

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: SB 332

INTRODUCER: Senator Stewart

SUBJECT: Land Acquisition Trust Fund

DATE: February 24, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dyson</u>	<u>Rogers</u>	<u>EN</u>	<u>Favorable</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 332 creates a statutory distribution from the Land Acquisition Trust Fund requiring \$100 million to be appropriated annually to the Florida Forever Trust Fund. Funds appropriated into the Florida Forever Trust Fund are required to be distributed in accordance with the Florida Forever Act. The bill also specifies that the Land Acquisition Trust Fund may not be used to fund any costs within the budget entities that provide administrative support for the four state entities receiving these funds.

The bill takes effect July 1, 2020.

**II. Present Situation:**

**Florida Forever**

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the Blueprint for conserving Florida's natural resources.<sup>1</sup> 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.<sup>2</sup> Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased

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<sup>1</sup> Chapter 99-247, Laws of Fla.

<sup>2</sup> Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2019), available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf> (last visited Oct. 31, 2019).

protection of land through the purchase of conservation easements.<sup>3</sup> The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.<sup>4</sup> Under Florida Forever, the issuance of up to \$5.3 billion in Florida Forever bonds is authorized to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements<sup>5</sup> to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.<sup>6</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 Florida Forever Trust Fund is administered by the Department of Environmental Protection (DEP). The DEP is required to distribute revenues from the Florida Forever Trust Fund in accordance with s. 259.105(3), F.S., which sets forth the allocation of the proceeds of cash payments or bonds deposited into the Florida Forever Trust Fund and is depicted in the graph below.

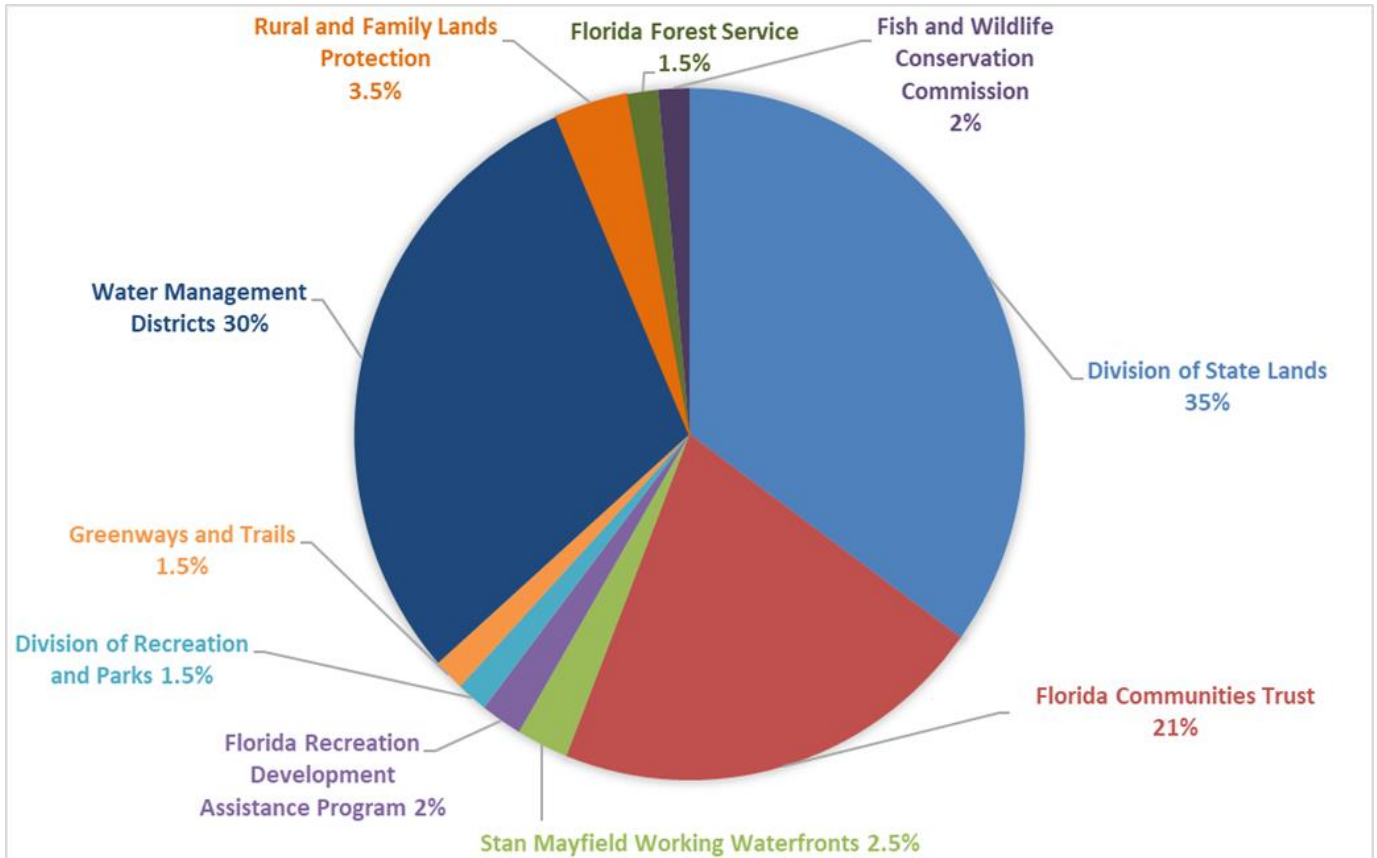
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<sup>3</sup> Section 259.105, F.S.

