

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 638

INTRODUCER: Senator Montford

SUBJECT: Apalachicola Environmental Stewardship Act

DATE: February 24, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dyson</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	Pre-meeting
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 638 creates the Apalachicola Environmental Stewardship Act, which creates an annual appropriation of at least \$12 million from the funds allocated to Division of State Lands from the Florida Forever Trust Fund beginning in the 2020-2021 through the 2024-2025 fiscal years, to be spent on land acquisition and projects that improve surface water and groundwater quality within the Apalachicola River and in Apalachicola Bay within the Apalachicola Area of Critical State Concern. Priority for these funds are given to land acquisitions that achieve a combination of conservation goals, including protecting and preserving fisheries and wildlife habitats, recreational spaces, nearshore water quality, surface water resources, and groundwater recharge. The bill requires at least three, but no more than ten percent of the allocated funds to be spent on projects and activities including land management, increased public access and recreation, and greenways.

The bill renames the Apalachicola Bay Area of Critical State Concern to the Apalachicola Area of Critical State Concern, and amends any references to the area.

The bill provides additional principles for guiding development within the Apalachicola Area of Critical State Concern to include projects that protect and improve water quality through a variety of facility and operations upgrades.

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.¹ The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.² Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.³ The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.⁴ 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 improvements⁵ 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.⁶

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.

¹ Chapter 99-247, Laws of Fla.

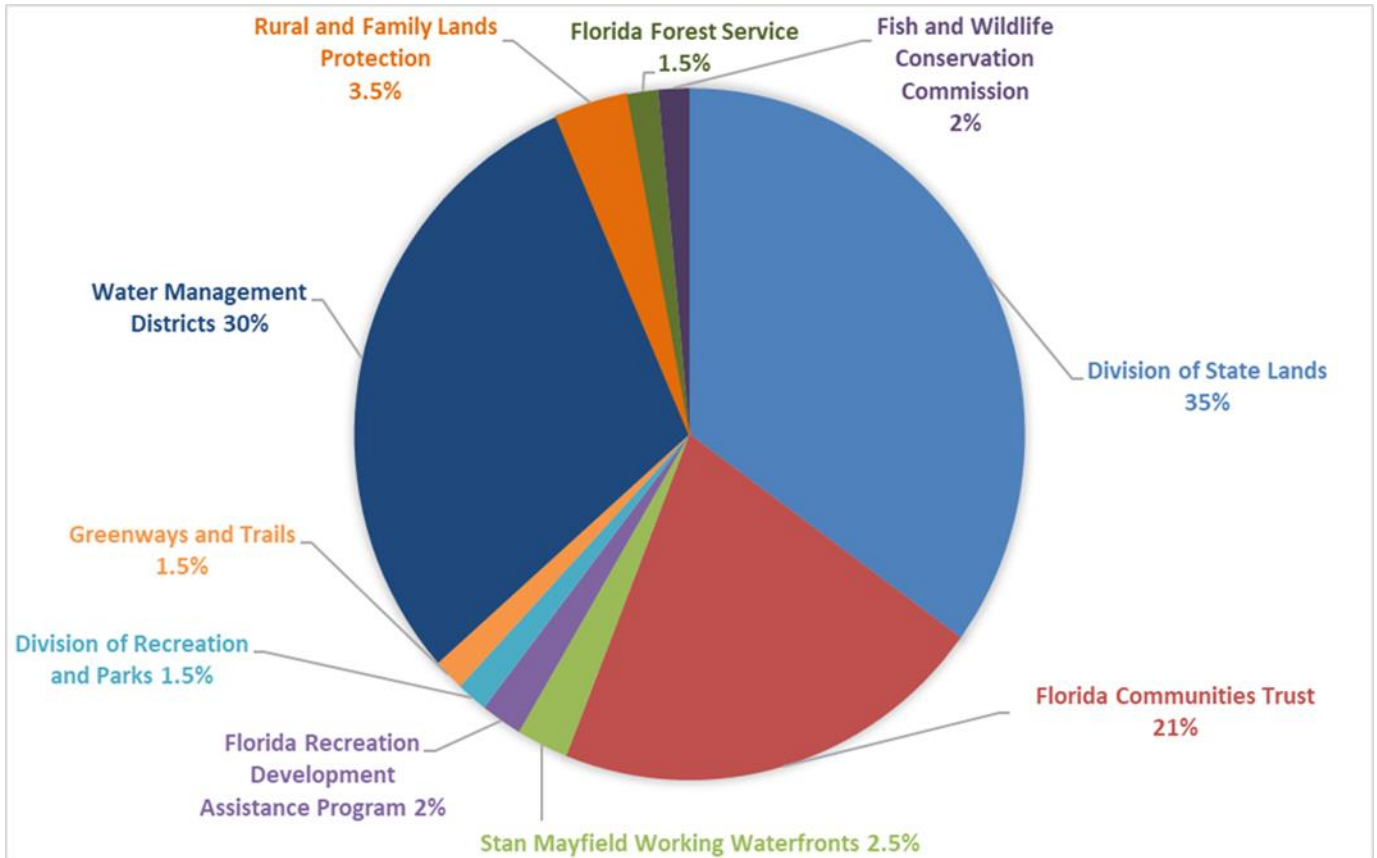
² Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2019), 49, available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf> (last visited Nov. 25, 2019).

