

**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 Committee on Environment and Natural Resources

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BILL: SB 54

INTRODUCER: Senator Rodriguez

SUBJECT: Land Acquisition Trust Fund

DATE: January 13, 2023      REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 54 appropriates \$20 million from the Land Acquisition Trust Fund to the Department of Environmental Protection (DEP) for the purpose of:

- Entering into financial assistance agreements with local governments located in the Florida Keys or the City of Key West Areas of Critical State Concern to promote the protection or restoration of Florida Bay, the Florida Keys, and nearshore marine ecosystems, including coral reefs; or
- Acquiring land within the Florida Keys Area of Critical State Concern with increased priority given to acquisitions that achieve a combination of conservation goals.

The bill prohibits DEP from using the appropriated funds to implement wastewater management projects or programs.

**II. Present Situation:**

**The Florida Keys**

The Florida Keys consist of more than 100 miles of small limestone islands formed from ancient coral reefs rising a few meters above sea level.<sup>1</sup> The Keys' tropical climate supports populations of rare and unique wildlife and plants that occur nowhere else in the world.<sup>2</sup> For example, the tropical hardwood hammocks in the Keys are the only tropical hardwood forests in the continental U.S. and are the most imperiled plant communities in the world.<sup>3</sup> The Keys also support many migratory bird species, along with imperiled and rare wildlife and plants including

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<sup>1</sup> Florida Fish and Wildlife Conservation Commission (FWC), *Florida Keys – Habitat and Management*, <https://myfwc.com/recreation/lead/florida-keys/habitat/> (last visited Jan. 12, 2023).

<sup>2</sup> *Id.*; FWC, *A Management Plan for the Florida Keys Wildlife and Environmental Area: 2016-2026*, 1 (Feb. 2016) available at <https://myfwc.com/media/5371/fkweamanagementplan2016-2026.pdf> (last visited Jan. 12, 2023).

<sup>3</sup> FWC, *A Management Plan for the Florida Keys Wildlife and Environmental Area: 2016-2026* at 1.

the Key deer, American crocodile, tree cactus, and four species of sea turtle.<sup>4</sup> Because of its unique combination of tropical endemic rare and imperiled species and habitats, the conservation of the critical remaining natural lands in the Florida Keys has long been a commitment of the State of Florida, the federal government, the South Florida Water Management District, Monroe County, and many conservation organizations.<sup>5</sup> Conservation helps to protect the Keys' Outstanding Florida Waters, its reefs and islands, its fisheries, and its ecotourism opportunities.<sup>6</sup>

### **Areas of Critical State Concern**

The Governor and Cabinet, sitting as the Administration Commission,<sup>7</sup> may designate certain areas within the state that contain resources of statewide or regional significance as areas of critical state concern.<sup>8</sup> There are five designated areas of critical state concern: the Big Cypress,<sup>9</sup> Green Swamp,<sup>10</sup> Florida Keys, Key West,<sup>11</sup> and Apalachicola Bay Areas.<sup>12</sup>

### ***The City of Key West and the Florida Keys Areas of Critical State Concern***

The Florida Keys Area of Critical State Concern includes the Village of Islamorada, the municipalities of Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.<sup>13</sup> Following litigation in 1984 to challenge the designation, the City of Key West was given its own area of critical state concern designation.<sup>14</sup>

By designating the Florida Keys Area of Critical State Concern, the legislature intended to:

- Establish a land-use management system that protects the natural environment, conserves and promotes the community character, promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services, and promotes and supports a diverse and sound economic base in the Florida Keys;
- Provide affordable housing in close proximity to places of employment in the Florida Keys;
- Protect the constitutional rights of property owners to own, use, and dispose of their real property;
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land-use activities within the Florida Keys;
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;
- Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects; and

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> Section 380.031(1), F.S.

<sup>8</sup> Section 380.05, F.S.

<sup>9</sup> Section 380.055, F.S.

<sup>10</sup> Section 380.0551, F.S.

<sup>11</sup> Section 380.0552, F.S.

<sup>12</sup> Section 380.0555, F.S.

<sup>13</sup> Department of Economic Opportunity (DEO), *City of Key West and the Florida Keys Areas*, <https://floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys> (last visited Jan. 6, 2023).

<sup>14</sup> *Id.*

- Ensure that the population of the Florida Keys can be safely evacuated.<sup>15</sup>

State, regional, and local agencies and units of government in the Florida Keys Area of Critical State Concern must coordinate development plans and conduct programs and activities consistent with principles for guiding development that:

- Strengthen local government capabilities for managing land use and development.
- Protect shoreline and marine resources.
- Protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, dune ridges and beaches, and wildlife.
- Ensure sound economic development.
- Limit the adverse impacts of development on water quality.
- Protect the historical heritage of the Florida Keys.
- Protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments.<sup>16</sup>
- Protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; and other water quality and supply projects, including direct and indirect potable reuse.
- Ensure the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys.
- Make available adequate affordable housing for all sectors of the population of the Florida Keys.
- Provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan.
- Protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.<sup>17</sup>

### **Florida Keys Stewardship Act**

The Florida Keys Stewardship Act revised various policies relating to local government environmental financing.<sup>18</sup> The Act:

- Required the Department of Environmental Protection (DEP) to annually consider the recommendations of the Department of Economic Opportunity relating to land purchases within an area of critical state concern;

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<sup>15</sup> Section 380.0552, F.S.