<sup>4</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Oct. 29, 2019). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2019), available at [https://www.fnai.org/PDF/Maacres\\_201902\\_FCL\\_plus\\_LTF.pdf](https://www.fnai.org/PDF/Maacres_201902_FCL_plus_LTF.pdf) (last visited Oct. 18, 2019) for a complete summary of the total amount of conservation lands in Florida.

<sup>5</sup> As defined in s. 259.03, F.S., the terms “capital improvement” or “capital project expenditure” when used in ch. 259, F.S., mean “those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities’ signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter.”

<sup>6</sup> Section 215.618, F.S.



***Division of State Lands – 35 Percent***

The Division of State Lands (DSL) within the 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.<sup>7</sup> 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.<sup>8</sup>

<sup>7</sup> DEP, *Florida Forever Five Year Plan*, 51 (2019), available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf> (last visited Oct. 31, 2019).

<sup>8</sup> Section 259.105(4), F.S.

The Acquisition and Restoration Council (ARC) is a 10-member body<sup>9</sup> that makes recommendations on the acquisition, management, and disposal of state-owned lands.<sup>10</sup> The ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding. In evaluating each application, the ARC is required to consider whether the project:

- Meets multiple program goals;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- 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.<sup>11</sup>

The ARC is required to give increased priority to:

- Projects for which matching funds are available;
- Project elements previously identified on an acquisition list which 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 which 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; and

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<sup>9</sup> Section 259.035(1), F.S. Four of ARC's 10 members are appointed by the Governor, three from scientific disciplines related to land, water, or environmental sciences and one with least five years of experience in managing lands for both active and passive types of recreation. Four of the members are the Secretary of Environmental Protection, 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. One member is appointed by the Commissioner of Agriculture from a discipline related to agriculture, including silviculture, and one member is appointed by the Fish and Wildlife Conservation Commission from a discipline related to wildlife management or wildlife ecology.

<sup>10</sup> 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 31, 2019).

<sup>11</sup> Section 259.105(9), F.S.

- 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.<sup>12</sup>

Using its established criteria, the ARC develops a priority list of applications submitted. An affirmative vote of at least five members of the ARC is required to place a proposed project on the priority list. The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.<sup>13</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 lands, less-than-fee, partnerships or regional incentives, and substantially complete (greater than 85 percent complete).<sup>14</sup> Projects are ranked within each category from highest to lowest priority.

