

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7063 PCB GAC 18-02 Natural Resources

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee, Government Accountability Committee, Caldwell

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee	20 Y, 0 N	Shugar	Williamson
1) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	White	Pigott
2) Appropriations Committee			

### SUMMARY ANALYSIS

The bill revises policies relating to Florida's natural resources. The bill, in part:

- Consolidates funding allocations in the Florida Forever Act (Florida Forever) into three categories: land acquisition, Florida Communities Trust, and the Rural and Family Lands Protection Program. Each would receive 33 1/3 percent.
- Removes the authorization to use Florida Forever funding for capital improvement projects, water resource development projects (WRDP), and land management.
- Consolidates all land acquisition into one category, including acquisitions selected by the Acquisition and Restoration Council; water management districts (WMDs) priority lists; inholdings proposed by agencies; and the Florida Recreation and Development Assistance Program.
- Requires annual dedicated funding for Florida Forever from the Land Acquisition Trust Fund (LATF) beginning in fiscal year 2019-2020.
- Prioritizes eligible Comprehensive Everglades Restoration Plan (CERP) projects for funding under the LATF to prioritize Phase I and Phase II of the C-43 Reservoir above other CERP projects.
- Requires counties, municipalities, and WMDs to deposit any proceeds generated from the disposal of conservation lands acquired with state funds in the appropriate state trust fund.
- Requires WMDs to deposit any revenue generated from the use of conservation lands purchased with state funds into a separate agency trust fund or special revenue account to support land management activities.
- Authorizes the Department of Environmental Protection (DEP) and the Department of Agriculture and Consumer Services to assist local governments in implementing rural-lands-protection easement programs.
- Requires the agencies that manage conservation lands to prioritize the exotic and invasive species that must be maintained or controlled and the areas where the control and maintenance must first be addressed.
- Requires DEP to create a volunteer state park annual entrance pass for individuals who perform 50 hours of volunteer service removing nonnative and invasive plants.
- Requires DEP to consider the economic benefit of beach management projects when prioritizing annual funding.
- Requires the comprehensive long-term beach management plan to include at a minimum a Strategic Beach Management Plan, a critically eroded beaches report, and a statewide long-range budget plan.
- Exempts certain local governments from the requirement to develop and maintain a water facilities work plan.
- Clarifies operation provisions of the C-51 reservoir project and provides waiver of repayment.
- Requires regional water supply authorities to provide annual status reports to WMDs on certain WRDPs.
- Allows DEP to include innovative nutrient reduction pilot projects in a Basin Management Action Plan and provide funding.
- Requires the Department of Transportation to coordinate with WMDs, DEP, and local governments to redirect stormwater from road projects for beneficial use, if economically feasible.
- Requires public water systems and domestic wastewater treatment systems to develop an asset management plan (AMP) and create a reserve fund to implement an AMP.
- Requires a public water system or domestic wastewater treatment system within a 100-year floodplain or a 500-year floodplain to build any new infrastructure to withstand the respective flood conditions.
- Authorizes DEP to use data collected and compiled by the Florida LAKEWATCH Program.
- Authorizes a prevailing party to receive reasonable costs and attorney fees in an administrative proceeding from an intervener when the intervener is a nonprevailing adverse party, as determined by the administrative law judge.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h7063a.ANR

**DATE:** 2/12/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Florida Forever

###### Present Situation

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

- Restoration, conservation, recreation, water resource development, or historical preservation; and
- Capital improvements<sup>2</sup> to lands and water areas that accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.<sup>3</sup>

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever program. The Department of Environmental Protection (DEP) administers the Florida Forever Trust Fund. The Florida Forever Trust Fund receives its funding from the Land Acquisition Trust Fund (LATF).<sup>4</sup> DEP must distribute revenues from the Florida Forever Trust Fund in accordance with the Florida Forever Act.<sup>5</sup>

Each year, at least 1 ½ percent of the cumulative total of funds deposited into the Florida Forever Trust Fund must be made available for the purposes of management, maintenance, and capital improvements, and for associated contractual services, for conservation and recreation lands acquired with funds deposited into the LATF or the former Preservation 2000 or Florida Forever programs.<sup>6</sup> The Board of Trustees of the Internal Improvement Trust Fund (BOT)<sup>7</sup> must reserve up to one-fifth of those funds for interim management of acquisitions and for associated contractual services to ensure the conservation and protection of natural resources on project sites and to allow limited public recreational use of lands.<sup>8</sup> Further, managing agencies may use up to one-fourth of these funds to control and remove nonnative, invasive species on public lands.<sup>9</sup>

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<sup>1</sup> Section 259.105(2), F.S.

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

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

<sup>4</sup> Section 259.1051, F.S.

<sup>5</sup> Section 215.618(5), F.S.

<sup>6</sup> Section 259.032(9)(b), F.S.

<sup>7</sup> Section 253.001, F.S., provides that the BOT holds state lands in trust for the use and benefit of the people of Florida; s. 253.02(1), F.S., provides that the BOT consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture; The BOT may acquire, sell, transfer, and administer state lands in the manner consistent with chs. 253 and 259, F.S.

<sup>8</sup> Section 259.032(9)(d), F.S.

<sup>9</sup> Section 259.032(9)(e), F.S.

## Florida Forever Projects

Florida Forever is Florida's conservation and recreation lands acquisition program, a blueprint for conserving natural resources and renewing Florida's commitment to conserve the state's natural and cultural heritage.<sup>10</sup> The Acquisition and Recreation Council (ARC),<sup>11</sup> with the assistance of the Florida Natural Area Inventories and several state agencies, evaluates applications for acquisition projects under the Florida Forever Program and provides recommendations to BOT on the projects to pursue.<sup>12</sup> To be considered for acquisition under the Florida Forever Program, the project must contribute to the achievement of the following goals:

- Enhance the coordination and completion of land acquisition projects;
- Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state;
- Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state;
- Increase natural resource-based public recreational and educational opportunities;
- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources; or
- Increase the amount of open space available in urban areas.<sup>13</sup>

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

- Meets multiple goals described above;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- Has funding sources that are identified and assured through at least the first two years of the project;
- Contributes to the solution of water resource problems on a regional basis;
- Has a significant portion of its land area in imminent danger of development, in imminent danger of losing its significant natural attributes or recreational open space, or in imminent danger of subdivision which would result in multiple ownership and make acquisition of the project costly or less likely to be accomplished;
- Implements an element from a plan developed by an ecosystem management team;
- Is one of the components of the Everglades restoration effort;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple, including but not limited to, tax incentives, mitigation funds, or other revenues; the purchase of development rights, hunting rights, agricultural or silvicultural rights, or mineral rights; or obtaining conservation easements or flowage easements; and
- Is a joint acquisition, either among public agencies, nonprofit organizations, or private entities, or by a public-private partnership.<sup>14</sup>

<sup>10</sup> DEP, *Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/florida-forever-0> (last visited Jan. 18, 2018).

<sup>11</sup> Section 259.035(1), F.S., provides that the ARC is a 10-member board established to assist the BOT to review the recommendations and plans for state-owned lands. Four members are appointed by the Governor, one member is appointed by the Secretary of DEP, one member is appointed by the Director of the Florida Forest Service, two members are appointed by the Executive Director of the Fish and Wildlife Conservation Commission (FWC), one member is appointed by the Secretary of the Department of State, and one member is appointed by the Commissioner of Agriculture.

<sup>12</sup> Sections 259.105(8), (14) and (15), F.S.

<sup>13</sup> Section 259.105(4), F.S.

<sup>14</sup> Section 259.105(9), F.S.

Using its established criteria, ARC develops a priority list of applications submitted. An affirmative vote of at least five members of ARC is required to place a proposed project on the priority list. ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.<sup>15</sup> Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural, less-than-fee, partnerships, greater than 85 percent complete, and critical historical.<sup>16</sup> ARC ranks the projects within each category from highest to lowest priority.

ARC presents the priority list to the BOT.<sup>17</sup> Florida Forever projects may only be implemented if the BOT approves ARC's recommendations to acquire the particular parcel.<sup>18</sup> While the BOT may remove projects from the priority list, the BOT may not add or rearrange projects on the priority list.<sup>19</sup>

The Division of State Lands (DSL) within DEP prepares an annual work plan based on the priority list developed by ARC. This work plan outlines the specific projects and acquisitions within projects that DEP will seek to acquire with Florida Forever funds available for that fiscal year.<sup>20</sup> Currently, there are 43 projects, totaling approximately 1.4 million acres, in the work plan.<sup>21</sup>

#### *Water Management District Projects*

Water management districts (WMDs) may acquire real property to conserve and protect water and water-related resources.<sup>22</sup> Each WMD must develop a five-year work plan that identifies projects necessary to promote reclamation, storage, or recovery of water and other properties or activities that would assist in meeting the goals of Florida Forever.<sup>23</sup> DEP must submit the WMDs report on acquisitions to the BOT along with the recommendations from ARC for Florida Forever projects.<sup>24</sup>

#### *Florida Communities Trust and Stan Mayfield Working Waterfronts Program Projects*

Florida Communities Trust (FCT) assists communities to protect important natural resources, provide recreational opportunities, and preserve Florida's traditional working waterfronts through the competitive criteria in the Parks and Open Space Florida Forever Grant Program and the Stan Mayfield Working Waterfronts Florida Forever Grant Program. These local land acquisition grant programs provide funding to local governments and eligible non-profit organizations to acquire land for parks, open spaces, greenways, and projects supporting Florida's seafood harvesting and aquaculture industries.<sup>25</sup> From the funds available to the FCT and used for land acquisition, local governments must match at least 75 percent on a dollar-for-dollar basis.<sup>26</sup>

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<sup>15</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Jan. 18, 2018).

<sup>16</sup> Section 259.105(17), F.S.

<sup>17</sup> Section 259.105(14), F.S.

<sup>18</sup> Section 259.105(16), F.S.

<sup>19</sup> Section 259.105(14), F.S.

<sup>20</sup> Section 259.105(17), F.S.

<sup>21</sup> DEP, *Focused on Florida's Future, Florida Forever Program*, p. 7, presentation before the Senate Appropriations Subcommittee on the Environment and Natural Resources (Oct. 25, 2017), available at:

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

<sup>22</sup> Section 373.139, F.S.

<sup>23</sup> Sections 373.199(2) and (3), F.S.

<sup>24</sup> Section 373.199(7), F.S.

<sup>25</sup> DEP, *Florida Communities Trust Home*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/florida-communities-trust-fct-home> (last visited Jan. 18, 2018); *see also* s. 380.507, F.S.

<sup>26</sup> Section 259.105(3)(c), F.S.

## *Florida Recreation Development Assistance Program Projects*

Florida Recreation Development Assistance Program Projects (FRDAP) is a competitive, reimbursement grant program. FRDAP provides financial assistance for acquisition or development of land for public outdoor recreation. Eligible participants include all county governments, municipalities, and other legally created local governmental entities with the responsibility for providing outdoor recreational sites and facilities for the public.<sup>27</sup> Local governments may submit three applications a year. The most any one project may receive is \$200,000.<sup>28</sup>

## *State Parks Projects*

The Division of Recreation and Parks (DRP) within DEP manages 175 parks covering 800,000 acres and 100 miles of beaches.<sup>29</sup> DRP may acquire in the name of the state any property, real or personal, by purchase, grant, devise, condemnation, donation, or otherwise. In DRP's judgement, this property must be necessary or proper toward the administration of the purposes of the parks.<sup>30</sup> DRP must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions. DRP may acquire proposed additions if DRP identified them within the original project boundary, adopted management plan, or management prospectus. If the proposed acquisition does not meet those criteria, ARC must approve the proposed acquisition.<sup>31</sup>

## *Florida Forest Service Projects*

The Florida Forest Service (FFS) within the Department of Agriculture and Consumer Services (DACS) manages 37 state forests consisting of over a million acres of forest for multiple purposes including timber, recreation, and wildlife habitat.<sup>32</sup> FFS may acquire lands suitable for state forest purposes by gift, donation, contribution, purchase, or otherwise and may enter into agreements with the federal government or other agencies for acquiring by gift, purchase, or otherwise such lands as are suitable and desirable for state forests.<sup>33</sup> FFS must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions. FFS may acquire proposed additions if FFS identified them within the original project boundary, the adopted management plan, or the management prospectus. If the proposed acquisition does not meet FFS criteria, then ARC must approve the proposed acquisition.<sup>34</sup>

## *Fish and Wildlife Conservation Commission Projects*

Wildlife management areas (WMAs) are public lands managed or cooperatively managed with other government agencies by the Fish and Wildlife Conservation Commission (FWC) for the enjoyment of anglers, hunters, wildlife viewers, and boaters.<sup>35</sup> FWC, with the approval of the Governor, may acquire in the name of the state lands and waters suitable for the protection and propagation of game, fish, nongame birds, or fur-bearing animals, or game farms for hunting purposes, by purchase, lease, gift, or

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<sup>27</sup> DEP, *Florida Recreation Development Assistance Program*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/florida-recreation-development-assistance-program/> (last visited Jan. 18, 2018).

<sup>28</sup> Section 375.075(3), F.S.

<sup>29</sup> DEP, *Division of Recreation and Parks*, <https://floridadep.gov/parks> (last visited Jan. 18, 2018).

<sup>30</sup> Section 258.007(1), F.S. DRP's ability to use condemnation is limited to parks within its jurisdiction on July 1, 1980, and may not exceed 40 acres or 10 percent of the total acreage of the park, whichever is less.

<sup>31</sup> Section 259.105(3)(1), F.S.

<sup>32</sup> DACS, *Florida Forest Service*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service> (last visited Jan. 18, 2018); DACS, *Our Forests*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests> (last visited Jan. 18, 2018).

<sup>33</sup> Section 589.07, F.S.

<sup>34</sup> Section 259.105(3)(1), F.S.

