

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1347 Apalachicola Environmental Stewardship Act
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	7 Y, 0 N, As CS	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico. The Apalachicola Bay is a productive estuary and serves as an important nursery ground for numerous commercially and recreationally important fish and invertebrate species. The Apalachicola Bay also supplies approximately 90 percent of the oysters in Florida and 10 percent nationally. The Apalachicola Bay Area was designated as an Area of Critical State Concern (ACSC) in 1985.

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever program. The Florida Forever Trust Fund is administered by the Department of Environmental Protection (DEP). The Division of State Lands (DSL) within DEP oversees the Florida Forever program, under which the state has protected over 770,279 acres of land purchased with about \$3 billion in Florida Forever funds.

Beginning in the 2020-2021 fiscal year and continuing through the 2024-2025 fiscal year, the bill requires at least \$5 million of the funds allocated from the Florida Forever Trust Fund to DSL to be spent on projects that improve surface water and groundwater quality within the Apalachicola Bay ACSC.

The bill reprioritizes how an existing distribution shall be allocated. As a result, there will be less funds available for other eligible projects on the Florida Forever list.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,¹ may designate by rule certain areas that contain resources of statewide significance as areas of critical state concern (ACSCs) based on the recommendations of the Florida Department of Economic Opportunity (DEO).² To be designated as an ACSC, the area must:

- Contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance, the uncontrolled private or public development of which would cause substantial deterioration of such resources;
- Contain, or have a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or
- Have a significant impact upon, or be significantly impacted by, an existing or proposed major public facility or other area of major public investment, including highways, ports, airports, energy facilities, and water management projects.³

Areas currently designated as ACSCs include the Big Cypress Area,⁴ the Green Swamp Area,⁵ the Florida Keys Area,⁶ and the Apalachicola Bay Area.⁷

Apalachicola Bay Area

The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico.⁸ The Apalachicola Bay is a productive estuary and serves as an important nursery ground for numerous commercially and recreationally important fish and invertebrate species. The Apalachicola Bay also supplies approximately 90 percent of the oysters in Florida and 10 percent nationally.⁹

The Apalachicola Bay Area was designated as an ACSC in 1985.¹⁰ The initial designation included the City of Apalachicola, the City of Carrabelle, and unincorporated Franklin County (excluding Alligator Point). In 1993, the designation was amended to reduce the ACSC to only include the City of Apalachicola.¹¹ The Legislature declared that the intent of establishing the ACSC was to:

- Protect the water quality of the Apalachicola Bay Area to ensure a healthy environment and a thriving economy for the residents of the area and the state;
- Financially assist Franklin County and its municipalities in upgrading and expanding their sewerage systems;
- Protect the Apalachicola Bay Area's natural and economic resources by implementing and enforcing comprehensive plans and land development regulations;

¹ See ss. 14.202 and 380.031(1), F.S.

² Section 380.05, F.S.

³ Section 380.05(2), F.S.

⁴ Section 380.055, F.S.

⁵ Section 380.0551, F.S.

⁶ Section 380.0552, F.S.

⁷ Section 380.0555, F.S.

⁸ DEO, *Apalachicola Bay Area*, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Jan. 30, 2020); see also, U.S. Fish and Wildlife Service, *Next Steps for a Healthy Gulf of Mexico Watershed*, available at <https://www.fws.gov/southeast/gulf-restoration/next-steps/focal-area/greater-apalachicola-basin/> (last visited Jan. 30, 2020).

⁹ DEO, *Apalachicola Bay Area*, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Jan. 30, 2020).

¹⁰ Chapter 85-360, Laws of Fla.; s. 380.0555, F.S.

¹¹ DEO, *Apalachicola Bay Area*, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Jan. 30, 2020).