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

The DSL prepares an annual work plan based on the priority list developed by the ARC, which outlines the specific projects and acquisitions within projects that will be negotiated for purchase with Florida Forever funds available for that fiscal year for land acquisition.<sup>18</sup>

At least \$5 million of the funds allocated to the DSL under Florida Forever, beginning in the 2017-2018 fiscal year and continuing through the 2026-2027 fiscal year, are required to be spent on land acquisition within the Florida Keys Area of Critical State Concern.<sup>19</sup>

### ***Water Management Districts – 30 Percent***

The state is divided into five water management districts (WMDs), which are responsible for the administration of water resources at a regional level. Each WMD is required to develop a Florida Forever 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 the Florida Forever program.<sup>20</sup> Each project identified must contribute to the achievement of the Florida Forever goals and be evaluated in accordance with the specific criteria and numeric performance measures developed by the ARC.<sup>21</sup> By March 1 of each year, each WMD is

<sup>12</sup> Section 259.105(10), F.S.

<sup>13</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Oct. 29, 2019).

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

<sup>15</sup> Section 259.105(14), F.S.

<sup>16</sup> DEP, *Florida Forever Five Year Plan*, 50 (2019), available at

[http://publicfiles.dep.state.fl.us/DSL/OESWeb/FF2017/FLDEP\\_DSL\\_SOLI\\_2018FloridaForever5YrPlan\\_20180706.pdf](http://publicfiles.dep.state.fl.us/DSL/OESWeb/FF2017/FLDEP_DSL_SOLI_2018FloridaForever5YrPlan_20180706.pdf) (last visited Oct. 31, 2019).

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

<sup>18</sup> Section 259.105(17), F.S.

<sup>19</sup> Section 259.105(3)(b), F.S.

<sup>20</sup> Section 373.199, F.S.

<sup>21</sup> Section 259.105(4), F.S.

required to report to the DEP on acquisitions completed during the year together with modifications or additions to its five-year work plan, including:

- A description of land management activity for each property or project area owned by the WMD;
- A list of any lands surplus and the amount of compensation received; and
- The progress of funding, staffing, and resource management of every project funded pursuant to Florida Forever for which the WMD is responsible.<sup>22</sup>

The DEP is required to submit each WMD's five-year work plan to the BOT together with the ARC's project list.<sup>23</sup> Pursuant to s. 259.105(11), F.S., Florida Forever funds provided to the WMDs are allocated as follows:

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

#### ***Florida Communities Trust – 21 Percent***

The Florida Communities Trust (FCT) is a multi-faceted program that assists communities in protecting important natural resources, providing recreational opportunities, and preserving the state's traditional working waterfronts through grant programs.<sup>24</sup> The FCT is governed by a five-member board that includes the Secretary of the DEP or his or her designee and four members of the public appointed by the Governor. From the funds available to the FCT and used for land acquisition, 75 percent is required to be matched by local governments on a dollar-for-dollar basis.<sup>25</sup>

The Parks and Open Space grant program provides funding to local governments and eligible nonprofit organizations for acquisition of community-based parks, open space, and greenways that further outdoor recreation and natural resource protection needs identified in a local government's comprehensive plan. As of June 2017, more than 92,400 acres have been preserved statewide, leveraging \$839 million state dollars of the total \$1.56 billion used to acquire such lands.<sup>26</sup>

#### ***Stan Mayfield Working Waterfronts – 2.5 Percent***

The FCT administers the Stan Mayfield Working Waterfront program, which provides funding to acquire parcels of land used directly for commercially harvesting marine organisms or saltwater products.<sup>27</sup> Such projects include piers, wharves, docks, and other facilities operated to

<sup>22</sup> Section 373.199(7), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> DEP, *Florida Communities Trust Annual Report Fiscal Year 2018-2019*, 3 (Sept. 30, 2019) available at [https://floridadep.gov/sites/default/files/FCT\\_18-19\\_Annual\\_Report\\_FINAL\\_0.pdf](https://floridadep.gov/sites/default/files/FCT_18-19_Annual_Report_FINAL_0.pdf) (last visited Oct. 31, 2019).