<sup>35</sup> FWC, *What are Wildlife Management Areas?*, <http://myfwc.com/viewing/recreation/wmas/> (last visited Jan. 18, 2018).

otherwise to be known as state game lands.<sup>36</sup> FWC must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions. FWC may acquire proposed additions if it identified them within the original project boundary, adopted management plan, or management prospectus. If the proposed acquisition does not meet those criteria, ARC must approve the proposed acquisition.<sup>37</sup>

### *Florida Greenways and Trails Program Projects*

The Office of Greenways and Trails (OGT) within DRP provides statewide leadership and coordination to establish, expand, and promote the Florida Greenways and Trails System (FGT).<sup>38</sup> FGT is a statewide system of greenways and trails that consists of individual and networks of greenways and trails designated by DEP as part of the statewide system.<sup>39</sup> DEP may acquire land by gift or purchase or any lesser interest in land, including easements, for purposes of greenways and trails.<sup>40</sup> The Florida Greenways and Trails Council (Council) recommends lands for acquisition based on ranking criteria developed by DEP. DEP's Secretary either approves the Council's recommendations or modifies them.<sup>41</sup> OGT must develop its individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures developed by ARC for acquisitions.<sup>42</sup> OGT is exempt from the evaluation and selection procedures developed by ARC.<sup>43</sup>

### *Rural and Family Lands Protection Program Projects*

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

- Protects valuable agricultural lands from conversion to other uses;
- Creates easement documents that work together with agricultural production to ensure sustainable agricultural practices and reasonable protection of the environment without interfering with agricultural operations in such a way that could put the continued economic viability of these operations at risk; and
- Protects natural resources, not as the primary purpose, but in conjunction with economically viable agricultural operations.<sup>44</sup>

DACS adopted rules that established an application process; a process and criteria for setting priorities for use of funds to achieve the purposes of the RFLPP and giving preference to ranch and timber lands managed using sustainable practices; an appraisal process; and a process for title review and compliance and approval of the rules by the BOT.<sup>45</sup>

### *Florida Forever Act*

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

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<sup>36</sup> Section 379.2222, F.S.

<sup>37</sup> Section 259.105(3)(1), F.S.

<sup>38</sup> DEP, *Office of Greenways and Trails*, <https://floridadep.gov/parks/ogt> (last visited Jan. 18, 2018).

<sup>39</sup> Section 260.014, F.S.

<sup>40</sup> Section 260.015(1), F.S.

<sup>41</sup> Section 260.016(2), F.S.; rr. 62S-1.300(7) and (8), F.A.C.

<sup>42</sup> Section 259.105(3)(1), F.S.

<sup>43</sup> Section 260.015(1)(c), F.S.

<sup>44</sup> 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 Jan. 18, 2018); s. 570.71(1), F.S.

<sup>45</sup> Section 570.71(10), F.S.; ch. 5I-7, F.A.C.

accounts and other costs associated with bonds.<sup>46</sup> DEP must distribute those proceeds in the following manner:

- Thirty percent to DEP for the acquisition of lands and capital project expenditures necessary to implement the WMDs' priority lists developed in their five-year work plans. WMDs must use a minimum of 50 percent of the total funds provided over the life of the Florida Forever Program for the acquisition of lands. The funds must be distributed to WMDs as follows: 35 percent to the South Florida WMD, 25 percent to the Southwest Florida WMD, 25 percent to the St. Johns River WMD, 7 ½ percent to the Suwannee River WMD, and 7 ½ percent to the Northwest Florida WMD.<sup>47</sup>
- Thirty-five percent to DEP for the acquisition of lands and capital project expenditures under the Florida Forever Program. The funds for the Florida Forever Program must be spent as follows:
  - Increased priority should be given to those acquisitions that achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge;
  - At a minimum, three percent, and no more than 10 percent, of the funds allocated to the Florida Forever Program must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access; and
  - Beginning in the 2017-2018 fiscal year (FY) and continuing through the 2026-2027 FY, at least \$5 million must be spent on land acquisition within the Florida Keys Area of Critical State Concern.
- Twenty-one percent to DEP for use by FCT for purposes of the FCT Act and grants to local governments or nonprofit environmental organizations that are tax-exempt under s. 501(c)(3) of the United States Internal Revenue Code. FCT and the grant recipients must use those funds for the acquisition of community-based projects, urban open spaces, parks, and greenways to implement local government comprehensive plans. The funds for FCT must be spent as follows:
  - Emphasize funding projects in low-income or otherwise disadvantaged communities and projects that provide areas for direct water access and water-dependent facilities that are open to the public and offer public access by vessels to waters of the state, including boat ramps and associated parking and other support facilities;
  - At least 30 percent of the total allocation must be used in Standard Metropolitan Statistical Areas. One-half of that amount must be used in localities where the project site is located in built-up commercial, industrial, or mixed-use areas and functions to intersperse open spaces within congested urban core areas; and
  - No less than five percent must be used to acquire lands for recreational trail systems, provided that in the event these funds are not needed for such projects, they will be available for other trust projects.
- Two percent to DEP for grants under FRDAP.
- One and five-tenths percent to DEP for the purchase of inholdings and additions to state parks and for capital project expenditures. At a minimum, one percent, and no more than 10 percent, of the funds allocated to state parks must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.
- One and five-tenths percent to FFS to fund the acquisition of state forest inholdings and additions, the implementation of reforestation plans or sustainable forestry management practices, and for capital project expenditures. At a minimum, one percent, and no more than 10 percent, of the funds allocated for the acquisition of inholdings and additions for state forests may be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.
- One and five-tenths percent to FWC to fund the acquisition of inholdings and additions to lands managed by FWC. The acquisitions must be important to the conservation of fish and wildlife and for certain capital project expenditures. At a minimum, one percent, and no more than 10

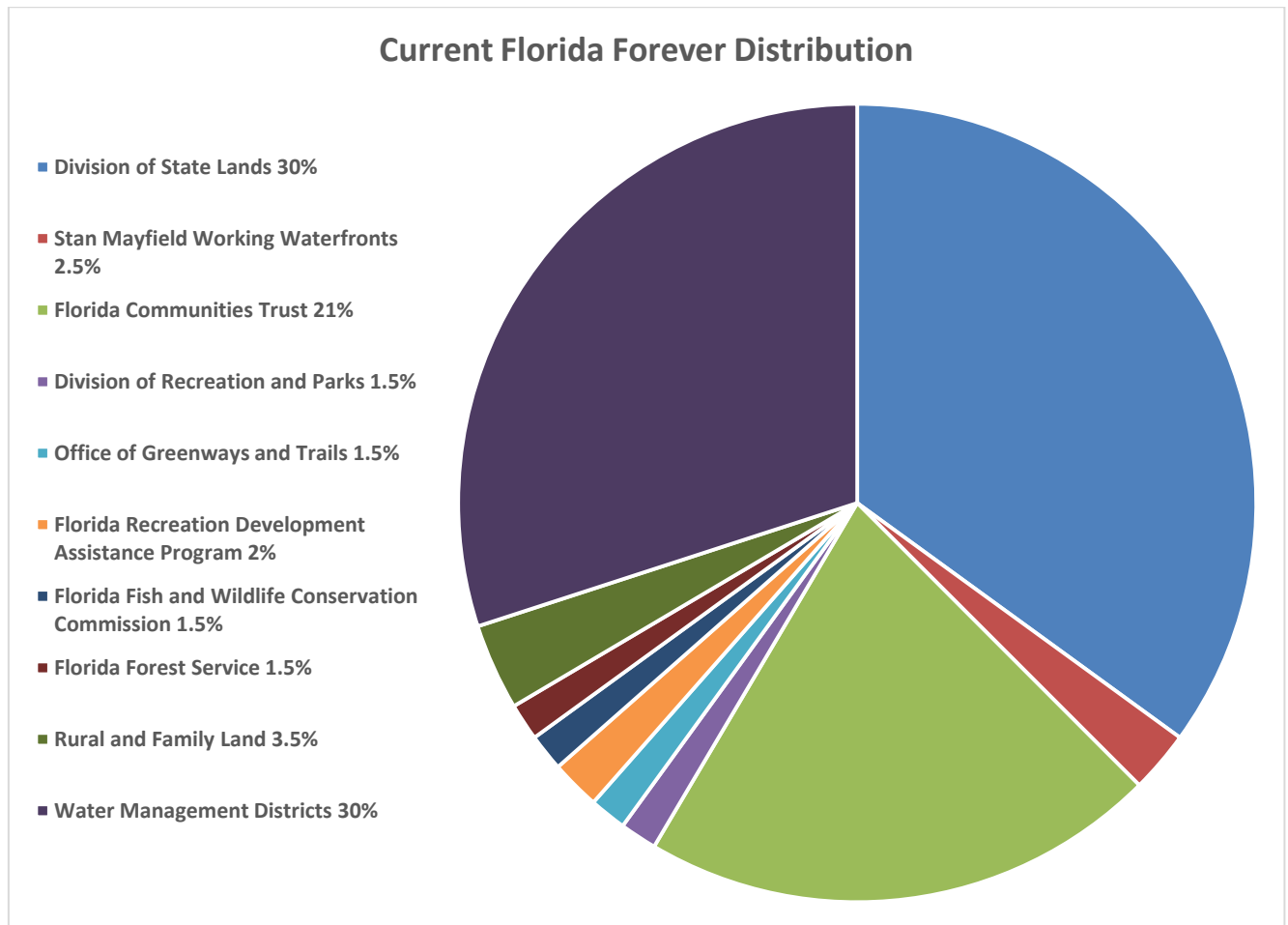
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<sup>46</sup> Section 259.105(3), F.S.

<sup>47</sup> Section 259.105(11), F.S.

percent, of the funds allocated to FWC may be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.

- One and five-tenths percent to DEP for FGT to acquire greenways and trails or greenways and trail systems. At a minimum, one percent, and no more than 10 percent, of the funds allocated to FGT may be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.
- Three and five-tenths percent to DACS for the acquisition of agricultural lands through perpetual conservation easements and other perpetual less than fee techniques that achieve the objectives of the Florida Forever Program and RFLPP.
- Two and five-tenths percent to DEP for the acquisition of land and capital project expenditures necessary to implement the Stan Mayfield Working Waterfronts Program within FCT.<sup>48</sup>



### *Everglades Agricultural Area Reservoir Project*

The Everglades Agricultural Area (EAA) Reservoir Project is a restoration project identified in the Comprehensive Everglades Restoration Project (CERP). CERP is composed of a series of projects designed to address the quality, quantity, timing and distribution of flow in the Central & Southern Florida Project to restore the south Florida ecosystem.<sup>49</sup> Chapter 2017-10, Laws of Florida, authorized the issuance of up to \$800 million in Florida Forever bonds for costs related the EAA Reservoir Project and other eligible water storage reservoir projects, including costs for land acquisition, planning, and construction.

<sup>48</sup> Section 259.105(3), F.S.

<sup>49</sup> Corps, *CERP Overview* (Mar. 2015), [http://www.saj.usace.army.mil/Portals/44/docs/FactSheets/CERP\\_FS\\_March2015\\_revised.pdf](http://www.saj.usace.army.mil/Portals/44/docs/FactSheets/CERP_FS_March2015_revised.pdf) (last visited Feb. 8, 2018).



## Effect of Proposed Changes

The bill amends ss. 215.618(1)(a); 259.032(9)(b), (d), and (e); and 259.105(2)(a), (2)(e), (4)(c)3., (4)(d)2., and (6), F.S., to remove the authorization to use Florida Forever funds for improvements, land management, enhancement, restoration, water resource development projects, and capital improvement projects to focus Florida Forever on land acquisition. These activities are authorized and are typically funded directly from the LATF. The bill also amends s. 215.618(1)(a), F.S., to authorize the use of Florida Forever funds to finance and refinance costs related to the EAA Reservoir Project and other water storage reservoir projects authorized under s. 373.4598, F.S.