- Assist Franklin County and its municipalities with technical and advisory assistance in formulating additional land development regulations and modifications to comprehensive plans;
- Monitor activities within the Apalachicola Bay Area to ensure the long-term protection of all the area's resources;
- Promote a broad base of economic growth that is compatible with the protection and conservation of the natural resources of the Apalachicola Bay Area; and
- Educate the residents of the Apalachicola Bay Area in order to protect and preserve its natural resources.¹²

State, regional, and local agencies and units of government in the Apalachicola Bay Area are required to coordinate their plans and conduct their programs and regulatory activities consistently using the following principles for guiding the development of the area¹³:

- Land development to be guided so that the basic functions and productivity of the Apalachicola Bay Area's natural land and water systems are conserved to reduce or avoid health, safety, and economic problems for present and future residents of the area;
- Land development to be consistent with a safe environment, adequate community facilities, a superior quality of life, and a desire to minimize environmental hazards;
- Growth and diversification of the local economy to be fostered only if it is consistent with protecting the natural resources of the Apalachicola Bay Area through appropriate management of the land and water systems;
- Aquatic habitats and wildlife resources of the Apalachicola Bay Area to be conserved and protected;
- Water quantity to be managed to conserve and protect the natural resources and the scenic beauty of the Apalachicola Bay Area;
- Water quality to be protected, maintained, and improved for public water supply, propagation of aquatic life, and recreational and other uses;
- No waste to be discharged into any waters of the Apalachicola Bay Area without first being given the degree of treatment necessary to protect water uses;
- Stormwater discharges to be managed in order to minimize impacts on the bay system and protect its uses;
- Protection of coastal dune systems, specifically the area extending landward from the extreme high-tide line to the beginning of the pinelands of the Apalachicola Bay Area; and
- Public lands to be managed, enhanced, and protected so that the public may continue to enjoy the traditional use of such lands¹⁴

Florida Forever

In 1998, Florida voters amended the State Constitution by ratifying a constitutional amendment that reauthorized bonds for land acquisition. As a result, the 1999 Legislature created the 10-year \$3 billion Florida Forever program to acquire and manage land for conservation as well as serve as the blueprint for conserving Florida's natural resources.¹⁵ The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.¹⁶ Florida Forever is the largest public land acquisition program of its kind in the U.S. and currently manages about 10 million acres. More than 2.5 million acres have been purchased under the program and its predecessor, Preservation 2000.¹⁷

In 2014, Florida voters amended the State Constitution again, ratifying a constitutional amendment that dedicated 33 percent of documentary stamp taxes to finance or refinance acquisition and improvement

¹² Section 380.0555(2), F.S.

¹³ Section 380.0555(7), F.S.

¹⁴ *Id.*

¹⁵ Chapter 99-247, Laws of Fla.

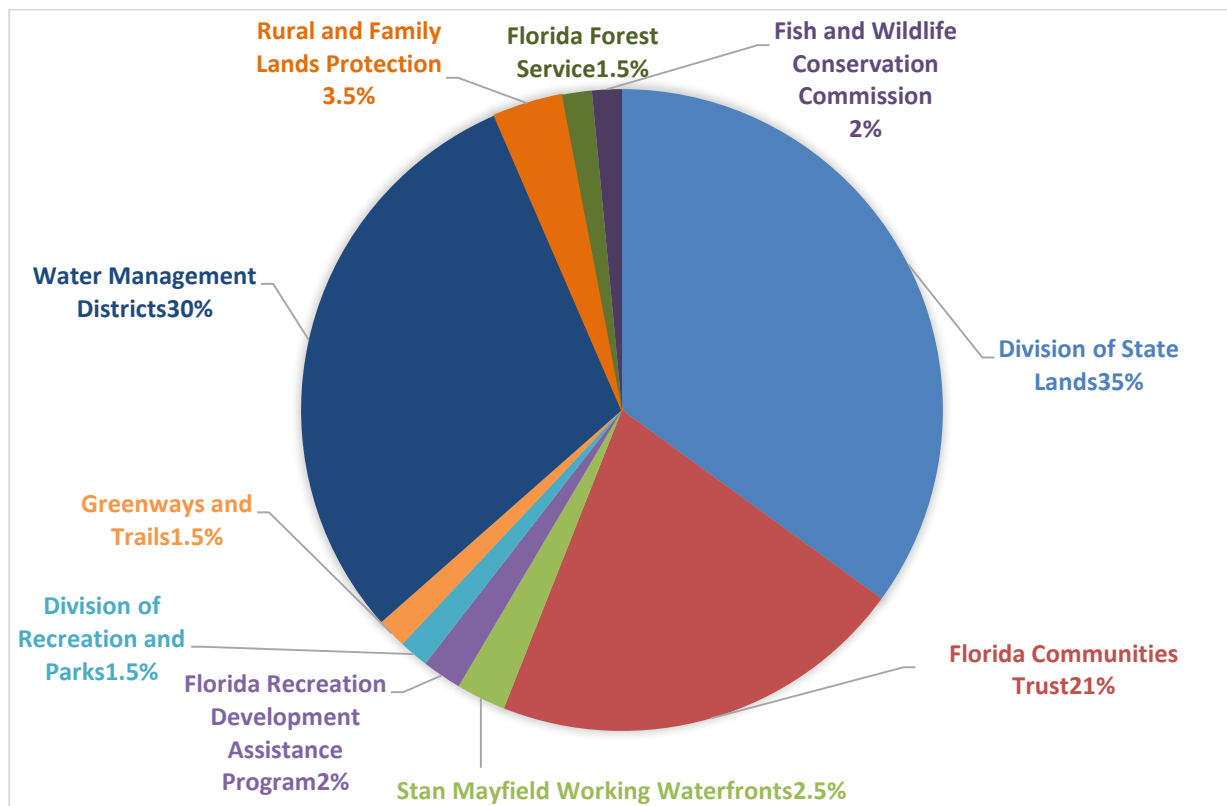
¹⁶ DEP, *Florida Forever Five Year Plan*, 49 (2019), available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf> (last visited Oct. 25, 2019) (herein "Florida Forever 2019 Plan").

