million.
- Office of Greenways and Trails - \$1.5 million.
- Florida Forest Service - \$1.5 million.
- Fish and Wildlife Conservation Commission - \$1.5 million.

The bill deletes an obsolete provision relating to an appropriation for the 2017-2018 Fiscal Year.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a specific annual distribution from the Land Acquisition Trust Fund, which may affect other programs that are funded through the trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not contain language to reduce the distribution based on any debt service paid on bonds issued for the Florida Forever program. Pursuant to s. 375.041, F.S., the payment of debt service occurs before the distribution is made, therefore, the \$100 million distribution would be in addition to any payment of debt service for bonds issued for the purposes of the Florida Forever program.

VIII. Statutes Affected:

This bill substantially amends section 375.041 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.