

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 407 Apalachicola Bay Area of Critical State Concern

SPONSOR(S): Shoaf

TIED BILLS: **IDEN./SIM. BILLS:** SB 702

FINAL HOUSE FLOOR ACTION: 110 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 407 passed the House on April 27, 2023, and subsequently passed the Senate on May 1, 2023.

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 at one point supplied approximately 90 percent of the oysters in Florida and 10 percent nationally. However, the Apalachicola Bay oyster population began declining in 2013 and by 2020 had collapsed. In 2020, all wild oyster harvesting was suspended through the end of calendar year 2025.

The Apalachicola Bay Area was designated an Area of Critical State Concern (ACSC) in 1985.

Beginning in the 2023-2024 fiscal year and continuing through the 2027-2028 fiscal year, the bill authorizes the Department of Environmental Protection (DEP) to expend up to \$5 million each fiscal year for the purpose of entering into financial assistance agreements with the City of Apalachicola to implement projects that improve surface water and groundwater quality within the Apalachicola Bay ACSC, including the construction 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. This authorization will expire on June 30, 2028.

The bill may have a negative fiscal impact on state government and a positive fiscal impact on local government if DEP expends funds for the purposes stated in this bill.

The bill was approved by the Governor on June 12, 2023, ch. 2023-227, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

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

STORAGE NAME: h0407z1.DOCX

DATE: 6/19/2023

A. EFFECT OF CHANGES:

Background

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.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, but not limited to, 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

A former Apalachicola Riverkeeper described the Apalachicola River, floodplain and Bay as “compris[ing] one of the most biodiverse and productive riverine and estuarine systems in the northern hemisphere.”⁸ The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico.⁹ The Apalachicola Bay is a productive estuary and serves as an important nursery ground for numerous commercially and recreationally important fish and invertebrate species. In addition, it “is a major forage area for migratory birds, in particular for trans-gulf migrants in the spring.”¹⁰

The Apalachicola Bay supported a thriving oyster fishery for decades and at one time supplied approximately 90 percent of the oysters in Florida and 10 percent nationally.¹¹ However, the Apalachicola Bay oyster population began declining in 2013 and by 2020 had collapsed.¹² To assist with restoration and recovery of oysters in the Apalachicola Bay system, the Florida Fish and Wildlife

¹ S. 14.202, F.S. (The Administration Commission is part of the Executive Office of the Governor.); *see also* s. 380.031(1), F.S.

² S. 380.05, F.S.

³ S. 380.05(2), F.S.

⁴ S. 380.055, F.S.

⁵ S. 380.0551, F.S.

⁶ S. 380.0552, F.S.

⁷ S. 380.0555, F.S.

⁸ Department of Environmental Protection (DEP), *Apalachicola Bay Aquatic Preserve* (last updated Feb. 14, 2023), <https://floridadep.gov/ABAP> (last visited Apr. 12, 2023).