<sup>25</sup> Section 259.105(3)(c), F.S.

<sup>26</sup> DEP, *FCT Parks and Open Space Program Overview*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/fct-parks-and-open-space-program-overview> (last visited Oct. 28, 2019).

<sup>27</sup> DEP, *FCT Stan Mayfield Working Waterfronts Grant Program Overview*, <https://floridadep.gov/lands/land-and-recreation-grants/content/fct-stan-mayfield-working-waterfronts-grant-program> (last visited Oct. 28, 2019).



provide waterfront access to licensed commercial fishermen, aquaculturists, or business entities.<sup>28</sup> The funds may also be used for the acquisition of land for exhibitions, demonstrations, educational venues, civic events, and other purposes to promote and educate the public about the economic, cultural, and historic heritage of the state's traditional working waterfronts, including marketing events for the seafood and aquaculture industries.<sup>29</sup>

### ***Rural and Family Lands Protection Program – 3.5 Percent***

The Rural and Family Lands Protection Program within the Department of Agriculture and Consumer Services (DACS) is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements.<sup>30</sup> The purpose of the program is to promote and improve wildlife habitat; protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds; perpetuate open space on lands with significant natural areas; or protect agricultural lands threatened by conversion to other uses.<sup>31</sup> Under the program, lands must be acquired pursuant to a priority ranking process developed by the DACS, the DEP, the WMDs, the Department of Economic Opportunity, and the Fish and Wildlife Conservation Commission (FWC).<sup>32</sup> Preference must be given to ranch and timber lands that are managed using sustainable practices.<sup>33</sup>

### ***Florida Recreation Development Assistance Program – 2 Percent***

The Florida Recreation Development Assistance Program within the DEP provides grants to qualified local governmental entities to acquire or develop land for public outdoor recreation purposes.<sup>34</sup> The maximum grant that may be awarded for each project application is \$200,000 in state funds and a local government may not have more than three active projects expending grant funds during a state fiscal year.<sup>35</sup> The DEP has developed a competitive project selection process designed to maximize outdoor recreation for the public.<sup>36</sup> The selection criteria ranks projects, in part, based on the extent to which the project would implement outdoor recreation goals, objectives, and priorities specified in the state comprehensive outdoor recreation plan and the extent to which the project would provide priority resource or facility needs in the region, as specified in the state comprehensive outdoor recreation plan.<sup>37</sup>

### ***Florida Greenways and Trails Program – 1.5 Percent***

The Office of Greenways and Trails (OGT) within the DEP provides a comprehensive approach to identify, prioritize, connect, promote, and coordinate the implementation of a statewide system

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Department of Agriculture and Consumer Services (DACS), *Rural and Family Lands Protection Program*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/Land-Planning-and-Administration-Section/Rural-and-Family-Lands-Protection-Program2> (last visited Oct. 28, 2019); see DEP, *Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/florida-forever> (last visited Oct. 28, 2019).

<sup>31</sup> Section 570.71, F.S.

<sup>32</sup> *Id.*; see Fla. Admin. Code Ch. 5I-7.

<sup>33</sup> Section 570.71, F.S.

<sup>34</sup> DEP, *Florida Recreation Development Assistance Program*, <https://floridadep.gov/lands/land-and-recreation-grants/content/florida-recreation-development-assistance-program> (last visited Oct. 28, 2019).

<sup>35</sup> Section 375.075, F.S.

<sup>36</sup> See Fla. Admin. Code Ch. 62D-5.057.