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

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

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

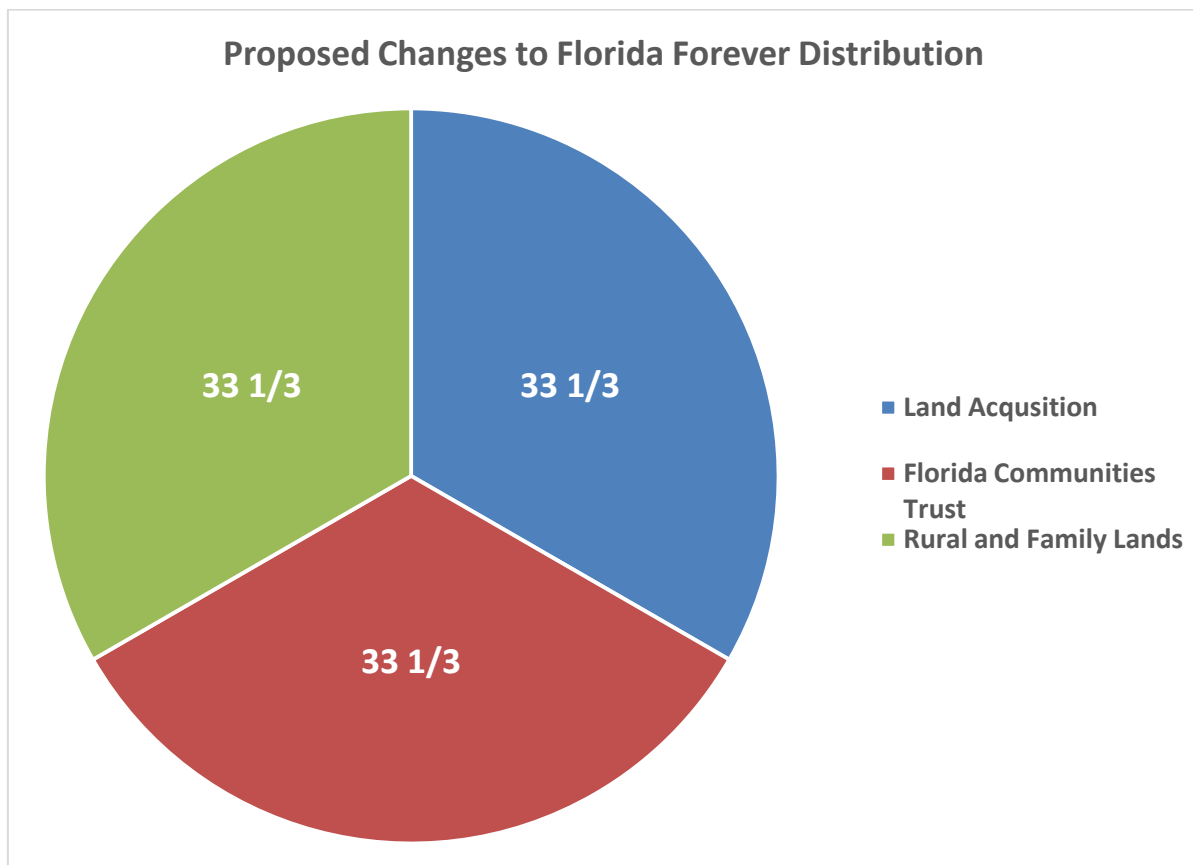
- Consolidates funding allocations for land acquisition for Florida Forever projects selected by ARC; the purchase of inholdings for lands managed by DEP, FWC, and FFS; and FRDAP grants into one allocation receiving 33 ⅓ percent of the funding. FRDAP grants will not require review and approval by ARC.
- Requires DEP to distribute funds received in its Florida Forever Trust Fund for lands necessary to implement the water management districts' priority lists; purchase of inholdings for lands managed by DEP, FWC, and FFS; and to provide grants for land acquisition for FRDAP, if the acquisition proposed by an agency is identified as a current year priority, has demonstrated to be the greatest need, and is consistent with annual legislative appropriations.
- Requires agencies that receive funds for the acquisition of inholdings to develop individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures similar to ARC's criteria. These agencies may acquire the inholdings if the proposed additions are identified within the original project boundary, the land management plan, or the land management prospectus. Proposed additions not meeting these requirements must be submitted to ARC for approval. ARC may only approve the proposed addition if it meets two or more of the following criteria: serves as a link or corridor to other publicly owned property; enhances the protection or management of the property; adds a desirable resource to the property; creates a more manageable boundary configuration; protects a high resource value that would otherwise not be protected; and can be acquired at less than fair market value. This provision is similar to the requirements in s. 259.105(3)(l), F.S.
- Removes funding allocations for acquisitions identified on WMDs' priority lists; acquisition of inholdings and additions to state parks, state forests, and lands managed by FWC; and greenways and trails. These projects will still be eligible to receive funding through the priority list developed by ARC.
- Increases the funding allocation for FCT projects from 21 percent to 33 ⅓ percent and consolidates the Stan Mayfield Working Waterfronts Program into this allocation.
- Removes the requirement that allocations from FCT funding be used to fund projects in low-income or otherwise disadvantaged communities and projects that provide areas for direct water access and water-dependent facilities that are open to the public and offer public access by vessels to waters of the state.
- Removes the requirement that at least 30 percent of the allocations from FCT funding be used in Standard Metropolitan Statistical Areas.

- Removes the requirement that no less than five percent of allocations from FCT funding be used to acquire lands for recreational trail systems.
- Increases funding allocations for RFLPP from  $3\frac{5}{10}$  percent to  $33\frac{1}{3}$  percent and requires that DACS give higher priority to the acquisition of rural-lands-protection easements where local governments are willing to provide cost-share funding for the acquisition.
- Removes specific appropriations for the 2016-2017 FY.

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

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

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



## Land Acquisition Trust Fund

### Present Situation

Article X, s. 28 of the Florida Constitution directs 33 percent of net revenues derived from existing excise tax on documents<sup>50</sup> to LATF for 20 years.<sup>51</sup> Funds from LATF must be used to:

- Finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for conservation lands; WMAs; lands that protect water resources and drinking water sources and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area; beaches and shores; outdoor recreation lands; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands;<sup>52</sup> and
- Pay the debt service on bonds.<sup>53</sup>

Section 375.041, F.S., implements art. X, s. 28 of the Florida Constitution by allocating the distribution of funds from LATF. First, LATF funds must be used to pay debt service or to fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds; and pay debt service, provide reserves, and pay rebate obligations and other amounts due with respect to Everglades restoration bonds.<sup>54</sup> Next, of the funds remaining after the payments to fund debt service, but before funds may be appropriated, pledged, or dedicated for other uses:

- A minimum of the lesser of 25 percent or \$200 million must be appropriated annually for Everglades restoration projects;<sup>55</sup>
- A minimum of the lesser of 7 <sup>6</sup>/<sub>10</sub> percent or \$50 million must be appropriated annually for spring restoration, protection, and management projects;<sup>56</sup>
- The sum of \$5 million must be appropriated each fiscal year through the 2025-2026 FY to the St. Johns River WMD for projects dedicated to the restoration of Lake Apopka;<sup>57</sup> and
- The sum of \$64 million must be appropriated and transferred to the Everglades Trust Fund for the 2018-2019 FY, and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project.<sup>58</sup>

Finally, any remaining moneys in LATF not distributed as previously discussed must be appropriated for the purposes set forth in art. X, s. 28 of the Florida Constitution.<sup>59</sup>

### *C-43 Reservoir*

CERP is the congressionally approved framework for restoring, protecting and preserving the water resources of central and southern Florida. CERP calls for the construction of the Caloosahatchee River (C-43) West Basin Storage Reservoir Project. The project will help store and manage basin runoff, as

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<sup>50</sup> The documentary stamp tax is imposed on documents that transfer interest in Florida real property and certain types of debt. Documents subject to the tax include deeds, bonds, corporate shares, notes and written obligations to pay money, and mortgages, liens, and other evidences of indebtedness; *see* s. 201.02, 201.07, and 201.08, F.S.

<sup>51</sup> FLA. CONST. art. X, s. 28(a).

<sup>52</sup> FLA. CONST. art. X, s. 28(b)(1).

<sup>53</sup> FLA. CONST. art. X, s. 28(b)(2).

<sup>54</sup> Section 375.041(3)(a), F.S.

<sup>55</sup> Section 375.041(3)(b)1., F.S.

<sup>56</sup> Section 375.041(3)(b)2., F.S.

<sup>57</sup> Section 375.041(3)(b)3., F.S.

<sup>58</sup> Section 375.041(3)(b)4., F.S.

<sup>59</sup> Section 375.041(4), F.S.

well as Lake Okeechobee regulatory discharges, to meet the needs of the Caloosahatchee Estuary during the wet and dry seasons by reducing the frequency of undesirable salinity ranges.<sup>60</sup>

### Effect of Proposed Changes

The bill creates s. 375.041(3)(b)5., F.S., to establish the funding allocations for the Florida Forever Trust Fund for FYs 2019-2020 through 2035-2036. The bill also amends s. 375.041(3)(b)1., F.S., to require the highest funding priority for the construction of the C-43 West Basin Storage Reservoir Project.<sup>61</sup>

## **Conservation Lands**

### Revenue Generated from the Disposition of Conservation Lands

#### *Present Situation*

WMDs and local governments use a myriad of funding sources to purchase conservation lands. These funds may come from the state through the Florida Forever Program (or previously from Preservation 2000) or directly from the LATF. Funds for land acquisition may also come from taxes collected by the WMDs and local governments (ad valorem funds).<sup>62</sup>

For the disposal of property, WMDs follow the procedures in s. 373.089, F.S., while the BOT must follow the procedures found in s. 253.0341, F.S., which include additional requirements to ensure the public's interest is protected. The requirements include a study and standard for determining lands to sell, ARC review, first rights of refusal to local governments and colleges, appraisal procedures, bid requirements, and the management and accounting of funds generated from disposition of lands.

If a WMD sells conservation lands, with the exception of lands purchased with Preservation 2000 or Florida Forever funds, it is unclear where the proceeds of the sale must go. Beginning July 1, 2015, the BOT must deposit proceeds from any sale of conservation lands into the LATF.<sup>63</sup> This requirement arguably may not apply to WMDs because the statute directing the use of the disposition funds only mentions the BOT. The BOT, WMDs, and local governments must deposit any revenues generated from the disposal of lands acquired with Preservation 2000 funds into the Florida Forever Trust Fund within DEP.<sup>64</sup> WMDs cannot use any revenue derived from disposition of Preservation 2000 or Florida Forever lands for any purpose, except for the purchase of other lands meeting the criteria specified for the selection of WMD lands in s. 373.139, F.S., or payment of debt service on revenue bonds or notes issued by the WMD to undertake capital projects or other projects allowed by the Florida Constitution.<sup>65</sup> Further, the BOT and WMDs may not surplus or exchange lands if the effect of the sale or exchange would cause all or any portion of the interest on any revenue bonds issued to lose their tax-exempt status.<sup>66</sup>

It appears that at least one WMD improperly used funds from the disposition of conservation lands for purposes not authorized by statute. Further, some WMDs do not appear to be keeping proper records for the use and disposition of funds for conservation lands.<sup>67</sup>

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<sup>60</sup> South Florida WMD, *Quick Facts on Caloosahatchee River (C-43) West Basin Storage Reservoir*, [https://www.sfwmd.gov/sites/default/files/documents/spl\\_calooos\\_c43\\_reservoir.pdf](https://www.sfwmd.gov/sites/default/files/documents/spl_calooos_c43_reservoir.pdf) (last visited Jan. 18, 2018).

<sup>61</sup> South Florida WMD, *C-43 Draft Financial and Construction Update*, available upon request from the Natural Resources & Public Lands Subcommittee.

<sup>62</sup> Section 373.503, F.S.

<sup>63</sup> Section 253.0341(13), F.S.

<sup>64</sup> Section 259.101(5)(c), F.S.

<sup>65</sup> Section 373.139(6), F.S.

<sup>66</sup> Sections 215.618(6), 253.0341(15) and 373.139(6), F.S.

<sup>67</sup> State of Florida Auditor General, *Operational Audit Report NO. 2017-215, Suwannee River Water Management District* (June 2017), available at: [https://flauditor.gov/pages/pdf\\_files/2017-215.pdf](https://flauditor.gov/pages/pdf_files/2017-215.pdf) (last visited Jan. 18, 2018).

### *Effect of Proposed Changes*

The bill creates ss. 125.35(4) and (5), 166.0452, and 373.089(10) and (11), F.S., to require counties, municipalities, and WMDs to deposit proceeds from the sale of surplus conservation lands purchased with Florida Forever funds before July 1, 2015, into the Florida Forever Trust Fund if the entities do not use the proceeds for another purpose identified in the Florida Forever Act within three years. The bill also requires counties, municipalities, and WMDs to deposit proceeds from the sale of surplus conservation lands purchased with funds from the state on or after July 1, 2015, into the LATF if the entities do not use the proceeds for another purpose identified in article X, s. 28 of the Florida Constitution within three years. When counties, municipalities, or WMDs purchase conservation lands with state funds other than those from LATF or a land acquisition trust fund created to implement, article X, s. 28 of the Florida Constitution, counties, municipalities, and WMDs must deposit the proceeds from the sale into the fund from which they purchased the lands. If counties, municipalities, or WMDs bought the conservation land with multiple revenue sources, counties, municipalities, and WMDs must deposit an amount based on the percentage of state funds used for the original purchase.

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

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

#### *Present Situation*

Several WMDs generate revenue from the use of conservation lands purchased with state funds, including timber sales, hunting, and recreation. All state agencies must return revenues generated through multiple-use management or compatible secondary use management of their lands to the lead managing agency. The lead managing agency may only use these funds to pay for management activities on conservation, preservation, and recreation lands under the agency's jurisdiction. In addition, the agency must segregate such revenue in an agency trust fund to remain available to the agency in subsequent fiscal years to support land management activities.<sup>68</sup> It appears at least one WMD has used funds derived from the use of conservation lands purchased with state funding for purposes unrelated to land management, and the WMD did not segregate the revenue into the appropriate trust funds.<sup>69</sup>

#### *Effect of Proposed Changes*

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

### Local Rural Conservation Easement Programs

#### *Present Situation*

As previously discussed, the Rural and Family Lands Protection Program (RFLPP) within DACS is an agricultural land preservation program designed to protect important agricultural lands through the

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<sup>68</sup> Sections 253.036 and 259.032(9)(c), F.S.

<sup>69</sup> State of Florida Auditor General, *Operational Audit Report NO. 2017-215, Suwannee River Water Management District* (June 2017), available at: [https://flauditor.gov/pages/pdf\\_files/2017-215.pdf](https://flauditor.gov/pages/pdf_files/2017-215.pdf) (last visited Jan. 18, 2018).

acquisition of permanent agricultural land conservation easements. Local governments may conduct similar conservation easement programs within their jurisdictions to facilitate the preservation of agricultural lands through acquisition of development rights.<sup>70</sup> These types of conservation easement programs provide several benefits including:

- Protecting important farmland while keeping the land in private ownership and on local tax rolls;
- Creating a flexible property interest that can be tailored to meet the needs of individual farmers and ranchers and unique properties;
- Providing land owners with several tax benefits including income, estate, and property tax reductions;<sup>71</sup> and
- Helping farmers and ranchers transfer their operations to the next generation.<sup>72</sup>

### *Effect of Proposed Changes*

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

## **Maintenance and Control of Exotic and Invasive Species on State Lands**

### Present Situation

Generally, the state manages its uplands in a manner that will provide the greatest combination of benefits to the general public.<sup>73</sup> The BOT may authorize use of these lands when it determines such use to be in the public interest.<sup>74</sup> Managers of conservation lands must prepare, follow, and update every 10 years "land management plans."<sup>75</sup> All state agencies who use state conservation lands must submit a management plan to DSL for review.<sup>76</sup> The management plan must include goals that include measurable objectives for the following, as appropriate:

- Habitat restoration and improvement;
- Public access and recreational opportunities;
- Hydrological preservation and restoration;
- Sustainable forest management;
- Exotic and invasive species maintenance and control;
- Capital facilities and infrastructure;
- Cultural and historical resources; and
- Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

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<sup>70</sup> See Miami-Dade County, *Purchase of Development Rights*, <http://www.miamidade.gov/business/agriculture-purchase-development-rights.asp> (last visited Jan. 18, 2018).