<sup>16</sup> These investment include the Florida Keys Aqueduct and water supply facilities; sewage collection, treatment, and disposal facilities, the Key West Naval Air Station and other military facilities; transportation facilities; federal parks, wildlife refuges, and marine sanctuaries; state parks, recreation facilities, aquatic preserves, and other publicly owned properties; city electric service and the Florida Keys Electric Co-op; and other utilities, as appropriate. Section 380.0552(7), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Chapter 2016-225, Laws of Fla.; Section 259.045, F.S.

- Required DEP to make recommendations to the Board of Trustees of the Internal Improvement Trust Fund with respect to the purchase of fee or any lesser interest in specified types of lands;
- Allowed local governments and special districts within an area of critical state concern to recommend additional land purchases;
- Provided additional principles for guiding development within the Florida Keys Area of Critical State Concern;<sup>19</sup>
- Expanded the purposes for which the local government infrastructure surtax<sup>20</sup> can be used to include land acquisition by a county for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern;<sup>21</sup> and
- Directed that, beginning in the 2017-2018 fiscal year and continuing through the 2026-2027 fiscal year, at least \$5 million from the Florida Forever Trust Fund must be spent on land acquisition within the Florida Keys Area of Critical State Concern.<sup>22</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>23</sup>

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.<sup>24</sup> 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).<sup>25</sup> 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;

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<sup>19</sup> Chapter 2016-225, Laws of Fla.; Section 380.0552(7), F.S.

<sup>20</sup> The local government infrastructure surtax allows the governing authority in each county to levy a discretionary sales surtax of 0.5 percent or 1 percent. Section 212.055(2), F.S.

<sup>21</sup> Chapter 2016-225, Laws of Fla.; Section 212.055(2), F.S.

<sup>22</sup> Chapter 2016-225, Laws of Fla.; s. 259.105(3)(b), F.S.

<sup>23</sup> See ss. 201.02(1)(a) and 201.08(1)(a), F.S.

<sup>24</sup> The Florida Senate, *Water and Land Conservation*, <https://www.flsenate.gov/media/topics/WLC> (last visited Jan. 4, 2023).

<sup>25</sup> *Id.*

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>26</sup>

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.<sup>27</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, unless superseded by the General Appropriations Act, 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;
  - \$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

<sup>26</sup> FLA. CONST. art. X, s. 28(b)(1).

<sup>27</sup> Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- \$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.<sup>28</sup>

During the 2022 session, the Legislature added language that specifies that the purposes set forth in s. 375.041(3)(a)3., F.S., relating to Lake Apopka would instead be appropriated as provided in the General Appropriations Act.<sup>29</sup> In August 2022, the General Revenue Estimating Conference estimated that for fiscal year 2022-2023 a total of \$4.52 billion would be collected in documentary stamp taxes.<sup>30</sup> Thirty-three percent of the net revenues collected, or approximately \$1.49 billion, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that amount, \$124 million is committed to debt service, leaving \$1.36 billion to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.<sup>31</sup>

### ***Litigation***

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.<sup>32</sup> The cases were consolidated and a hearing was held in June of 2018.<sup>33</sup> The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the State Constitution. 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.<sup>34</sup> The decision described how the LATF funds may be used, and ruled that numerous appropriations from 2015 and 2016 were unconstitutional.<sup>35</sup>

On appeal, 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>36</sup> The court 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>37</sup> The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.<sup>38</sup>

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<sup>28</sup> Section 375.041(3)-(4), F.S.

<sup>29</sup> Chapter 2022-157, Laws of Fla.

<sup>30</sup> Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results* (Aug. 2022), available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Jan. 5, 2023).

<sup>31</sup> *Id.*

<sup>32</sup> *Fla. Wildlife Fed'n v. Negron*, No. 2015-CA-001423 (Fla. 2nd Cir. Ct.); *Fla. Defenders of the Env't, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2nd Cir. Ct.).

<sup>33</sup> *Fla. Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. June 28, 2018).

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.* at 7–8.

<sup>36</sup> *Oliva v. Fla. Wildlife Fed'n*, 281 So. 3d 531, 539 (Fla. 1st Dist. Ct. App., 2019).

<sup>37</sup> *Id.* at 537.

<sup>38</sup> *Id.* at 539.

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.<sup>39</sup> On July 20, 2022, the Florida Wildlife Federation filed a motion to reopen the case.<sup>40</sup> The case is now on appeal in the First District Court of Appeal.<sup>41</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 375.041, F.S., to appropriate \$20 million to the Department of Environmental Protection (DEP) to:

- Implement the Florida Keys Stewardship Act by entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern to promote the protection or restoration of Florida Bay, the Florida Keys, and nearshore marine ecosystems, including coral reefs; or
- Acquire land within the Florida Keys Area of Critical State Concern, giving increased priority to acquisitions that achieve a combination of conservation goals, including protecting water resources and natural groundwater recharge.

The bill prohibits DEP from using the appropriated funds to implement wastewater management projects or programs, notwithstanding any other law. The bill requires the distribution of the \$20 million to be reduced by an amount equal to the debt service paid out of the LATF on bonds issued for these purposes after July 1, 2023.

The bill deletes obsolete language that directed LATF funds to be appropriated for the 2022-2023 fiscal year as provided in the General Appropriations Act.

**Section 2** provides an effective date of July 1, 2023.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

See Present Situation.

<sup>39</sup> *Fla Wildlife Fed'n 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. 5, 2023).

<sup>40</sup> Dep't of Environmental Protection, *Fla. Enviro. Cases August*, 1 (Aug. 2022) (on file with the Senate Committee on Environment and Natural Resources).

<sup>41</sup> *Fla. Wildlife Fed'n v. Fla. Legislature*, No. 1D22-3142 (Fla. 1st Dist. Ct. App., 2022).

**D. State Tax or Fee Increases:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill will have a positive fiscal impact of \$20 million to the Florida Keys area.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.