<sup>37</sup> Section 375.075, F.S.

of connected greenways and trails.<sup>38</sup> The program serves to integrate natural and human environments using greenways and trails to tie communities together by linking features such as parks, open spaces, historic sites, and residential areas. The Florida Greenways and Trails Council recommends lands for acquisition based on ranking criteria developed by the DEP and is not subject to the ranking criteria developed by the ARC.<sup>39</sup>

### ***Division of Recreation and Parks – 1.5 Percent***

The Division of Recreation and Parks (DRP) within the DEP administers Florida's Park Service, which consists of 175 state parks, trails, and historic sites spanning nearly 800,000 acres and 100 miles of beaches.<sup>40</sup> The DRP is authorized to use Florida Forever funds to purchase inholdings and additions to state parks and for capital expenditure project expenditures.<sup>41</sup> At a minimum, one percent, and no more than 10 percent, must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.<sup>42</sup> The DRP must develop and utilize a priority acquisition list based on the specific criteria and numeric performance measures developed by the ARC for acquisitions under the Florida Forever program.<sup>43</sup>

### ***Florida Forest Service – 1.5 Percent***

The Florida Forest Service (FFS) within the DACS manages 37 state forests, totaling over one million acres.<sup>44</sup> The FFS is authorized to acquire lands, suitable for state forest purposes, by gift, donation, contribution, purchase, or otherwise and is authorized to enter into an agreement with the federal government, or other agency, for acquiring by gift, purchase, or otherwise, such lands as are, in the judgment of the FFS, suitable and desirable for state forests.<sup>45</sup> The FFS may use Florida Forever funds for the acquisition of state forest inholdings and additions, the implementation of reforestation plans, or sustainable forestry management practices, and for capital project expenditures.<sup>46</sup> At a minimum, one percent, and no more than 10 percent, must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.<sup>47</sup>

### ***Fish and Wildlife Conservation Commission – 1.5 Percent***

The FWC exercises the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life.<sup>48</sup> The FWC is authorized to acquire lands and waters suitable for the protection, improvement, and restoration of the state's wild animal life, freshwater aquatic

<sup>38</sup> DEP, *Florida Greenways and Trails System Plan 2019-2023*, 6, available at <https://floridadep.gov/sites/default/files/FL-Greenway%2BTrails-System-Plan-2019%2C%202023.pdf> (last visited Oct. 28, 2019).

<sup>39</sup> Section 260.015(1), F.S.

<sup>40</sup> DEP, *Division of Recreation and Parks*, <https://floridadep.gov/Parks> (last visited Oct. 28, 2019).

<sup>41</sup> Section 259.105(3)(e), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Section 259.105(3)(i)1., F.S.

<sup>44</sup> DACS, *State Forests*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests> (last visited Oct. 29, 2019).

<sup>45</sup> Section 589.07, F.S.

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

<sup>47</sup> *Id.*

<sup>48</sup> FLA. CONST. art. IV, s. 9.



life, and marine life resources.<sup>49</sup> Lands acquired must be managed for recreational and other multiple-use activities that do not impede the FWC's ability to perform its constitutional and statutory duties and responsibilities.<sup>50</sup> The lands managed by the FWC include lands that are leased to the FWC and owned by the state, and lands owned by the FWC. The FWC is authorized to use Florida Forever funds for the acquisition of inholdings and additions to lands they manage which are important to the conservation of fish and wildlife and for capital project expenditures.<sup>51</sup> At a minimum, one percent, and no more than 10 percent, must be spent on capital project expenditures identified during the time of acquisition that meet land management planning activities necessary for public access.<sup>52</sup>

### **Land Acquisition Trust Fund**

Documentary stamp tax revenues are collected under ch. 201, F.S., which requires an excise tax to be levied on two classes of documents: deeds and other documents related to real property, which are taxed at the rate of 70 cents per \$100; and certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, which are taxed at 35 cents per \$100.<sup>53</sup>

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

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.<sup>54</sup>

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<sup>49</sup> Section 20.331(11), F.S.