³ Section 259.105, F.S.

⁴ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Nov. 25 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 (last visited Nov. 25, 2019) for a complete summary of the total amount of conservation lands in Florida.

⁵ 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."

⁶ 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.⁷ 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.⁸

⁷ DEP, *Florida Forever Five Year Plan*, (2019), 51, available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf> (last visited Nov. 26, 2019).

⁸ Section 259.105(4), F.S.

The Acquisition and Restoration Council (ARC) is a 10-member body⁹ that makes recommendations on the acquisition, management, and disposal of state-owned lands.¹⁰ The ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding. In evaluating each application, the ARC is required to consider whether the project:

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

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;
- Projects that contribute to improving the water quality and flow of springs; and

⁹ 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.

¹⁰ 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 Nov. 25, 2019).

¹¹ Section 259.105(9), F.S.

- Projects for which the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.¹²

Using its established criteria, the ARC develops a priority list of applications submitted. An affirmative vote of at least five members of the ARC is required to place a proposed project on the priority list. The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.¹³ Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural lands, less-than-fee, partnerships or regional incentives, and substantially complete (greater than 85 percent complete).¹⁴ 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).¹⁵ The BOT is responsible for acting on the ARC's recommendations by approving the acquisition of each parcel.¹⁶ While the BOT is authorized to remove projects from the proposed list, the BOT may not add or rearrange projects on the list.¹⁷

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

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.¹⁹

Area of Critical State Concern

The Areas of Critical State Concern Program was created in the "Florida Environmental Land and Water Management Act of 1972."²⁰ The purpose of the program is to ensure that the state, in accordance with s. 7, Art. II of the State Constitution, ensures a water management system that will reverse the deterioration of water quality and provide optimum utilization of the state's limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of residents of this state.²¹

¹² Section 259.105(10), F.S.

¹³ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Nov. 25, 2019).

¹⁴ Section 259.105(17), F.S.

¹⁵ Section 259.105(14), F.S.

¹⁶ 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 (last visited Nov. 25, 2019).

¹⁷ Section 259.105(14), F.S.

¹⁸ Section 259.105(17), F.S.

¹⁹ Section 259.105(3)(b), F.S.

²⁰ Chapter 72-317, s. 1, Laws of Fla.

²¹ Section 380.021, F.S.

The current designated Areas of Critical State Concern are the Apalachicola Bay Area, the Green Swamp Area, the Big Cypress Area, and the Florida Keys Area and the City of Key West Area.²²

Apalachicola Bay Area of Critical State Concern

The Legislature designated the Apalachicola Bay Area as an Area of Critical State Concern in 1985.²³ The initial designation of the Apalachicola Bay Area included the City of Apalachicola, the City of Carrabelle, and unincorporated Franklin County (excluding Alligator Point).²⁴ All of the designation was repealed in 1993 except for the City of Apalachicola.²⁵

The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico.²⁶ The Apalachicola River and the adjoining Chattahoochee and Flint Rivers comprise a drainage system encompassing more than 19,000 square miles of southern Georgia, eastern Alabama, and northern Florida.²⁷ The area harbors one of the highest concentrations of threatened and endangered species in the United States.²⁸ Apalachicola Bay is a productive estuary, supplying approximately 90 percent of the oysters in Florida and 10 percent nationally, and is an important nursery ground for numerous commercially and recreationally important fish and invertebrate species.²⁹

The designated area is shown below:³⁰

²² Department of Economic Opportunity, *Areas of Critical State Concern Program*, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Nov. 26, 2019).