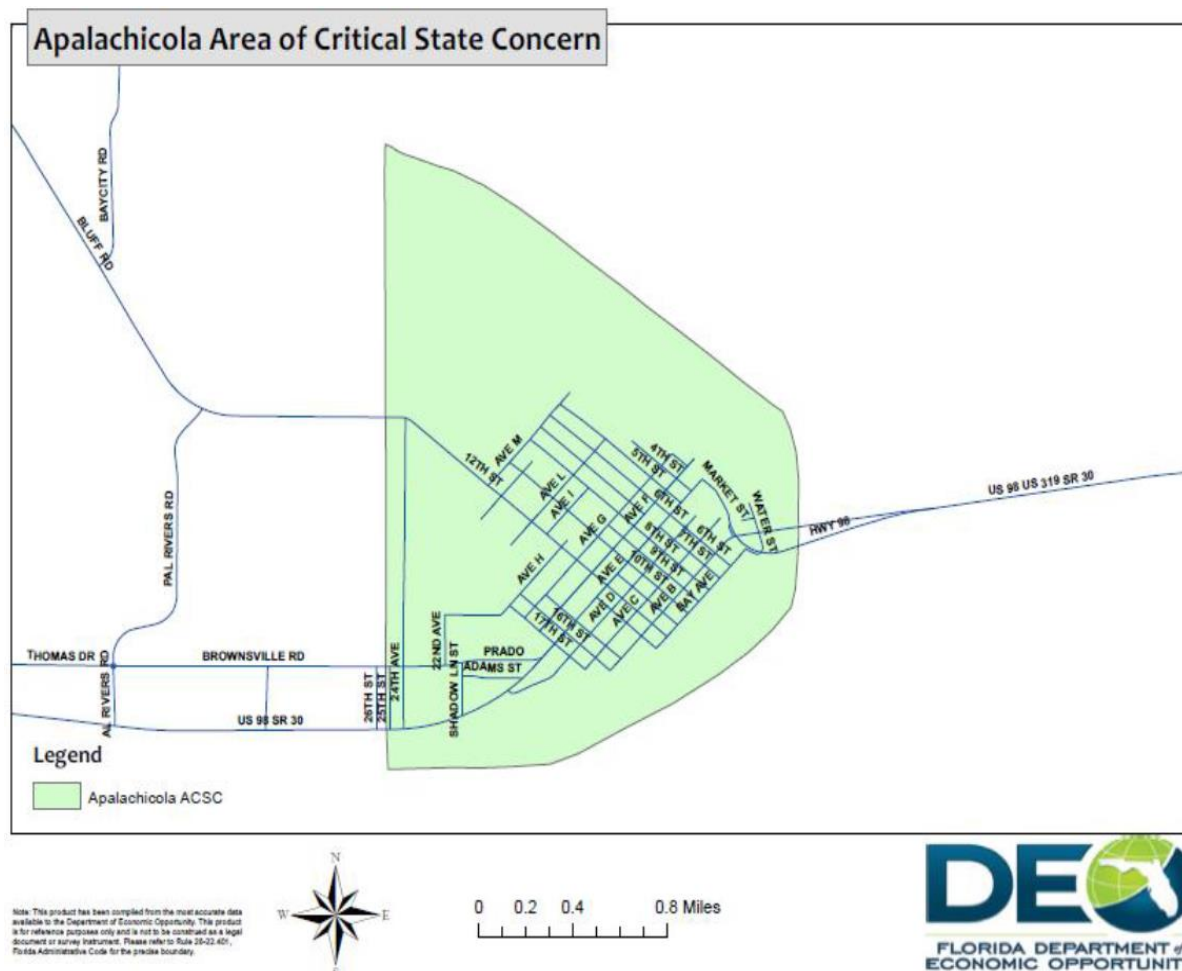
⁹ Department of Economic Opportunity (DEO), *Apalachicola Bay Area*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Mar. 27, 2023); *see also* U.S. Fish & Wildlife Service, *Vision for a Healthy Gulf of Mexico Watershed*, p. 19 (June 2013), <https://www.fws.gov/sites/default/files/documents/gulf-vision-document.pdf#:~:text=The%20Service%E2%80%99s%20Vision%20for%20a%20Healthy%20Gulf%20of,The%20conservation%20strategies%20are%20to%3A%20nUse%20sound%20science%3B.>

¹⁰ DEP, *supra* note 8.

¹¹ *Id.*

¹² Florida Fish and Wildlife Conservation Commission, *FWC approves measures to support recovery and restoration of oysters in Apalachicola Bay*, <https://myfwc.com/news/all-news/oyster-commission-1220/> (last visited Mar. 27, 2023).

Conservation Commission suspended all wild oyster harvest and on-the-water possession of wild oyster harvesting equipment (tongs) from Apalachicola Bay through the end of calendar year 2025.¹³ The Apalachicola Bay Area was designated an ACSC in 1985.¹⁴ 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.¹⁵



The Legislature declared that the intent of establishing the Apalachicola Bay 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;
- 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;

¹³ *Id.*

¹⁴ Chapter 85-360, Laws of Florida.; s. 380.0555, F.S.

¹⁵ DEO, *supra* note 9.

- 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
- To 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.¹⁶

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 area¹⁷ that require:¹⁸

- 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 wastes 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-tide¹⁹ 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 lands.

Effect of the Bill

Beginning in the 2023-2024 fiscal year and continuing through the 2027-2028 fiscal year, the bill authorizes the DEP to expend up to \$5 million each fiscal year for the purpose of entering into financial assistance agreements with the City of Apalachicola to implement projects that improve surface water and groundwater quality within the Apalachicola Bay ACSC, including the construction 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. This authorization will expire on June 30, 2028.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁶ S. 380.0555(2), F.S.

¹⁷ S. 380.0555(7), F.S.

¹⁸ *Id.*

¹⁹ These tidal ranges occur twice each month when the Earth, sun, and moon are nearly in alignment and the gravitational pull of the sun on Earth is “added” to the gravitational pull of the moon on Earth, resulting in higher tides. National Oceanic and Atmospheric Administration, National Ocean Service, *What are spring and neap tides?* (last updated Jan. 20, 2023), <https://oceanservice.noaa.gov/facts/springtide.html> (last visited Apr. 27, 2023).

1. Revenues:

None.

2. Expenditures:

The bill authorizes, but does not require, DEP to expend up to \$5 million each fiscal year, beginning in Fiscal Year 2023-2024 and continuing through Fiscal Year 2027-2028 for the purpose of entering into financial assistance agreements with the City of Apalachicola to implement projects that improve surface water and groundwater quality within the Apalachicola Bay ACSC.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the City of Apalachicola, if DEP expends funds in any fiscal year beginning in Fiscal Year 2023-2024 and continuing through Fiscal Year 2027-2028 for the purpose of entering into financial assistance agreements with the City of Apalachicola to implement projects that improve surface water and groundwater quality within the Apalachicola Bay ACSC.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.