<sup>50</sup> *Id.*

<sup>51</sup> Section 259.105(3)(g), F.S.

<sup>52</sup> *Id.*

<sup>53</sup> *See* ss. 201.02 and 201.08, F.S.

<sup>54</sup> FLA. CONST. art. X, s. 28(b)(1).

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

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes; and
- Section 375.041, F.S., to designate the LATF within the DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.<sup>55</sup>

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

- First, obligations relating to debt service, specifically:
  - Payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds.
- Then, before funds are authorized to be appropriated for other uses:
  - A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan, or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades restoration projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. From these funds, the following specified distributions are required:
    - \$32 million annually through the 2023-2024 fiscal year for the Long-Term Plan;
    - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million annually through the 2025-2026 fiscal year for the CERP; and
    - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
  - A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for spring restoration, protection, and management projects;
  - \$5 million annually through the 2025-2026 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka; and
  - \$64 million to the Everglades Trust Fund in the 2018-2019 fiscal year and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project, and any funds remaining in any fiscal year shall be made available only for Phase II of the C-51 Reservoir Project or projects that implement the CERP, the Long Term Plan, or the NEEPP.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.<sup>56</sup>

<sup>55</sup> Ch. 2015-229, ss. 9 and 50, Laws of Fla.

<sup>56</sup> Section 375.041(3)-(4), F.S.

The General Revenue Estimating Conference in January 2020 estimated that for the 2019-2020 fiscal year a total of \$2.87 billion would be collected in documentary stamp taxes.<sup>57</sup> Thirty-three percent of the net revenues collected, or approximately \$945.12 million, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that amount, \$157.69 million is committed to debt service, leaving \$787.43 million to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.<sup>58</sup>

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.<sup>59</sup> The cases were consolidated and a hearing was held in June of 2018.<sup>60</sup> The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the constitutional language. The court held for the plaintiffs, stating the amendment requires the funds be used for acquiring conservation lands, and for improving, managing, restoring, and enhancing public access to conservation lands acquired after the effective date of the amendment.<sup>61</sup> The decision described how the LATF funds may be used, and ruled numerous appropriations from 2015 and 2016 unconstitutional.<sup>62</sup>

The circuit court decision was appealed and the First District Court of Appeal overturned the circuit court ruling, holding that the LATF funds are not restricted to use on land purchased by the state after the constitutional amendment took effect in 2015.<sup>63</sup> The court also held that the plain language in the Constitution authorizing the use of funds for management, restoration, and enhancement activities would specifically authorize use of the funds on activities beyond land acquisition.<sup>64</sup> The case is currently on remand to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.<sup>65</sup>

### III. Effect of Proposed Changes:

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

- Division of State Lands - \$35 million, of which \$5 million is dedicated for land acquisition within the Florida Keys Area of Critical State Concern.

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<sup>57</sup> Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results (Jan. 2020)*, available at, <http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf> (last visited Feb. 20, 2020).

<sup>58</sup> *Id.*

<sup>59</sup> *Florida Wildlife Federation, Inc. v. Negron*, No. 2015-CA-001423 (Fla. 2nd Cir. Ct.); *Florida Defenders of the Environment, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2nd Cir. Ct.).

<sup>60</sup> *Florida Wildlife Federation, Inc. v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. June 28, 2018).

<sup>61</sup> *Id.* at 3.

<sup>62</sup> *Id.* at 7–8.

<sup>63</sup> *Oliva v. Florida Wildlife Federation, Inc.*, 1D18-3141 (Fla. 1st Dist. Ct. App.), available at [https://www.1dca.org/content/download/536427/5956785/file/183141\\_1286\\_09092019\\_09211709\\_i.pdf](https://www.1dca.org/content/download/536427/5956785/file/183141_1286_09092019_09211709_i.pdf) (last visited Sept. 23, 2019).

