

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 1816

INTRODUCER: Senator Stewart

SUBJECT: Land Acquisition Trust Fund

DATE: January 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1816 extends the retirement date of Land Acquisition Trust Fund (LATF) bonds issued to fund the Florida Forever Act. It appropriates \$100 million from the LATF to the Florida Forever Trust Fund. The bill also provides that LATF funds may not be used for costs associated with certain budget entities.

II. Present Situation:

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 \$100.¹

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.² 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).³ 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

¹ See ss. 201.02(1)(a) and 201.08(1)(a), F.S.

² The Florida Senate, *Water and Land Conservation*, <https://www.flsenate.gov/media/topics/WLC> (last visited Jan. 19, 2022).

³ *Id.*

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.⁴

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 DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.⁵

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;

⁴ FLA. CONST. art. X, s. 28(b)(1).

⁵ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- \$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; and
- \$50 million annually to the South Florida Water Management District for the Lake Okeechobee Watershed Restoration Project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁶

The General Revenue Estimating Conference in August 2021 estimated that for fiscal year 2021-2022 a total of \$3.82 billion would be collected in documentary stamp taxes.⁷ Thirty-three percent of the net revenues collected, or approximately \$1.26 billion, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that amount, \$136 million is committed to debt service, leaving \$1.12 billion to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.⁸

Litigation

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.⁹ The cases were consolidated and a hearing was held in June of 2018.¹⁰ 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 circuit 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.¹¹ The decision described how the LATF funds may be used, and ruled numerous appropriations from 2015 and 2016 unconstitutional.¹²

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 2015.¹³ 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

⁶ Section 375.041(3)-(4), F.S.

⁷ Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results* (Aug. 2021), available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Jan. 19, 2022).

⁸ *Id.*

⁹ *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.).

¹⁰ *Florida Wildlife Federation, Inc. v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. June 28, 2018).

¹¹ *Id.* at 3.

¹² *Id.* at 7-8.

¹³ *Oliva v. Florida Wildlife Federation, Inc.*, 1D18-3141 (Fla. 1st Dist. Ct. App.), available at https://www.1dca.org/content/download/619664/opinion/183141_1286_09232019_11211543_i.pdf (last visited Jan. 19, 2021).

acquisition.¹⁴ The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.¹⁵

The circuit court dismissed the lawsuit on January 3, 2022, finding that it was moot because the money approved by the Legislature in 2015 had already been spent.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹ The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.²⁰

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 improvements²¹ 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.²²

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 11.

¹⁶ *Florida Wildlife Federation, Inc. v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. Jan. 3, 2022), available at <https://www.politico.com/states/fl/?id=0000017e-21d8-d3d7-a37f-afdee5cb0000&source=email> (last visited Jan. 19, 2022).

¹⁷ Chapter 99-247, Laws of Fla.

¹⁸ Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2020), 9, available at https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_2021Abstract_2.pdf (last visited Jan. 19, 2022).

¹⁹ Section 259.105, F.S.

²⁰ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Jan. 19, 2022). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2019), available at <https://www.fnai.org/conslands/conservation-lands> (last visited Jan. 19, 2022) for a complete summary of the total amount of conservation lands in Florida.

²¹ 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."

²² Section 215.618, F.S.; FLA. CONST. art. VII, s. 11(e).

Florida Forever Bonds

Florida Forever bonds are payable from a dedicated state tax revenue: documentary stamp tax revenues.²³ The bonds are issued by the Division of Bond Finance of the State Board of Administration.²⁴ The amount deposited into the LATF must be used first for the payment of debt service or funding of debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds.²⁵ The bonds issued to fund the Florida Forever Act generally have a 20-year term and are intended to be retired by December 31, 2040.²⁶ Except for bonds issued to refund previously issued bonds, no bonds may be issued unless such bonds are approved and the debt service for the remainder of the fiscal year in which the bonds are issued is specifically appropriated in the General Appropriations Act.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 201.15, F.S., to extend the retirement date of bonds issued to fund the Florida Forever Act until December 31, 2054.

Section 2 amends s. 375.041, F.S., to appropriate \$100 million to the Florida Forever Trust Fund. The bill deletes the appropriation of funds as provided in the General Appropriations Act for the 2021-2022 fiscal year that has expired.

The bill provides that any remaining moneys in the Land Acquisition Trust Fund may not be used for costs associated with any of the following budget entities:

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

Section 3 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ Section 215.618(3), F.S.

²⁴ Section 215.618(4), F.S.

²⁵ Section 201.15(3), F.S.

²⁶ *Id.*; s. 215.618(1), F.S.

²⁷ Section 201.15(3), F.S.

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 appropriates \$100 million to the Florida Forever Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 201.15 and 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.