<sup>71</sup> See s. 193.501, F.S.

<sup>72</sup> Farmland Information Center, *Agricultural Conservation Easements*, available at:

[http://www.farmlandinfo.org/sites/default/files/Agricultural\\_Conservation\\_Easements\\_AFT\\_FIC\\_01-2016.pdf](http://www.farmlandinfo.org/sites/default/files/Agricultural_Conservation_Easements_AFT_FIC_01-2016.pdf) (last visited Jan. 18, 2018).

<sup>73</sup> Rule 18-2.018(2)(b), F.A.C.

<sup>74</sup> Rule 18-2.018(1), F.A.C.

<sup>75</sup> See s. 253.034(5), F.S.; r. 18-2.018(3)(a)5., F.S.

<sup>76</sup> Rule 18-2.018(3)(a)5.a., F.A.C.

## Effect of Proposed Changes

The bill amends s. 253.034(5)(b)5., F.S., to require the agencies that manage conservation lands to prioritize the exotic and invasive species that must be maintained or controlled and the areas where the control and maintenance must first be addressed in their land management plans.

### **State Park Volunteer Annual Entrance Pass**

#### Present Situation

The DRP manages 175 parks covering 800,000 acres and 100 miles of beaches.<sup>77</sup> The state established these areas for the protection and preservation of their natural features or historic significance and for public use and enjoyment.<sup>78</sup>

DRP may charge reasonable fees, rentals, or charges for the use or operation of facilities and concessions in state parks. These fees must be deposited in the State Park Trust Fund. DRP may use these funds to administer, improve, maintain, acquire, and develop lands for state park purposes.<sup>79</sup> State park annual entrance passes are available for purchase that provide day use park entry into state parks, in lieu of paying daily entrance fees, for one year from the month of purchase.<sup>80</sup> An individual state park annual entrance pass costs \$60, while a family state park annual entrance pass costs \$120.<sup>81</sup> Discounts to state park annual entrance passes include:

- A 25 percent discount on state park annual entrance passes for active duty members and honorably discharged veterans of the United States Armed Forces, National Guard, or reserve components;<sup>82</sup>
- A lifetime family state park annual entrance passes at no charge for honorably discharged veterans who have service-connected disabilities; surviving spouses and parents of deceased members of the United States Armed Forces, National Guard, or reserve components who have fallen in combat; and surviving spouse and parents of a law enforcement officer or a firefighter who has died in the line of duty;<sup>83</sup>
- A free family state park entrance annual for families operating a family foster home licensed by the Department of Children and Families;
- A one-time family state park annual entrance pass at no charge for families who adopt a special needs child;<sup>84</sup>
- Free admission to a park along with their family for individuals who provide 100 hours of volunteer service; and
- A state park annual entrance pass for individuals who provide 500 hours of volunteer service.<sup>85</sup>

The United States Department of the Interior provides a similar annual pass volunteer program, the America the Beautiful Pass, to provide access to all federal recreation lands including national parks. Individuals may earn an America the Beautiful Pass if they perform 250 hours of volunteer service with federal agencies who manage federal lands.<sup>86</sup>

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<sup>77</sup> DEP, *Division of Recreation and Parks*, <https://floridadep.gov/parks> (last visited Feb. 5, 2018).

<sup>78</sup> Rule 62D-2.013(1), F.A.C.

<sup>79</sup> Section 258.014(1), F.S.

<sup>80</sup> Florida State Parks, *Annual Pass Information*, <https://www.floridastateparks.org/content/annual-pass-information#aboutannualpasses> (last visited Feb. 5, 2018).

<sup>81</sup> *Id.*; Family annual passes cover the entrance of up to eight people in a group, except at Ellie Schiller Homosassa Springs Wildlife State Park, Weeki Wachee Springs State Park, and Skyway Fishing Pier State Park where the family pass is good for admission of up to two people.

<sup>82</sup> Section 258.0145(1), F.S.

<sup>83</sup> Sections 258.0145(2) – (4), F.S.

<sup>84</sup> Section 258.0142(1), F.S.

<sup>85</sup> Florida State Parks, *Volunteer Opportunities*, <https://www.floridastateparks.org/get-involved/volunteer> (last visited Feb. 6, 2018)

<sup>86</sup> National Park Service, *America the Beautiful Passes*, <https://www.nps.gov/playourvisit/passses.htm> (last visited Feb. 5, 2018).

## Effect of Proposed Changes

The bill adds s. 258.014(3), F.S., to require DRP to adopt rules to create a state park annual entrance pass program for volunteer work related to nonnative and invasive plant species removal. The bill requires DRP to issue a state parks annual entrance pass at no charge to individuals who perform 50 hours of volunteer service at any state park to remove nonnative and invasive plant species. The volunteer work performed by the individual must be consistent with the park's adopted unit management plan and under the supervision of DRP. The rules adopted by DRP must include, at a minimum:

- Identification of what qualifies as volunteer hours performed;
- A process to document and verify the individual performed 50 hours of volunteer service for nonnative and invasive species removal at state parks prior to receiving an annual entrance pass at no charge;
- A process to identify appropriate nonnative and invasive species removal activities and locations appropriate for volunteers consistent with each park's unit management plan; and
- A process for supervising volunteer activities to ensure the safety of the volunteers and the service is conducted in a manner consistent with the park's unit management plan.

## **Beach Management Funding Assistance Program**

Sandy shores line 825 miles of Florida's coasts, fronting the Atlantic Ocean, Gulf of Mexico, and Straits of Florida. These beaches serve several important functions, each being vital to maintaining the health of Florida's economy and environment. The coastal sandy beach system is home to hundreds of species of plants and animals that are dependent upon the beaches, dunes, and nearshore waters.<sup>87</sup> Beaches also serve as Florida's primary tourist attraction, generating millions of dollars for Florida's economy. The Office of Economic and Demographic Research (EDR) identified beaches as the most important feature of Florida's brand, and beaches have the strongest effect in terms of attracting tourists.<sup>88</sup> Nourished beaches contribute to the expanding federal, state, and local tax bases; increase sales, income, and employment opportunities from resident and visitor spending; and enhance property values by protecting the developed shorefront from storm surges and prevent loss of upland property.<sup>89</sup> During the 2010-2011 FY through 2012-2013 FY, \$5.40 of additional tax revenue was generated for every dollar spent by the state on beach restoration.<sup>90</sup>

Beaches are dynamic landforms at the edge of the ocean or gulf subject to both natural erosion and human-created erosion. Sand moves along the shore due to wind-driven currents and tides, and storms can cause dramatic changes to the beach. The majority of human-created erosion is attributed to the creation and maintenance of inlets. Construction and maintenance of the inlets historically removed sand from the coastal system, and jetties block the natural drift of sand along the shore, trapped sand in channels, or moved sand into ebb and flood shoals. The development and the placement of infrastructure in close proximity to the shore also contributes to coastal erosion by limiting the amount of sand stored in dunes and hardening the shore for protection of upland property.<sup>91</sup>

Due to storm events, construction and maintenance of inlets, imprudent coastal development, and other factors, 420.9 miles of Florida's beaches are critically eroded.<sup>92</sup> Recognizing the importance of

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<sup>87</sup> DEP, *Beaches and Coastal Systems*, <https://floridadep.gov/water/beaches> (last visited Feb. 5, 2018).

<sup>88</sup> EDR, *Economic Evaluation of Florida's Investment in Beaches*, Jan. 2015, p. 9, available at: <http://edr.state.fl.us/Content/returnnoninvestment/BeachReport.pdf> (last visited Feb. 5, 2018).

<sup>89</sup> DEP, *Strategic Beach Management Plan*, June 2015, p. 1, available at: <https://floridadep.gov/water/beaches-inlets-ports/documents/introduction-strategic-beach-management-plan> (last visited Feb. 5, 2018).

<sup>90</sup> EDR, *supra* note 90, at p. 12.

<sup>91</sup> DEP, *supra* note 91, at p. 1.

<sup>92</sup> DEP, *Critically Eroded Beaches in Florida Report*, December 2017, p. 5, available at:

<http://www.dep.state.fl.us/beaches/publications/pdf/CriticalErosionReport.pdf> (last visited Feb. 5, 2018). A "critically eroded shoreline" is a segment of shoreline where natural processes or human activities have caused, or contributed to, erosion and recession



the state's beaches and the problems presented by erosion, the Legislature declared it necessary to protect and restore the state's beaches through a comprehensive beach management planning program.<sup>93</sup> Under the planning program, DEP evaluates beach erosion problems throughout the state seeking viable solutions.<sup>94</sup> The Beach Management Funding Assistance Program (funding program) serves as the primary vehicle to implement the beach management planning recommendations with the purpose of working in concert with local, state, and federal governmental entities to achieve the protection, preservation, and restoration of the coastal sandy beach resources of the state.<sup>95</sup> The funding program provides cost-share funding with county and municipal governments, community development districts, or special taxing districts for shore protection and preservation activities (collectively "local sponsors") to implement beach management and inlet management projects.<sup>96</sup> DEP annually evaluates and ranks beach management and inlet management project funding requests submitted by local sponsors and submits its recommendation to the Legislature for funding consideration.<sup>97</sup>

## Beach Management Projects

### *Present Situation*

"Beach Management" is protecting, maintaining, preserving, or enhancing Florida's beaches. Beach management activities include beach restoration<sup>98</sup> and nourishment<sup>99</sup> activities; dune protection and restoration; restoration of natural shoreline processes; removal of derelict structures and obstacles to natural shoreline process in conjunction with restoration or nourishment; and construction of erosion control structures (beach management projects).<sup>100</sup> To receive funding, beach management projects must be consistent with the adopted Strategic Beach Management Plan (SBMP).<sup>101</sup> Funding for these beach management projects comes from federal, state, and local government sources. DEP may provide financial assistance to local sponsors in an amount up to 75 percent of the beach management project costs for beach management projects located on critically eroded beaches fronting the Gulf of Mexico, Atlantic Ocean, or Straits of Florida.<sup>102</sup> However, until the unmet demand for repairing Florida's beaches and dunes is met, DEP may only provide cost-share funding up to 50 percent of the of the non-federal share.<sup>103</sup>

Beach management projects must provide adequate public access, protect natural resources, and provide protection for endangered and threatened species.<sup>104</sup> Further, DEP may not fund projects that provide only recreational benefits. All funded activities must have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing sand in the system.<sup>105</sup>

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of the beach and dune system to such a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost. Critically eroded shoreline may also include adjacent segments or gaps between identified critical erosion areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects; r. 62B-36.002(5), F.A.C.

<sup>93</sup> Sections 161.088 and 161.091, F.S.

<sup>94</sup> Section 161.101(2), F.S.

<sup>95</sup> DEP, *Beach Funding*, <https://floridadep.gov/wra/beaches-funding> (last visited Feb. 5, 2018).

<sup>96</sup> Rules 62B-36.001 and 62B-36.002(9), F.A.C.

<sup>97</sup> Sections 161.101 and 161.143, F.S.

<sup>98</sup> "Beach restoration" is the placement of sand on an eroded beach for the purposes of restoring it as a recreational beach and providing storm protection for upland properties; s. 161.021(4), F.S.

<sup>99</sup> "Beach nourishment" is the maintenance of a restored beach by the replacement of sand; s. 161.021(3), F.S.

<sup>100</sup> Rule 62B-36.002(3), F.A.C.

<sup>101</sup> Rule 62B-36.005(3), F.A.C.

<sup>102</sup> Sections 161.101(1) and (7), F.S.

<sup>103</sup> Section 161.101(15), F.S.; rr. 62B-36.003(9) and 62B-36.007(1), F.A.C. DEP may pay up to 100 percent of the costs of a project when the state is the upland riparian owner.; s. 161.101(10), F.S.

<sup>104</sup> Section 161.101(12), F.S.

<sup>105</sup> Section 161.101(13), F.S.

Currently, local, state and federal entities manage approximately 227 miles of critically eroded beaches in Florida.<sup>106</sup>

Annually, local sponsors submit cost-share funding requests to DEP.<sup>107</sup> DEP must evaluate and rank these requests based on the information submitted by the local sponsor prior to submitting a funding recommendation to the Legislature.<sup>108</sup> DEP prioritizes the beach management projects based on the following criteria:

- The severity of erosion conditions, the threat to existing upland development, and recreational or economic benefits;
- The availability of federal matching dollars;
- The extent of the local government sponsor financial and administrative commitment to the beach management project, including a long-term financial plan with a designated funding source or sources for initial construction and periodic maintenance;
- Previous state commitment and involvement in the beach management project;
- The anticipated physical performance of the proposed beach management project, including the frequency of periodic planned nourishment;
- The extent to which the proposed beach management project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches;
- Innovative, cost-effective, and environmentally sensitive applications to reduce erosion;
- Beach management projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles;
- The extent to which local or regional sponsors of beach erosion control beach management projects agree to coordinate the planning, design, and construction of their beach management projects to take advantage of identifiable cost savings; and
- The degree to which the beach management project addresses the state's most significant beach erosion problems.<sup>109</sup>

In the event that more than one beach management project ranks equally, DEP must assign funding priority to those beach management projects that are ready to proceed.<sup>110</sup>

### *Effect of Proposed Changes*

The bill amends s. 161.101(14), F.S., to add the economic benefit of beach management projects to the criteria DEP must consider when determining annual funding priorities. DEP must measure the economic benefit by the ratio of the tourist development tax revenue collected<sup>111</sup> for the most recent year to state sales tax and the tourist development tax revenues for the most recent year. DEP must calculate this ratio using state sales tax and the tourist development tax data of the county having jurisdiction over the beach management project area. If multiple counties have jurisdiction over the beach management project area, DEP must calculate the ratio for each county individually. DEP must then calculate the mean average of these ratios to determine the final overall economic benefit of the beach management project for the multicounty beach management project. This change will likely require rulemaking.