¹⁷ DEP, *Florida Forever*, available at <https://floridadep.gov/lands/environmental-services/content/florida-forever> (last visited Jan. 30, 2020).

of land, water areas, and related property interests, including conservation easements, and resources for conservation lands, including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources; lands in the Everglades Agricultural Area and the Everglades Protection Area; beaches and shores; outdoor recreation lands; rural landscapes; working farms and ranches; and historic or geologic sites.¹⁸

The Florida Forever Trust Fund

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



While the allocations depicted above are statutorily defined, in recent years the Legislature has deviated from these percentages through specific proviso language. Thus, the funds appropriated to the Florida Forever program have not been allocated based on these percentages since FY 2010-2011. In fiscal years (FYs) 2011-2012, 2013-2014, 2017-2018, and 2019-2020,¹⁹ the Legislature appropriated funds from the Florida Forever Trust Fund to specific divisions within Florida Forever rather than to the overall Florida Forever program.²⁰

Division of State Lands

¹⁸ *Id.*
¹⁹ In FY 2019-2020, \$33 million was appropriated only to DSL; see s. 259.105(3)(m), F.S.
²⁰ DEP, *Florida Forever*, available at <https://floridadep.gov/lands/environmental-services/content/florida-forever> (last visited Jan. 30, 2020). For FYs 2012-2013, 2014-2015, 2015-2016, 2016-2017, and 2018-2019, funds appropriated to the program were transferred from General Revenue, the Land Acquisition Trust Fund, the Conservation and Recreation Lands Trust Fund, and cash from interest earnings in the Florida Forever Trust Fund. See DEP, *Current Monthly Summary Report* (Dec. 31, 2019), available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Monthly%20Summary%20Report%20of%20Financial%20Status.pdf> (last visited Jan. 30, 2020).

The Division of State Lands (DSL) within DEP oversees the Florida Forever program.²¹ Florida Forever projects and acquisitions are required to contribute to the achievement of one or more of the following program goals:

- Enhance the coordination and completion of land acquisition projects;
- Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetlands systems of the state;
- Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state;
- Increase natural resource-based public recreational and educational opportunities;
- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources;
- Increase the amount of open space available in urban areas; and
- Mitigate the effects of natural disasters and floods in developed areas.²²

However, DSL must spend a minimum of three percent of funds allocated for the acquisition of lands on capital project expenditures²³ that meet land management planning activities necessary for public access. In addition, DSL must spend at least \$5 million, beginning in FY 2017-2018 and continuing through FY 2026-2027, on land acquisition within the Florida Keys Area of Critical State Concern.²⁴

The Acquisition and Restoration Council (ARC) is a 10-member body that makes recommendations on the acquisition, management, and disposal of state-owned lands and includes private citizen members with backgrounds in scientific disciplines of land, water, or environmental sciences as well as wildlife management, forestry management, and outdoor recreation, in addition to four state agency representatives.²⁵ ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding.