²³ Chapter 85-360, ss. 1-10, Laws of Fla.

²⁴ *Id.*

²⁵ Chapter 93-135, s. 1, Laws of Fla.

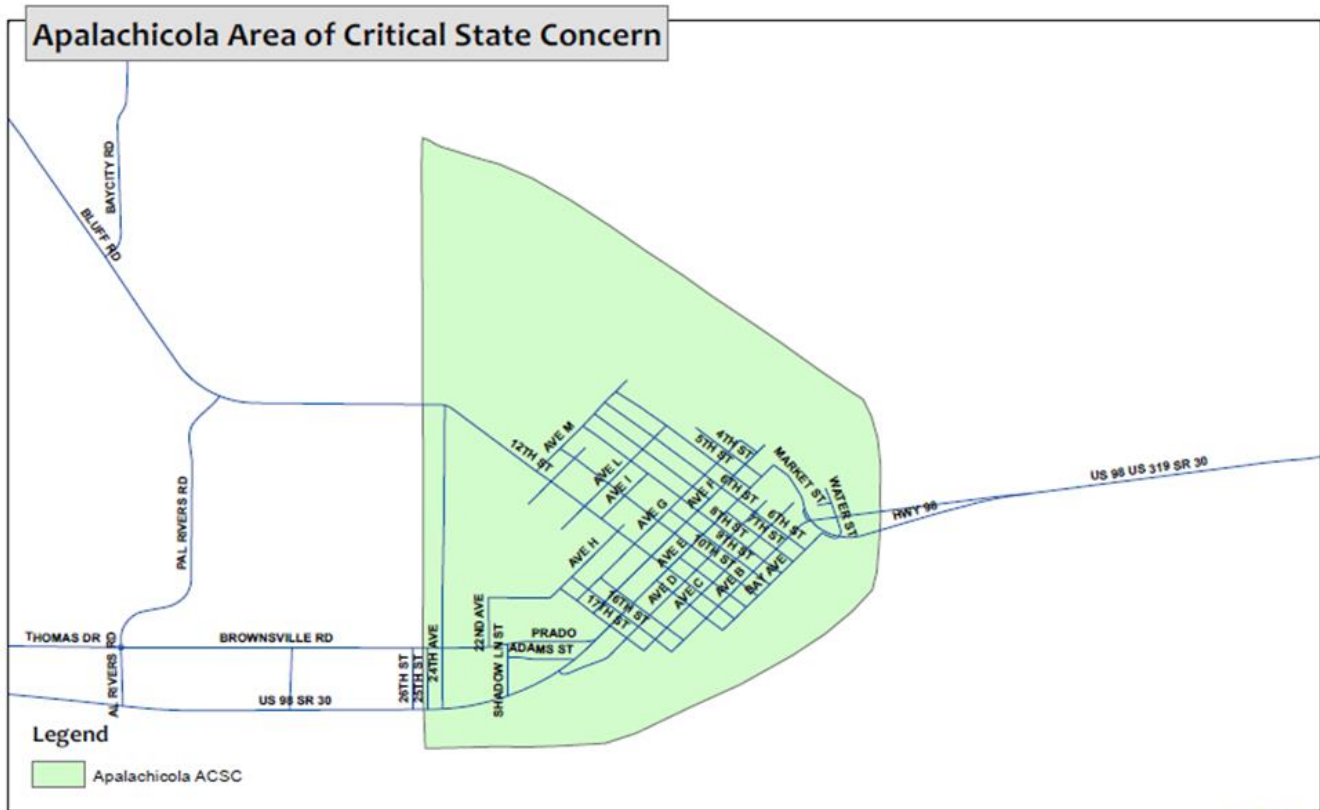
²⁶ Department of Economic Opportunity, *Apalachicola Bay Area*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Nov. 25, 2019); *see also*, U.S. Fish and Wildlife Service, *Next Steps for a Healthy Gulf of Mexico Watershed*, <https://www.fws.gov/southeast/gulf-restoration/next-steps/focal-area/greater-apalachicola-basin/> (last visited Nov. 25, 2019).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Department of Economic Opportunity, *Apalachicola Area of Critical State Concern Program*, <http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/apalachicolamap.pdf?sfvrsn=2> (last visited Nov. 26, 2019).