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<sup>106</sup> DEP, *supra* note 97.

<sup>107</sup> Rule 62B-36.005(1), F.A.C.

<sup>108</sup> Rules 62B-36.005(3) and (4), F.A.C.

<sup>109</sup> Section 161.101(14), F.S.

<sup>110</sup> *Id.*

<sup>111</sup> Taxes levied on any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less. s. 125.0104, F.S.

## Strategic Beach Management Plan

### *Present Situation*

The SBMP provides an inventory of Florida's strategic beach management areas fronting on the Atlantic Ocean, Gulf of Mexico, and Straits of Florida and an inventory of Florida's 66 coastal barrier tidal inlets.<sup>112</sup> Beach management and inlet management projects proposed by local sponsors must be consistent with the SBMP to receive funding.<sup>113</sup> The SBMP must:

- Address long-term solutions to the problem of critically eroded beaches in this state;
- Evaluate each improved, modified, or altered inlet and determine whether the inlet is a significant cause of beach erosion;
- Design criteria for beach restoration and beach nourishment projects;
- Evaluate the establishment of feeder beaches as an alternative to direct beach restoration and recommend the location of such feeder beaches and the source of beach-compatible sand;
- Identify causes of shoreline erosion and change, calculate erosion rates, and project long-term erosion for all major beach and dune systems by surveys and profiles;
- Identify shoreline development and degree of density and assess impacts of development and shoreline protective structures on shoreline change and erosion;
- Identify short-term and long-term economic costs and benefits of beaches;
- Study dune and vegetation conditions;
- Identify beach areas used by marine turtles and develop strategies for protection of the turtles and their nests and nesting locations;
- Identify alternative management responses;
- Establish criteria for alternative management techniques;
- Select and recommend appropriate management measures for all of the state's sandy beaches in a beach management program; and
- Establish a list of beach restoration and beach nourishment projects, arranged in order of priority, and the funding levels needed for such projects.<sup>114</sup>

DEP may prepare the SBMP at the regional level based upon areas of greatest need and probable federal funding. The regional plans must be components of the SBMP and must serve as the basis for state funding decisions once approved by the secretary of DEP and the BOT. DEP staff must submit any completed regional plans to the secretary of DEP for approval no later than March 1 of each year. These regional plans must include, but shall not be limited to, recommendations of appropriate funding mechanisms for implementing projects in the beach management plan. DEP must hold public meetings in the areas affected by the proposed regional plans prior to presenting the plan to the secretary of DEP for approval.

### *Effect of Proposed Changes*

The bill amends s. 161.161(1), F.S., to update how DEP must develop and maintain its comprehensive long-term beach management plan. Specifically, the bill:

- Requires DEP to include improvement of infrastructure to facilitate sand bypassing in its recommendations on how to mitigate each inlet's erosive impacts;
- Eliminates the requirement for DEP to include cost estimates necessary to take inlet corrective measures and recommendations for cost sharing among the beneficiaries of such inlets;
- Requires DEP to evaluate, rather than design, criteria for beach restoration and beach nourishment;
- Adds that DEP must consider the establishment of regional sediment management alternatives for one or more individual beach and inlet sand bypassing projects as an alternative to beach

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<sup>112</sup> DEP, supra note 3, at p. 1.

<sup>113</sup> *Id.* at 5.; r. 62B-36.005(3), F.A.C.

<sup>114</sup> Section 161.161(1), F.S.

restoration. DEP must recommend location of such regional sediment management alternatives;

- Eliminates the requirement for DEP to consider the establishment of feeder beaches for inlet sand bypassing projects;
- Requires DEP to maintain an updated list of critically eroded sandy beaches based on data, analyses, and investigations of shoreline conditions;<sup>115</sup>
- Removes the requirement for DEP to project long-term erosion for all major beach and dune systems by surveys and profiles;
- Removes the requirement for DEP to identify shoreline development and degree of density;
- Requires DEP to assess the impact of coastal protection structures on shoreline change and erosion;
- Requires DEP to identify short-term and long-term economic costs and benefits of beaches to the state and individual beach communities;
- Eliminates the requirement to include recreational value to user groups, tax base, revenues generated, and beach acquisition and maintenance costs in the evaluation by DEP;
- Requires DEP to identify existing beach projects without dune features or with dunes without adequate elevations, and encourage dune restoration and revegetation to be incorporated as part of storm damage recovery projects or future dune maintenance events;
- Eliminates the requirement for DEP to identify alternative management responses to prevent inappropriate development and redevelopment on migrating beaches and to consider abandonment of development as an alternative management response. DEP must still consider relocation of development;
- Requires DEP to document procedures and policies for preparing post-storm damage assessments and corresponding recovery plans, including repair cost estimates;
- Removes the requirement for DEP to establish criteria including costs and specific implementation actions for alternative management techniques;
- Eliminates the requirement for DEP to select and recommend appropriate management measures for all of the state's sandy beaches in the beach management program. The bill replaces this requirement with the requirement to identify and assess appropriate management measures for all of the critically eroded beaches; and
- Removes the requirement for DEP to establish a list of beach restoration and beach nourishment projects in priority order for funding. This requirement already exists in s. 161.101(14), F.S.

The bill creates s. 161.161(2), F.S., to require the comprehensive long-term management plan developed and maintained by DEP to include at a minimum a SBMP, a critically eroded beaches report, and a statewide long-range budget plan.

The SBMP must identify and recommend appropriate measures for all of the state's critically eroded sandy beaches and may incorporate plans prepared at the regional level, taking into account areas of greatest need and probable federal and local funding. The bill removes information that must be included in the regional plans. This criterion is similar to what DEP considers in the statewide plan. The bill removes the requirement for DEP staff to present the plan to the secretary of DEP by March 1 of each year. DEP must still hold public meetings before finalizing such regional plans. The bill also authorizes DEP to host publically noticed webinars in lieu of holding public meetings.

DEP must base the critically eroded beaches report on data, analyses, and investigations of shoreline conditions.

The statewide long-range budget plan must include at least five years of planned beach restoration, beach nourishment, and inlet management projects funding needs as identified, and subsequently

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<sup>115</sup> DEP's current Critical Erosion Report may be found at: <https://floridadep.gov/water/engineering-hydrology-geology/documents/critically-eroded-beaches-florida> (last visited Feb. 5, 2018).

refined, by local sponsors. The plan must identify the proposed schedule of the feasibility, design, construction, and monitoring phases of the projects anticipated in the next five years and the projected costs of those phases. DEP may present the projects by region and does not need to present the projects in priority order. However, DEP must identify issues that may prevent successful completion of such projects and recommend solutions that would allow the projects to progress.

Lastly, the bill creates s. 161.161(3), F.S., to require the secretary of DEP to present the statewide long-range budget plan to the Legislature as part of the annual budget request. The statewide long-range budget plan must include a five-year financial forecast for the availability of funding for projects.

## **Comprehensive Plan Water Facilities Work Plan**

### Present Situation

Local governments are required to include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element in their comprehensive plan, correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area.<sup>116</sup>

The element must describe the problems and needs and the general facilities that will be required for solution of the problems and needs, including correcting existing facility deficiencies. It must address coordinating the extension of, or increase in the capacity of, facilities to meet future needs while maximizing the use of existing facilities and discouraging urban sprawl; conserving potable water resources; and protecting the functions of natural groundwater recharge areas and natural drainage features.<sup>117</sup> The element must also identify traditional water supply projects, alternative water supply projects, conservation, and reuse necessary to meet the water needs within the local government's jurisdiction. It must include a work plan, covering at least a 10-year planning period, for building public, private, and regional water supply facilities, including development of alternative water supplies, which are identified as necessary to serve existing and new development (water facilities work plan). Local governments must update the water facilities work plan at least every five years within 18 months after a WMD approves an updated regional water supply plan (RWSP).<sup>118</sup>

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

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

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

### *Rural Area of Opportunity*

A rural area of opportunity (RAO) is a rural community,<sup>119</sup> or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event,

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<sup>116</sup> Section 163.3177(6)(c), F.S.

<sup>117</sup> Section 163.3177(6)(c)2., F.S.

<sup>118</sup> Section 163.3177(6)(c)3., F.S.

<sup>119</sup> Section 288.0656(2)(e), defines a "rural community" to mean: a county with a population of 75,000 or fewer; a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer; a municipality within a county meeting the definition of rural community; an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors and verified by the Department of

severe or chronic distress, or a natural disaster that presents a unique economic development opportunity of regional impact.<sup>120</sup> The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.<sup>121</sup>

### Effect of Proposed Changes

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

### **C-51 Reservoir Project**

#### Present Situation

The C-51 reservoir project is a water storage facility<sup>122</sup> located in western Palm Beach County south of Lake Okeechobee consisting of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities and provide environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.<sup>123</sup>

The C-51 reservoir project consists of Phase I and Phase II. Phase I will provide approximately 14,000 acre-feet of water storage and will hydraulically connect to the South Florida WMD's L-8 Flow Equalization Basin. Phase II will provide approximately 46,000 acre-feet of water storage, for a total increase of 60,000 acre-feet of water storage.<sup>124</sup>

If state funds are appropriated for Phase I or Phase II, the South Florida WMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to providing relief to the Lake Worth Lagoon; water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and any water received from Lake Okeechobee may not be available to support consumptive use permits (CUPs).<sup>125</sup>

Phase I may be funded by appropriation or through the water storage facility revolving loan fund. Phase II may be funded by the issuance of Florida Forever bonds, through the water storage facility revolving loan fund, as a project component of the CERP, or through the Everglades Trust Fund.<sup>126</sup>

#### *Water Storage Facility Revolving Loan Fund*

The state, through DEP, must provide funding assistance to local governments or water supply entities for the development and construction of water storage facilities to increase the availability of sufficient

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Economic Opportunity (DEO). Population must be determined in accordance with the most recent official estimate pursuant to s. 186.901, F.S.

<sup>120</sup> Section 288.0656(2)(d), F.S.

<sup>121</sup> DEO, RAO, <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Jan. 17, 2018).

<sup>122</sup> Section 373.475(2)(b), F.S., defines water storage facility.

<sup>123</sup> Section 373.4598(9)(a), F.S.

<sup>124</sup> Section 373.4598(9)(b), F.S.

<sup>125</sup> Section 373.4598(9)(d), F.S.

<sup>126</sup> Section 373.4598(9)(e), F.S.; see s. 373.475, F.S., for the water storage facility revolving loan fund.

water for all existing and future reasonable-beneficial uses and natural systems. DEP may make loans, provide loan guarantees, purchase loan insurance, and refinance local debt through the issuance of new loans for water storage facilities approved by DEP. Local governments or water supply entities may borrow funds made available and may pledge any revenues or other adequate security available to them to repay any funds borrowed. DEP may award loan amounts for up to 75 percent of the costs of planning, designing, constructing, upgrading, or replacing water resource infrastructure or facilities, whether natural or manmade, including the acquisition of real property for water storage facilities.<sup>127</sup> The minimum amount of a loan is \$75,000 and the term of the loan may not exceed 30 years.<sup>128</sup>

### Effect of Proposed Changes

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

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

## **Regional Water Supply Authorities**

### Present Situation

Municipalities, counties, and special districts are encouraged to create regional water supply authorities (RWSA) or multijurisdictional water supply entities to develop, recover, store, and supply water for county or municipal purposes that will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas.<sup>129</sup> RWSAs are created by interlocal agreement, and are reviewed and approved by DEP to ensure the agreement will be in the public interest. Currently, there are four RWSAs in Florida: Tampa Bay Water (formerly known as the West Coast RWSA), Peace River/Manasota RWSA, Withlacoochee RWSA, and Walton/Okaloosa/Santa Rosa Regional Utility Authority.<sup>130</sup>

### *Water Resource Development and Funding*

WMDs take the lead in identifying and implementing water resource development projects, and are responsible for securing necessary funding for regionally significant water resource development projects, including regionally significant projects that prevent or limit adverse water resource impacts, avoid competition among water users, or support the provision of new water supplies in order to meet a MFL or to implement a recovery or prevention strategy or water reservation.<sup>131</sup>

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<sup>127</sup> Sections 373.475(3)(a)-(b), F.S.

<sup>128</sup> Section 373.475(7), F.S.

<sup>129</sup> Sections 373.707(1)(c) and 373.713(1), F.S.

<sup>130</sup> DEO, *Water Supply Planning*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/water-supply-planning> (last visited Jan. 15, 2018).

<sup>131</sup> Sections 373.705(1)(a) and (2)(b), F.S.