<sup>64</sup> *Id.* at 9-10.

<sup>65</sup> *Id.* at 11.

- Water Management Districts - \$30 million.
- Florida Communities Trust - \$21 million.
- Rural and Family Lands Protection Program - \$3.5 million.
- Stan Mayfield Working Waterfronts - \$2.5 million.
- Florida Recreation Development Assistance Program - \$2 million.
- Division of Recreation and Parks - \$1.5 million.
- Office of Greenways and Trails - \$1.5 million.
- Florida Forest Service - \$1.5 million.
- Fish and Wildlife Conservation Commission - \$1.5 million.

The bill deletes an obsolete provision relating to an appropriation for the 2019-2020 fiscal year.

The bill provides that moneys distributed from the Land Acquisition Trust Fund may not be used by the following budget entities:

- Executive Direction and Support Services and the Technology and Information Services within the Department of Environmental Protection;
- Executive Direction and Support Services and the Office of Agriculture Technology Services within the Department of Agriculture and Consumer Services;
- Office of Executive Direction and Administrative Support Services within the Fish and Wildlife Conservation Commission; and
- Executive Direction and Support Services within the Department of State.

The bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill creates a new distribution from the Land Acquisition Trust Fund (LATF) to the Florida Forever Trust Fund for distribution for various purposes. The LATF has constitutionally restricted uses, which are discussed in Section II of this bill analysis.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill creates a \$100 million annual distribution from the Land Acquisition Trust Fund (LATF) to the Florida Forever Trust Fund. Absent subsequent direction by the legislature to the contrary, these funds are to be distributed as follows:

- Division of State Lands - \$35 million, of which \$5 million is dedicated for land acquisition within the Florida Keys Area of Critical State Concern.
- Water Management Districts - \$30 million.
- Florida Communities Trust - \$21 million.
- Rural and Family Lands Protection Program - \$3.5 million.
- Stan Mayfield Working Waterfronts - \$2.5 million.
- Florida Recreation Development Assistance Program - \$2 million.
- Division of Recreation and Parks - \$1.5 million.
- Office of Greenways and Trails - \$1.5 million.
- Florida Forest Service - \$1.5 million.
- Fish and Wildlife Conservation Commission - \$1.5 million.

Agencies that receive funds from the LATF are the departments of Environmental Protection, State, and Agriculture and Consumer Services, and the Fish and Wildlife Conservation Commission. These agencies receive legislative appropriations for various items, such as springs restoration, Everglades and Northern Everglades restoration, Lake Apopka restoration, beach restoration, and land management activities. The additional \$100 million in distributions may affect the amount of additional funding available beyond the minimum required appropriation for the other purposes funded from the trust fund. Projections of Fiscal Year 2020-2021 documentary tax revenues deposited into the LATF totals \$945.12 million, which is an increase of \$37.28 million.<sup>66</sup> This increase in collections may offset some of the negative fiscal impact to the available funds.

**VI. Technical Deficiencies:**

None.

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<sup>66</sup> Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results (Jan. 2020)*, available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf> (last visited Feb. 19, 2020).

**VII. Related Issues:**

Other allocations from the Land acquisition Trust Fund (LATF) require the allocations to be reduced to the extent of any debt service on bonds issued for the same purpose after a date certain. This bill does not contain language to reduce the distribution based on any debt service paid on bonds issued for the Florida Forever program. As a result, the new \$100 million distribution for the Florida Forever program will be in addition to any payment of debt service for bonds issued for the purposes of the Florida Forever program. If the legislature wants to treat the allocation authorized in this bill similar to other allocations of the LATF moneys, the following language could be inserted: “This distribution shall be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2020, for the purposes set forth in this subparagraph.”

**VIII. Statutes Affected:**

This bill substantially amends section 375.041 of the Florida Statutes:

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.