Note: This product has been compiled from the most accurate data available to the Department of Economic Opportunity. This product is for reference purposes only and is not to be construed as a legal document or survey instrument. Please refer to Rule 25-22.401, Florida Administrative Code for the precise boundary.



The legislative intent of the designation is to:

- Protect the water quality of the Apalachicola Bay Area to ensure a healthy environment and thriving economy for area and state residents;
- 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;
- Assist Franklin County and its municipalities with technical and advisory assistance in formulating 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 which is compatible with the protection and conservation of the natural resources of the Apalachicola Bay Area;
- Educate the residents of the Apalachicola Bay Area in order to protect and preserve its natural resources;
- Provide affordable housing in close proximity to places of employment in the Apalachicola Bay Area; and

- Protect and improve the water quality of the Apalachicola Bay Area through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet state requirements.³¹

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 principles for guiding development of the area.³² These principles require that:

- Land development be guided so that the basic functions and productivity of the Apalachicola Bay Area's natural land and water systems be conserved to reduce or avoid health, safety, and economic problems for present and future residents of the Apalachicola Bay Area;
- Land development 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 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 be conserved and protected;
- Water quantity be managed to conserve and protect the natural resources and the scenic beauty of the Apalachicola Bay Area;
- Water quality be protected, maintained, and improved for public water supply, propagation of aquatic life, and recreational and other uses;
- No wastes 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 be managed in order to minimize impacts on the bay system and protect its uses;
- 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, be protected; and
- Public lands be managed, enhanced, and protected so that the public may continue to enjoy the traditional use of such lands.³³

III. Effect of Proposed Changes:

The bill creates the Apalachicola Environmental Stewardship Act which creates an annual appropriation of at least \$12 million from funds allocated to the Division of State Lands from the Florida Forever Trust Fund, beginning in the 2020-2021 fiscal year and continuing through the 2024-2025 fiscal year to be spent on land acquisition and projects that improve surface water and groundwater quality in the Apalachicola River and in Apalachicola Bay within the Apalachicola Area of Critical State Concern. Projects could 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;

³¹ Section 380.0555(2), F.S.

³² Section 380.0555(7), F.S.

³³ *Id.*

- Other water quality and water supply projects; and
- Land acquisition projects that protect water quality.

The bill specifies that priority must be given to land acquisitions that achieve a combination of conservation goals, including protecting and preserving fisheries and wildlife habitats, recreational spaces, nearshore water quality, surface water resources, and groundwater recharge. Additionally, the bill specifies that at least three percent but not more than 10 percent of the funds allocated for land acquisition shall be spent on projects and activities identified during the time of acquisition, including land management, increased public access and recreational opportunities, and greenways.

The bill removes any reference to the Apalachicola Bay Area, changing all references to read as “Apalachicola Area” while also making technical changes.

The bill deletes an obsolete provision relating to a plan that was required to be submitted by February 1, 1986.

The bill adds an additional principle for guiding development in the Apalachicola Area, which requires that water quality be protected and improved by the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection facilities; treatment and disposal facilities; the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; indirect and direct potable reuse; and other water quality and water supply projects.

The bill provides an effective date of 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:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a specific annual distribution of at least \$12 million from the funds allocated to the Division of State Lands from the Florida Forever Trust Fund through the 2024-2025 fiscal year, which may affect other programs that are funded through the trust fund.

Local governments in the Apalachicola Bay Area of Critical State Concern may have a positive fiscal impact by receiving funds to use for land acquisition and projects that improve surface and groundwater quality.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 259.105 and 380.0555.

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.