WMDs are required to include in their annual budget submittals the amount of funds for each water resource development project in the annual funding plan of the WMD's five-year Water Resource Development Work Program (Work Program).<sup>132</sup>

### *Water Supply Development and Funding*

Local governments, RWSAs, and government-owned and privately owned water utilities are the lead in securing funding for and implementing water supply development projects.<sup>133</sup> Generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit, and water supply development projects should continue to be paid for through local funding sources.<sup>134</sup>

Water supply development projects that are consistent with RWSPs and that meet one or more of the following criteria must receive priority consideration for state or WMD funding assistance:

- Supports establishment of a dependable, sustainable supply of water that is not otherwise financially feasible;
- Provides substantial environmental benefits, but requires assistance to be economically competitive; or
- Significantly implements reuse, storage, recharge, or conservation of water that contributes to the sustainability of regional water sources.<sup>135</sup>

Additionally, if a water supply development project meets one of the criteria previously mentioned and meets one or more of the following criteria, then the project must be given first consideration for state or WMD funding assistance:

- Brings about replacement of existing sources aiding in the implementation of an MFL;
- Implements reuse assisting in the elimination of a domestic wastewater ocean outfall; or
- Reduces or eliminates the adverse effects of competition between legal users and the natural system.<sup>136</sup>

Water supply development must be conducted in coordination with the WMD regional water supply planning and water resource development.<sup>137</sup>

### *Consolidated WMD Annual Report*

By March 1, each WMD must prepare and submit to DEP, the Governor, and the Legislature a consolidated WMD annual report on the management of water resources.<sup>138</sup> Among the requirements of the consolidated WMD annual report is the inclusion of the Work Program.<sup>139</sup>

The Work Program must describe the WMD's implementation strategy and include an annual funding plan for each of the five years included in the Work Plan for the water resource and water supply development components of each approved RWSP developed or revised. The Work Program must address all the elements of the water resource development component in the WMD's RWSPs, as well as the water supply projects proposed for WMD funding and assistance.<sup>140</sup>

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<sup>132</sup> Section 373.705(3)(b)1., F.S.; s. 373.536(6)(a)4., F.S., describes the Work Program.

<sup>133</sup> Sections 373.705(1)(b) and (2)(c), F.S.

<sup>134</sup> Sections 373.705(2)(c), F.S.

<sup>135</sup> Section 373.705(4)(a), F.S.

<sup>136</sup> Section 373.705(4)(b), F.S.

<sup>137</sup> Section 373.705(2)(d), F.S.

<sup>138</sup> Section 373.036(7)(a), F.S.

<sup>139</sup> Section 373.036(7)(b)5., F.S.

<sup>140</sup> Section 373.536(6)(a)4., F.S.



## *Polk Regional Water Cooperative and Annual Report*

In 2016, Polk County and 15 municipalities within the county entered into an interlocal agreement to create a RWSA known as the Polk Regional Water Cooperative (cooperative).<sup>141</sup> In 2017, HB 573 passed, requiring the cooperative to prepare a comprehensive annual report for water resource projects it identified for state funding consideration.<sup>142</sup> The cooperative must submit its comprehensive annual report by December 1, 2017, and annually thereafter, to the Governor, Legislature, DEP, and appropriate WMDs.<sup>143</sup> Additionally, the cooperative must coordinate annually with the appropriate WMD to submit a status report on projects receiving priority state funding for inclusion in the consolidated WMD annual report.<sup>144</sup>

### Effect of Proposed Changes

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

### **Innovative Nutrient Reduction**

#### Present Situation

Nutrient pollution is caused by excess nitrogen and phosphorus in the air and water. These nutrients are natural parts of aquatic ecosystems, but when too much enter the environment, usually from a wide range of human activities (e.g., onsite sewage treatment and disposal systems (OSTDS), industrial and domestic wastewater discharges, livestock manure, stormwater runoff, commercial and residential fertilization application, and car and power plant air emissions), the air and water can become polluted. Nutrient pollution has impacted many streams, rivers, lakes, bays and coastal waters, resulting in serious environmental and human health issues, and impacting the economy.<sup>145</sup>

During the 2016 Legislative session, the innovative nutrient and sediment reduction and conservation pilot project program was created.<sup>146</sup> The pilot projects are intended to test the effectiveness of innovative or existing nutrient reduction or water conservation technologies, programs, or practices to minimize nutrient pollution or restore flows in the water bodies of the state.<sup>147</sup>

Upon a specific appropriation in the General Appropriation Act, DEP may fund the pilot projects.<sup>148</sup> DEP is required to initiate rulemaking to establish criteria for evaluating and ranking pilot projects for funding. The criteria must include a determination by DEP that the pilot project will not be harmful to the ecological resources in the study area and give preference to projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project.<sup>149</sup>

DEP's rules for the innovative nutrient and sediment reduction and conservation pilot project program are contained in ch. 62-570, F.A.C.

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<sup>141</sup> Polk Regional Water Cooperative, *Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative*, [http://www.prwcwater.org/docs/default-source/documents/prwc-charter-\(formation-interlocal-agreement\).pdf?sfvrsn=fbb00418\\_4](http://www.prwcwater.org/docs/default-source/documents/prwc-charter-(formation-interlocal-agreement).pdf?sfvrsn=fbb00418_4) (last visited Jan. 15, 2018).

<sup>142</sup> Ch. 2017-111, Laws of Fla.; s. 373.463(1), F.S.

<sup>143</sup> Section 373.463(2), F.S.

<sup>144</sup> Section 373.463(3), F.S.; see s. 373.036(7), F.S., for the consolidated WMD annual report.

<sup>145</sup> EPA, *Nutrient Pollution*, <https://www.epa.gov/nutrientpollution/problem> (last visited Feb. 5, 2018).

<sup>146</sup> Chapter 2016-1, Laws of Fla.; see s. 403.0617, F.S.

<sup>147</sup> Section 403.0671(1), F.S.

<sup>148</sup> Section 403.0671(1), F.S.

<sup>149</sup> Section 403.0617(2), F.S.

## *Water Quality Standards and Total Maximum Daily Loads*

The CWA requires states to adopt water quality standards (WQS) for navigable waters, and to develop lists of waterbodies that do not meet WQS (impaired waters). States are then required to develop a total maximum daily load (TMDL) for the particular pollutants and the concentration of those pollutants causing the impairment relative to WQS, which serves as the maximum allowable amount of pollutants that the waterbody can receive while maintaining WQS.<sup>150</sup>

TMDLs must include reasonable and equitable pollutant load allocations between or among point sources and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions to achieve WQS for the pollutant causing impairment.<sup>151</sup> Implementation of the allocation must include consideration of a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies and may include the opportunity to implement the allocation through nonregulatory and incentive-based programs.<sup>152</sup>

### *Basin Management Action Plans*

Once a TMDL is adopted,<sup>153</sup> DEP may develop and implement a basin management action plan (BMAP) that addresses some or all of the watersheds and basins tributary to the water body.<sup>154</sup> A BMAP must integrate appropriate management strategies available to the state through existing water quality protection programs to achieve the TMDL.<sup>155</sup> Existing water quality protection programs include, but are not limited to:

- Permitting and other existing regulatory programs (e.g., water quality-based effluent limitations);
- Nonregulatory and incentive-based programs (e.g., best management practices, cost sharing, waste minimization, pollution prevention, and public education);
- Other water quality management and restoration activities (e.g., WMD surface water improvement and management plans);
- Trading of water quality credits or other equitable economically-based agreements;
- Public works including capital facilities; or
- Land acquisition.<sup>156</sup>

The BMAP must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved. An assessment of progress toward these milestones is conducted every five years, and the BMAP is revised as appropriate.<sup>157</sup>

### Effect of Proposed Changes

The bill amends s. 403.067, F.S., relating to the development of BMAPs and implementation of TMDLs. The bill authorizes DEP to consider and include innovative nutrient reduction pilot projects designed to reduce nutrient pollution as part of a BMAP. The bill also allows DEP to provide cost-share funding for these innovative nutrient reduction pilot projects.

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<sup>150</sup> 33 U.S.C. § 1313; *see* s. 403.067, F.S.

<sup>151</sup> Section 403.067(6)(b), F.S.

<sup>152</sup> Section 403.067(1), F.S.

<sup>153</sup> Section 403.067(6)(c), F.S.

<sup>154</sup> Section 403.067(7)(a)1., F.S.

<sup>155</sup> Section 403.067(7)(a)1., F.S.

<sup>156</sup> Section 403.067(7)(b)1., F.S.

<sup>157</sup> Section 403.067(7)(a)6., F.S.

## Stormwater Management

### Present Situation

Stormwater is generated from rain events that produce drainage and runoff, which is the flow of rainfall over land or impervious surfaces (e.g., paved streets, parking lots, rooftops) that does not soak into the ground.<sup>158</sup> The National Pollutant Discharge Elimination System (NPDES) Stormwater Program regulates discharges of stormwater from three potential sources: Municipal Separate Storm Sewer Systems (MS4s), construction activities, and industrial activities. The United States Environmental Protection Agency (EPA) developed the NPDES stormwater permitting program in two phases. Phase I, promulgated in 1990, addresses large and medium MS4s<sup>159</sup> and certain categories of industrial activity, one of which is large construction activity that disturbs five or more acres of land. Phase II, promulgated in 1999, addresses additional sources, including MS4s not regulated under Phase I, and small construction activity disturbing between one and five acres.<sup>160</sup> In October 2000, the EPA authorized DEP to implement the NPDES stormwater permitting program in all areas of the state, except tribal lands.<sup>161</sup>

### *Department of Transportation*

Stormwater discharges from the Department of Transportation's (DOT) projects and facilities are regulated under multiple water pollution control programs, including the NPDES stormwater permitting program. DOT operates both Phase I and Phase II MS4s throughout the state.<sup>162</sup>

### *State, Regional, and Local Stormwater Management Plans and Programs*

DEP, WMDs, and local governments are responsible for the development of mutually compatible stormwater management programs.<sup>163</sup> DEP is required to include goals in the water resource implementation rule for the proper management of stormwater.<sup>164</sup> WMDs are required to establish district and, where appropriate, watershed or drainage basin stormwater management goals that are consistent with the goals adopted by the state and with plans adopted pursuant to the Surface Water Improvement and Management Act (SWIM).<sup>165</sup> In developing their stormwater management programs, local governments must consider the water resource implementation rule, WMD stormwater management goals, plans approved pursuant to the SWIM, and technical assistance information provided by WMDs. Local governments are also encouraged to consult with WMDs, DOT, and DEP before adopting or updating their comprehensive plan or public facilities report, whichever is applicable.<sup>166</sup>

DEP, in coordination and cooperation with WMDs and local governments, must conduct a continuing review of the costs of stormwater management systems<sup>167</sup> and the effect on water quality and quantity and fish and wildlife values. DEP, WMDs, and local governments must use the review for planning purposes and to establish priorities for watersheds and stormwater management systems, which require better management and treatment of stormwater with emphasis on the costs and benefits of

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<sup>158</sup> Rule 62-624.200(12), F.A.C.; DEP, *NPDES Stormwater Program*. <https://floridadep.gov/water/stormwater> (last visited Jan. 16, 2018).

<sup>159</sup> Rules 62-624.200(4) and (7), F.A.C., define large and medium municipal separate storm sewer system, respectively.

<sup>160</sup> DEP, *NPDES Stormwater Program*. <https://floridadep.gov/water/stormwater>; DEP, *EPA Federal Regulations*, <https://floridadep.gov/water/stormwater/content/epa-federal-regulations> (last visited Jan. 16, 2018).

<sup>161</sup> Section 403.0885, F.S.; DEP, *EPA Federal Regulations*, <https://floridadep.gov/water/stormwater/content/epa-federal-regulations> (last visited Jan. 16, 2018).

<sup>162</sup> DOT, *NPDES Storm Water*, [http://www.fdot.gov/maintenance/NPDES\\_StormWater.shtm](http://www.fdot.gov/maintenance/NPDES_StormWater.shtm) (last visited Jan. 16, 2018).

<sup>163</sup> Section 403.0891, F.S.

<sup>164</sup> Section 403.0891(1), F.S.

<sup>165</sup> Section 403.0891(2), F.S.

<sup>166</sup> Section 403.0891(3), F.S.

<sup>167</sup> Section 403.031(16), F.S., defines stormwater management system.

needed improvements to stormwater management systems to better meet needs for flood protection and protection of water quality, and fish and wildlife values.<sup>168</sup> The results of the review must be maintained by DEP and WMDs and be provided to appropriate local governments or other parties on request.<sup>169</sup>

### *Altamonte Springs-FDOT Integrated Reuse and Stormwater Treatment*

A partnership between the City of Altamonte Springs, DOT, DEP, and the St. Johns River WMD provided a multi-faceted funding approach, bringing the Altamonte Springs-FDOT Integrated Reuse and Stormwater Treatment (A-FIRST) to fruition. This \$11.5 million stormwater and reclaimed water management project will provide up to 4.5 million gallons of water to the City of Altamonte Springs and the City of Apopka.<sup>170</sup> The project captures stormwater from Interstate 4 and redirects it to the City of Altamonte Springs' reclaimed water system for use as irrigation. The City of Altamonte Springs sends any of its remaining reclaimed water to the City of Apopka.<sup>171</sup>

### Effect of Proposed Changes

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

## **General Permit for Stormwater Management Systems Serving 10 Acres**

### Present Situation

Section 403.814(12), F.S., grants a general permit for the construction, alteration and maintenance of a stormwater management system serving a total project area of up to 10 acres if the stormwater management system is designed, operated, and maintained in accordance with applicable stormwater rules. There is a rebuttable presumption that the discharge from such systems complies with WQS. The construction of such a system may proceed without any further agency action by DEP or WMD if, before construction begins, an electronic self-certification is submitted to DEP or WMD which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system will meet the following additional requirements:

- The total project area is less than 10 acres and less than two acres of impervious surface;
- Activities will not impact wetlands or other surface waters;
- Activities are not conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan, development, or sale; and
- The project does not cause:
  - Adverse water quantity or flooding impacts to receiving water and adjacent lands;
  - Adverse impacts to existing surface water storage and conveyance capabilities;
  - A violation of state water quality standards; or

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<sup>168</sup> Section 403.0891(4), F.S.

<sup>169</sup> Section 403.0891(5), F.S.

<sup>170</sup> DEP, *Regional Water Supply Planning 2016 Annual Report*, pg. 22,

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

<sup>171</sup> City of Altamonte Springs, *A-FIRST*, <http://www.altamonte.org/index.aspx?NID=699> (last visited Jan. 15, 2018).

- An adverse impact to the maintenance of surface or ground water levels or surface water flows or a work of the WMD (10-2 general permit).<sup>172</sup>

### Effect of Proposed Changes

The bill amends s. 403.814, F.S., relating to the 10-2 general permit. The bill requires that the project does not cause or contribute to:

- Adverse water quantity or flooding impacts to receiving water and adjacent lands;
- Adverse impacts to existing surface water storage and conveyance capabilities;
- A violation of state water quality standards; or
- An adverse impact to the maintenance of surface or ground water levels or surface water flows or a work of the WMD.