In evaluating each application, ARC must consider whether the project:

- Meets multiple program goals;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- 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, losing its significant natural attributes or recreational open space, or subdivision that would result in multiple ownership and make acquisition of the project more costly or less likely to be accomplished;
- Implements an element from a plan developed by an ecosystem management team;
- Is one of the components of Everglades restoration efforts;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple; and
- Is a joint acquisition.²⁶

²¹ Florida Forever 2019 Plan at 51.

²² Section 259.105(4), F.S.

²³ Section 259.105(3)(b), F.S.

²⁴ *Id.*

²⁵ Section 259.035(1), F.S.; the members of the state agencies include the Secretary of DEP, the director of the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State, or their respective designees; *see*, Florida Forever 2019 Plan at 49-50.

²⁶ Section 259.105(9), F.S.

ARC is also required to give higher priority to:

- Projects for which matching funds are available;
- Project elements previously identified on an acquisition list that can be acquired at 80 percent or less of appraised value;
- Projects that can be acquired in less than fee ownership (acquiring land at less than fee ownership means acquisition of an interest in the property that allows the conservation and protection of resources on the property at less cost while keeping the land in private ownership);
- Projects that contribute to improving the quality or quantity of surface water or groundwater;
- Projects that contribute to improving the water quality and flow of springs; and
- Projects for which the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.²⁷

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.²⁸ Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural lands, less-than-fee, partnerships or regional incentives, and substantially complete (greater than 85 percent complete).²⁹ Projects are ranked within each category from highest to lowest priority.

The priority list is presented to the Governor and the Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (BOT).³⁰ BOT is then responsible for acting on ARC's recommendations by approving the acquisition of each parcel.³¹ While BOT is authorized to remove projects from the priority list, it may not add or rearrange projects on the priority list.³² DSL then prepares an annual work plan based on the priority list developed by ARC, which outlines the specific projects and acquisitions within projects that will be negotiated for purchase with Florida Forever funds available for that fiscal year for land acquisition.³³

Effect of the Bill

Beginning in FY 2020-2021 and continuing through FY 2024-2025, the bill requires at least \$5 million of the funds allocated from the Florida Forever Trust Fund to DSL to be spent on projects that improve surface water and groundwater quality within the Apalachicola Bay ACSC. Projects may include the construction and replacement of stormwater management facilities and central sewage collection facilities, installation of onsite sewage treatment and disposal systems, direct and indirect potable reuse, and other water quality and water supply projects.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law to provide a title for the act.

Section 2. Amends s. 259.105, F.S., relating to the Florida Forever Act.

Section 3. Provides an effective date of July 1, 2020.

²⁷ Section 259.105(10), F.S.

²⁸ DEP, *Frequently Asked Questions about Florida Forever*, available at <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Jan. 30, 2020).

²⁹ Section 259.105(17), F.S.

³⁰ Section 259.105(14), F.S.

³¹ Florida Forever 2019 Plan at 50.

³² Section 259.105(14), F.S.

³³ Section 259.105(17), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires at least \$5 million of the funds allocated from the Florida Forever Trust Fund to the Division of State Lands to be spent on projects within the Apalachicola Bay ACSC from FY 2020-2021 through FY 2024-2025. The bill reprioritizes how an existing distribution shall be allocated. As a result, there will be less funds available for other eligible projects on the Florida Forever list.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2020, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the provision including affordable housing projects in the allowable expenditures from the Florida Forever Trust Fund distribution to DSL;
- Changed the amount of the Florida Forever Trust Fund distribution to DSL that is allocated to the Apalachicola Bay ACSC to be at least \$5 million;
- Removed the provision requiring DEP to sell or relinquish an acre of land for each acre purchased for land acquisition for the Apalachicola Bay ACSC;

- Removed the provision requiring at least 3 percent but not more than 10 percent of the funds allocated for land acquisition for the Apalachicola Bay ACSC be spent on projects and activities identified during the time of acquisition; and
- Removed all provisions related to the Apalachicola Bay ACSC in s. 380.0555, F.S.

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