## **Drinking Water and Domestic Wastewater Treatment Utilities Asset Management**

### Present Situation

Renewing and replacing drinking water and domestic wastewater treatment infrastructure is an ongoing task. Asset management can help a utility maximize the value of its capital as well as its operations and maintenance dollars. Asset management provides utility managers and decision makers with critical information on capital assets and timing of investments. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these activities.<sup>173</sup> The EPA provides guidance and reference manuals for utilities to aid in developing asset management plans (AMPs).<sup>174</sup> Many states, including Florida, provide financial incentives for the development and implementation of an AMP when requesting funding under the State Revolving Fund (SRF) or other state funding mechanism.<sup>175</sup>

### *State Revolving Loan Fund Asset Management Incentives*

There are currently two SRF programs, the Clean Water SRF created under the Clean Water Act and the Drinking Water SRF created under the Safe Drinking Water Act. A SRF is a fund administered by a state to provide low interest loans for investments in drinking water and domestic wastewater treatment infrastructure and implementation of nonpoint source pollution control and estuary protection projects. A SRF receives its initial capital from federal grants and state contributions, and then revolves through the repayment of principal and earned interest on outstanding loans.<sup>176</sup>

DEP administers both SRF programs.<sup>177</sup> With respect to AMPs,<sup>178</sup> development of such plans are incentivized through priority scoring,<sup>179</sup> reduction of interest rates,<sup>180</sup> principal forgiveness for financially disadvantaged small communities,<sup>181</sup> and eligibility for small community wastewater facilities grants.<sup>182</sup>

<sup>172</sup> Section 403.814(12), F.S.; see DEP, *Business Portal*, [www.fldportal.com/go](http://www.fldportal.com/go) (last visited Feb. 5, 2018).

<sup>173</sup> EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited Jan. 16, 2018).

<sup>174</sup> EPA, *Asset Management: A Best Practices Guide*, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF>; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems*, (May 2014) [https://www.epa.gov/sites/production/files/2016-04/documents/am\\_tools\\_guide\\_may\\_2014.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf) (last visited Jan. 16, 2018).

<sup>175</sup> EPA, *State Asset Management Initiatives*, (Aug. 2012), [https://www.epa.gov/sites/production/files/2016-04/documents/state\\_asset\\_management\\_initiatives\\_11-01-12.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf) (last visited Jan. 16, 2018).

<sup>176</sup> EPA, *Fed Funds for Water and Wastewater Utilities*, <https://www.epa.gov/fedfunds/epa-state-revolving-funds> (last visited Jan. 16, 2018); DEP, *SRF*, <https://floridadep.gov/wra/srf> (last visited Jan. 16, 2018).

<sup>177</sup> Sections 403.1835(10) and 403.8532(9), F.S.; ch. 62-503, and 62-552, F.A.C.; DEP, *SRF*, <https://floridadep.gov/wra/srf> (last visited Jan. 16, 2018).

<sup>178</sup> Rules 62-503.200(3) and 62-552.200(2), F.A.C., define an AMP.

<sup>179</sup> Rule 62-503.300(e), F.A.C.

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

- Identification of all assets within the project sponsor's system;
- An evaluation of the current age, condition, and anticipated useful life of each asset;
- The current value of the assets and the cost to operate and maintain all assets;
- A capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life;
- An analysis of funding needs;
- An analysis of population growth and wastewater or stormwater flow projections and drinking water use projections, as applicable, for the sponsor's planning area, and a model, if applicable, for impact fees;
- Commercial, industrial and residential rate structures, and the establishment of an adequate funding rate structure;
- A threshold rate set to ensure the proper operation of the utility. If the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility; and
- A plan to preserve the assets; renewal, replacement, and repair of the assets as necessary, and a risk-benefit analysis to determine the optimum renewal or replacement time.<sup>183</sup>

#### *Water and Wastewater Utility Reserve Fund*

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit. The PSC was required to adopt rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for PSC authorization before disbursements are made from the fund.<sup>184</sup>

An applicant that requests approval to create a utility reserve fund must provide a capital improvement plan,<sup>185</sup> or an AMP prepared by the Florida Rural Water Association,<sup>186</sup> to the PSC.<sup>187</sup> The request may be a stand-alone application or in conjunction with an application for rate increase.<sup>188</sup>

#### *Domestic Wastewater Treatment Facility Renewal Operating Permit*

A domestic wastewater treatment plant operating permit is issued for a term of five years.<sup>189</sup> An applicant may request renewal of an operation permit for a term of up to 10 years for the same fee and under the same conditions as a five-year permit and must be issued the permit if:

- The treatment facility is not regulated under the NPDES program;

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<sup>180</sup> Rules 62-503.300(5)(b)1., 62-503.700(7), 62-552.300(6)(c)1., and 62-552.700(7), F.A.C.

<sup>181</sup> Rules 62-503.500(4) and 62-552.300(2)(b)4., F.A.C.

<sup>182</sup> Rules 62-505.300(d) and 62-505.350(5)(c), F.A.C.

<sup>183</sup> Rules 62-503.700(7) and 62-552.700(7), F.A.C.

<sup>184</sup> Ch. 2016-226, Laws of Fla.; s. 367.081(2)(c), F.S.; see r. 25-30.444, F.A.C., for the adopted rule.

<sup>185</sup> Rule 25-30.444(2)(e), F.A.C., provides a list of requirements for inclusion in the capital improvement plan.

<sup>186</sup> The Florida Rural Water Association is a nonprofit, non-regulatory professional association that assists water and wastewater systems with water and wastewater operations; Florida Rural Water Association, *Home*, <http://www.frwa.net/> (last visited Jan. 16, 2018).

<sup>187</sup> Rules 25-30.444(2)(e) and (m), F.A.C.

<sup>188</sup> Rule 25-30.444(2), F.A.C.; see ss. 367.081(2)(a), 367.0814, or 367.0822, F.S., for rate increases.

<sup>189</sup> Section 403.087(1), F.S.; r. 62-620.320(8), F.A.C.

- The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program;
- The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by EPA, DEP, or an approved local program;
- The treatment facility has operated under an operation permit for five years and, for at least the preceding two years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;
- DEP has reviewed the discharge monitoring reports required by DEP rule and is satisfied that the reports are accurate;
- The treatment facility has generally met water quality standards in the preceding two years, except for violations attributable to events beyond the control of the treatment plant or its operator (e.g., destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur); and
- DEP or an approved local program has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.<sup>190</sup>

### Effect of Proposed Changes

The bill creates s. 403.892, F.S., relating to AMPs and reserve funds for public water systems and domestic wastewater treatment system assets. The bill provides legislative findings regarding the public health and natural resource benefits of developing and implementing AMPs for public water system and domestic wastewater treatment system assets. The findings include the necessity of establishing and properly funding a reserve fund to ensure the timely implementation of an AMP.

The bill requires each public water system<sup>191</sup> and domestic wastewater treatment system to develop an AMP by August 1, 2022, and create a reserve fund to implement the AMP in a cost effective and timely manner. Every August 1 thereafter, each public water system and domestic wastewater treatment system must post on its website the implementation status of the AMP and reserve fund and must provide a report regarding such information to DEP. The bill requires a public water system or domestic wastewater treatment system to demonstrate that it is adequately implementing its AMP and has reserves available in its reserve fund to be eligible for state funding.

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

The bill requires DEP to adopt rules by July 1, 2019, establishing AMP requirements that include, but are not limited to:

- Identification of each asset;
- Evaluation of the current age, condition, and useful life of each asset;
- A risk-benefit analysis to determine the optimum repair or replacement time of each asset;
- A list of repair and replacement projects with projected timeframes for completion and estimated costs;
- Identification of funding options, including a separate reserve account or other comparable fund or account, for implementation of the repair or replacement projects; and
- Identification of plans comparable to an AMP.

<sup>190</sup> Section 403.087(3), F.S.

<sup>191</sup> Section 403.852(2), F.S., defines a public water system.

The bill amends s. 403.087(3), F.S., requiring that as part of the criteria for a domestic wastewater treatment facility to be eligible for a 10-year permit, DEP must review the annual status reports and be satisfied that the domestic wastewater treatment system is timely implementing the AMP.

## **Infrastructure Floodplain Resiliency**

### Present Situation

In response to Hurricane Irma, Florida's House of Representatives created the Select Committee on Hurricane Response and Preparedness (Committee). The Speaker of the Florida House of Representatives directed the Committee to gather information and ideas for improvement, and to suggest legislative options for meaningful ways to improve Florida's hurricane preparedness and response capabilities.<sup>192</sup> One of the Committee's final recommendations considered long-range plans to migrate critical infrastructure for public water supply and domestic wastewater treatment plants out of floodplains or have them hardened to prevent damage during a flood event and to establish policies to discourage investment in new facilities in floodplains unless they are hardened to avoid damage from floods.<sup>193</sup>

### Effect of Proposed Changes

The bill creates s. 403.893, F.S., relating to public water system and domestic wastewater treatment system infrastructure floodplain resiliency. The bill provides that it is the policy of the state to encourage such systems to increase the resilience of their critical infrastructure against flooding. The bill requires any new infrastructure for a public water system or domestic wastewater treatment system located within an area identified in accordance with the Federal Emergency Management Agency's 100-year and 500-year flood maps as a special flood hazard area or a moderate flood hazard area to build to withstand the respective flood conditions. Such new infrastructure must include, at a minimum, elevated control panels and appurtenant structures above the flood prone elevation and submersible components, including pumps and flow meters.

## **Florida LAKEWATCH Program**

### Present Situation

Florida LAKEWATCH is a citizen volunteer lake monitoring program that facilitates citizen participation in the management of Florida lakes, rivers and coastal sites through monthly monitoring activities (program). The program has been in existence since 1986. It is coordinated through the Institute of Food and Agricultural Sciences/School of Forest Resources and Conservation's Fisheries and Aquatic Sciences at the University of Florida, previously known as the Department of Fisheries and Aquaculture (DFA).<sup>194</sup>

In 2002, the Florida Legislature codified the program within the DFA of the Institute of Food and Agricultural Sciences and provides that the purpose of the program is to provide public education and training with respect to the water quality of Florida's lakes. The law allows the DFA to implement the program to:

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<sup>192</sup> Florida House of Representatives' Select Committee on Hurricane Response and Preparedness, *Select Committee on Hurricane Response and Preparedness Final Report* (Jan. 16, 2018), [http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General Publications&FileName=SCHRP - Final Report online.pdf](http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General%20Publications&FileName=SCHRP%20-%20Final%20Report%20online.pdf) (last visited Feb. 5, 2018).

<sup>193</sup> *Id.*

<sup>194</sup> Florida LAKEWATCH, *About*, <http://lakewatch.ifas.ufl.edu/about.shtml> (last visited Feb. 2, 2018); Florida LAKEWATCH, *History*, <http://sfrc.ufl.edu/fish/about/history/> (last visited Feb. 2, 2018).



- Train, supervise, and coordinate volunteers to collect water quality data from Florida's lakes;
- Compile the data collected by volunteers;
- Disseminate information to the public about the program;
- Provide or loan equipment to volunteers in the program; and
- Perform other functions as may be necessary or beneficial in coordinating the program.<sup>195</sup>

The data collected and compiled through the program must be used to establish trends and provide general background information. The law provides that the data cannot be used in a regulatory proceeding.<sup>196</sup>

### Effect of Proposed Changes

The bill amends s. 1004.49, F.S., relating to the program, clarifying that the School of Forest Resources and Conservation's Fisheries and Aquatic Science Program, formerly known as the DFA, may implement the program. The bill also allows for the collection of water quality data from Florida's streams and estuaries, and for DEP to use the data if it meets sufficient quality assurance and quality control requirements approved by DEP.

## **Attorney's Fees in Administrative Hearings Regarding Environmental Issues**

### Present Situation

#### *Interveners in Administrative Proceedings Regarding Environmental Issues*

When a party intervenes in an administrative proceeding, it joins an ongoing proceeding that may affect its substantial interests. The Department of Legal Affairs (DLA), a political subdivision or municipality of the state, or a citizen of the state may have standing to intervene as a party in an administrative proceeding regarding environmental issues. The intervener must file a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.<sup>197</sup> An intervener is a party<sup>198</sup> and may file motions, participate in discovery and the hearing, and file recommended orders.<sup>199</sup> However, an intervener is often subject to the decisions of the original party.<sup>200</sup>

#### *Attorney Fees in Administrative Proceedings Involving Issues of Disputed Facts*

"Attorney's fees and costs" are the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.<sup>201</sup> Costs are calculated using the methods outlined in ch. 57, F.S. The final order in an administrative proceeding involving issues of disputed facts must award reasonable costs and reasonable attorney fees to the prevailing party when the administrative law judge determines the nonprevailing adverse party participated in the proceeding for an improper purpose.<sup>202</sup> An "improper purpose" means participation in an administrative proceeding involving issues of disputed facts primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.<sup>203</sup> A "nonprevailing adverse party" is a party that failed to substantially change the outcome of the proposed or final agency action that was the subject of a proceeding. If the proceeding results in

<sup>195</sup> Section 1004.49, F.S.

<sup>196</sup> *Id.*

<sup>197</sup> Section 403.412(5), F.S.

<sup>198</sup> Section 120.52(13)(c), F.S.

<sup>199</sup> *See* ch. 28-106, F.A.C.

<sup>200</sup> *See* s. 120.574(1)(c), F.S.

<sup>201</sup> Section 57.111(3)(a), F.S.; *see* s. 120.595(e)2., F.S.

<sup>202</sup> Section 120.595(1)(b), F.S.

<sup>203</sup> Section 120.595(1)(e)1., F.S.

any substantial modification or condition intended to resolve the matters raised in a party's petition, the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial. The term "nonprevailing party" or "prevailing party" does not include any party that has intervened in a previously existing proceeding to support the position of an agency.<sup>204</sup>

Further, an award of attorney fees and costs shall be made to a prevailing small business party in any adjudicatory proceeding or administrative proceeding initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust.<sup>205</sup> A small business party<sup>206</sup> is a "prevailing small business party" when a final judgment or order has been entered in favor of the small business party and the judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired, the small business party obtained a settlement that is favorable to the small business party on the majority of issues that the party raised during the course of the proceeding, or the state agency has sought a voluntary dismissal of its complaint.<sup>207</sup> A proceeding is "substantially justified" if the state agency had a reasonable basis in law and fact at the time the proceeding initiated by a state agency.<sup>208</sup> This means the government must have a solid, though not necessarily correct, basis in fact and law for the position that it took in the action.<sup>209</sup>

### Effect of Proposed Changes

The bill amends s. 403.412(5), F.S., to authorize a prevailing party to receive reasonable costs and reasonable attorney fees in an administrative proceeding regarding environmental issues involving issues of disputed fact from an intervener when the intervener is a nonprevailing adverse party, as determined by the administrative law judge. The final order may only require the intervener to pay the portion of the reasonable costs and reasonable attorney fees related to the intervener's participation in the administrative proceeding.

#### B. SECTION DIRECTORY:

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

Section 2. Amends s. 161.101, F.S., relating to state and local participation in authorized projects and studies relating to beach management and erosion control.

Section 3. Amends s. 161.161, F.S., relating to procedures for approval of projects.

Section 4. Amends s. 163.3177, F.S., relating to required and optional elements of a comprehensive plan.

Section 5. Creates s. 166.0452, F.S. relating to disposition of municipal conservation land purchased with state funds.

Section 6. Amends s. 215.618, F.S., relating to bonds for acquisition and improvement of land, water areas, and related property interests and resources.

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<sup>204</sup> Section 120.595(1)(e)3., F.S.; In application, a party may lose in an administrative proceeding, but not be a nonprevailing party because it did not fail to change the outcome of the proposed agency action. Johnson v. Department of Corrections, 191 So.3d 965 (Fla. 1st DCA 2016).

<sup>205</sup> Section 57.111(4)(a), F.S.

<sup>206</sup> Section 57.111(3)(d), F.S., defines "small business party."

<sup>207</sup> Section 57.111(3)(c), F.S.

<sup>208</sup> Section 57.111(3)(e), F.S.

<sup>209</sup> McCloskey v. Department of Financial Services, 172 So.3d 973, 976 (Fla. 5th DCA 2016).

- Section 7. Amends s. 253.0251, F.S., relating to alternatives for fee simple acquisition for conservation and recreation lands.
- Section 8. Amends s. 253.034, F.S., relating to state-owned lands, uses.
- Section 9. Amends s. 258.014, F.S., relating to fees for use of state parks.
- Section 10. Amends s. 259.03, F.S., relating to definitions used for the Florida Forever program.
- Section 11. Amends s. 259.032, F.S., relating to conservation and recreation lands.
- Section 12. Amends s. 259.105, F.S., relating to the Florida Forever Act.
- Section 13. Amends s. 373.089, F.S., relating to sale or exchange of lands, or interests or rights in lands by WMDs.
- Section 14. Amends s. 373.139, F.S., relating to acquisition of real property by WMDs.
- Section 15. Amends s. 373.1391, F.S., relating to management of real property by WMDs.
- Section 16. Amends s. 373.199, F.S., relating to Florida Forever WMD Work Plan.
- Section 17. Amends s. 373.4598, F.S., relating to the C-51 reservoir project.
- Section 18. Amends s. 373.713, F.S., relating to RWSAs.
- Section 19. Amends s. 375.041, F.S., relating to the LATF.
- Section 20. Amends s. 403.067, F.S., relating to BMAPs and implementation of TMDLs.
- Section 21. Amends s. 403.087, F.S., relating to permits for domestic wastewater treatment facilities.
- Section 22. Amends s. 403.0891, F.S., relating to state, regional and local stormwater management plans and programs.
- Section 23. Amends s. 403.412, F.S., relating to the Environmental Protection Act.
- Section 24. Amends s. 403.814, F.S., relating to the general permit for stormwater management systems serving 10 acres.
- Section 25. Creates s. 403.892, F.S., relating to an AMP and reserve fund.
- Section 26. Creates s. 403.893, F.S., relating to public water system and domestic wastewater treatment system infrastructure floodplain resiliency.
- Section 27. Amends s. 570.76, F.S., relating to DACS powers and duties.
- Section 28. Amends s. 1004.49, F.S., relating to the Florida LAKEWATCH Program.
- Section 29. Amends s. 20.3315, F.S., conforming cross references.
- Section 30. Amends s. 253.027, F.S., conforming cross references.
- Section 31. Amends s. 259.035, F.S., conforming cross references.

Section 32. Amends s. 259.037, F.S., conforming cross references.

Section 33. Amends s. 380.510, F.S., conforming cross references.

Section 34. Amends s. 570.715, F.S., conforming cross references.

Section 35. Amends s. 589.065, F.S., conforming cross references.

Section 36. Provides a statement of legislative findings.

Section 37. Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

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

- For FY 2019-2020 and FY 2020-2021, the sum of \$57 million.
- For FY 2021-2022, the sum of \$78 million.
- For FY 2022-2023, the sum of \$89 million.
- For FY 2023-2024 and FY 2024-2025, the sum of \$110 million
- For FY 2025-2026, the sum of \$127 million.
- For FY 2026-2027, the sum of \$147 million
- For FY 2027-2028, the sum of \$157 million.
- For FY 2028-2029, the sum of \$179 million.
- For FY 2029-2030 and each FY through 2035-2036, the sum of \$200 million.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

The bill may also have a negative fiscal impact on private sector entities that own and operate, or intend to build and operate, public water systems and domestic wastewater treatment systems located

within a 100-year or 500-year floodplain that are required to implement infrastructure floodplain resiliency measures required under the bill when building new infrastructure.

#### D. FISCAL COMMENTS:

After all of the recurring base funding and statutorily-required expenditures have been allocated, there is a limited amount of revenues remaining in the LATF to fund issues such as beach projects, total maximum daily loads, state park repairs, state forest repairs, wildlife management area repairs, non-agricultural nonpoint source pollution prevention, and many others. The dedicated LATF allocation to the Florida Forever Program Trust Fund in the bill would require using funding sources other than LATF to fund critical issues that have been funded from the LATF in recent years. The primary alternative funding source would be the General Revenue Fund, because there is not enough funding available in other trust funds to provide for these issues. Assuming that current reserves and typical expenditures are not reduced or shifted to another funding source, the bill would place the LATF at a deficit of \$77.3 million in Fiscal Year 2019-2020.

The bill may have a positive fiscal impact on DEP and DACS by authorizing those agencies to provide assistance to local governments administering their own rural-lands-protection easement program. The local governments must compensate DEP and DACS for the services provided as defined in a memorandum of agreement. In addition, it may have a positive fiscal impact on those local governments choosing to seek assistance from DEP and DACS when administering their own rural-lands-protection easement program, because DEP and DACS may assist the local governments in more efficiently operating their conservation easement program.

The bill may have a negative fiscal impact on counties, municipalities, and WMDs that do not currently return proceeds from the sale of surplus conservation lands purchased with state funds to the proper state trust fund. In addition, the bill may have a negative fiscal impact on WMDs by requiring the districts to deposit any revenue generated from the use of conservation lands purchased with state funds into a separate agency trust fund or special revenue account used to support future land management activities. WMDs will no longer be able to use such funds for other district activities. The bill may have a positive fiscal impact on the South Florida WMD by prioritizing construction of the C-43 reservoir project.

The bill may have an indeterminate negative fiscal impact on DEP by requiring the agency to create a Volunteer Annual Pass for entrance into state parks for individuals who perform 50 hours of volunteer service removing nonnative and invasive plants and adopt rules to implement the new annual pass. It is unknown how many people would meet the volunteer requirements to qualify for a Volunteer Annual Pass.

The bill may have an insignificant negative fiscal impact on DEP by requiring the agency to consider the economic benefit of beach management projects when determining annual funding priorities because this change will likely require rulemaking. DEP can absorb this impact within existing resources.

The bill will have a negative fiscal impact on DEP because it requires the agency to create a statewide long-range budget plan that must include at least five years of planned beach restoration, beach nourishment, and inlet management projects funding needs as identified, and subsequently refined, by local sponsors. It is anticipated that this workload can be absorbed within existing resources.

Chapter 2017-10, L.O.F., provided \$30 million in nonrecurring funds from the General Revenue Trust Fund to be deposited in the Water Resource Projection and Sustainability Trust Fund for the purpose of providing a loan to the water supply entity responsible for implementing Phase I of the C-51 reservoir project utilizing through the water storage facility revolving loan fund as provided in s. 373.475, F.S. The water supply entity has executed capacity allocation agreements with local governments to allow the local governments to utilize specific water allocations identified in the agreements. The executed capacity allocation agreements do not utilize the total capacity of water available in the reservoir. The bill allows the South Florida Water Management District (South Florida WMD) to enter into a capacity

allocation agreement with the water supply entity for an allocation of the unreserved water needed that will be for the natural system based on water needs identified in CERP or other restoration plans. The South Florida WMD may request that DEP waive repayment of all or a portion of the loan based on pro rata share of the costs for providing the water storage capacity in the reservoir that will be used by the South Florida WMD. Instead of the South Florida WMD directly providing the funding to develop the water capacity in the C-51 reservoir, the South Florida WMD may request that DEP waive repayments of the loan by the water supply entity. Waiving the repayment of the loan will reduce the future funding available for other water storage reservoirs that qualify for loans under the water storage facility revolving loan fund.

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

The bill may also have a negative fiscal impact on state agencies and local governments that own and operate, or intend to build and operate, public water systems and domestic wastewater treatment systems that are located within a 100-year or 500-year floodplain required to implement the infrastructure floodplain resiliency measures required under the bill when building new infrastructure.

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

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

The bill may have a negative fiscal impact on the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state that intervene as a party in an administrative proceeding regarding environmental issues. The bill authorizes a prevailing party to receive reasonable costs and reasonable attorney fees in an administrative proceeding regarding environmental issues involving issues of disputed fact from an intervener when the intervener is a nonprevailing adverse party, as determined by the administrative law judge.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

## B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to implement a volunteer state park annual pass program for individuals who perform 50 hours of service removing nonnative and invasive plant species.

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

The bill requires DEP to adopt rules establishing AMP requirements by July 1, 2019.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2018, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorable with committee substitute. The strike-all amendment:

- Authorized the use of Florida Forever funds to finance and refinance costs related to the Everglades Agricultural Area Reservoir Project and other reservoir projects authorized under s. 373.4598, F.S.
- Required DEP to distribute funds received in its Florida Forever Trust Fund for lands necessary to implement the water management district priority lists; purchase of inholdings for lands managed by DEP, FWC, and FFS; and provide grants for land acquisition for FRDAP, if the acquisition proposed by an agency is identified as a current year priority, has demonstrated to be the greatest need, and is consistent with annual legislative appropriations.
- Required agencies that receive funds for the acquisition of inholdings to develop individual acquisition or restoration lists in accordance with specific criteria and numeric performance measures similar to ARC's criteria.
- Added that WMDs may segregate revenue from the use of lands bought with state fund into special revenue accounts to remain available to the district in subsequent fiscal years to support land management activities.
- Required the agencies that manage conservation lands to prioritize the exotic and invasive species that must be maintained or controlled and the areas where the control and maintenance must first be addressed in their land management plans.
- Required DEP to create a volunteer state park annual entrance pass for individuals who perform 50 hours of volunteer service removing nonnative and invasive plants.
- Added the economic benefit of beach management projects to the criteria DEP must consider when determining annual funding priorities.
- Updated how DEP must develop and maintain its comprehensive long-term beach management plan.
- Required the comprehensive long-term beach management plan to include at a minimum a SBMP, a critically eroded beaches report, and a statewide long-range budget plan. The statewide long-range budget plan must include at least five years of planned beach restoration, beach nourishment, and inlet management projects funding needs as identified, and subsequently refined, by local sponsors.
- Allowed DEP to consider and include innovative nutrient reduction pilot projects designed to reduce nutrient pollution as part of a BMAP and allows DEP to provide cost-share funding for these innovative nutrient reduction pilot projects.
- Required that as a condition for a 10-2 general permit, the project cannot contribute to:
  - Adverse water quantity or flooding impacts to receiving water and adjacent lands;
  - Adverse impacts to existing surface water storage and conveyance capabilities;
  - A violation of state water quality standards; or
  - An adverse impact to the maintenance of surface or ground water levels or surface water flows.
- Required rules adopted by DEP establishing AMP requirements to also:
  - Identify funding options, including a separate reserve account or other comparable fund or account, for implementation of the repair or replacement projects; and
  - Identify plans comparable to an AMP.

- Required a public water system or domestic wastewater treatment system with infrastructure within a 100-year flood, or a 500-year flood, in accordance with Federal Emergency Management Agency 100-year and 500-year Flood Maps, to build any new infrastructure to withstand the respective flood conditions including, at a minimum, elevated control panels and appurtenant structures above the flood prone elevation, and have submersible components, including pumps and flow meters.
- Clarified that the School of Forest Resources and Conservation's Fisheries and Aquatic Science Program, formerly known as the DFA, may implement the Florida LAKEWATCH Program for streams and estuaries, and allows DEP to use water quality data collected and compiled by the Florida LAKEWATCH Program if the data meets sufficient quality assurance and quality control requirements approved by DEP.
- Authorized a prevailing party to receive reasonable costs and reasonable attorney fees in an administrative proceeding regarding environmental issues involving issues of disputed fact from an intervener when the intervener is a nonprevailing adverse party, as determined by the administrative law judge.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.