

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 602

INTRODUCER: Senator Burton

SUBJECT: Land Acquisition Trust Fund

DATE: March 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 602 appropriates \$20 million from the Land Acquisition Trust Fund to the Department of Environmental Protection to implement the Heartland Headwaters Protection and Sustainability Act (Act).

The funds must be used to enter into financial assistance agreements and distributed in accordance with the projects identified in the Heartland Headwaters Annual Report that protect, restore, or enhance the headwaters of the river systems located in the Heartland Region of Central Florida.

The bill also contains legislative findings regarding the enactment and purposes of the Act, findings from the Central Florida Water Initiative and its Regional Water Supply Plan, and the need for consistent funding support to implement the Act.

II. Present Situation:

Green Swamp Area of Critical State Concern

The Green Swamp contains 560,000 acres of wetlands, flatlands, and prominent sandy ridgelines in southwest Florida.¹ In 1979, the Legislature designated approximately 322,690 acres lying in northern Polk and southern Lake Counties as the Green Swamp Area of Critical State Concern.² The designation recognizes the need to protect the swamp from encroaching development, as well as the area's valuable hydrologic functions. The Green Swamp is an intrinsic part of the

¹ Southwest Florida Water Management District, *Green Swamp Wilderness Preserve*, <https://www.swfwmd.state.fl.us/recreation/green-swamp-wilderness-preserve> (last visited Feb. 23, 2023).

² Florida Department of Economic Opportunity, *Green Swamp Area*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-green-swamp> (last visited Feb. 23, 2023).

Floridan Aquifer. Flatwoods and sandhill uplands throughout the swamp provide moderate to high recharge, and the high elevation of the aquifer within the swamp provides the groundwater pressure necessary to maintain springs and rivers. In addition, wetlands in the swamp coalesce to create the headwaters of the Withlacoochee, Ocklawaha, Hillsborough, and Peace rivers.³

The Southern Water Use Caution Area

The Southern Water Use Caution Area (SWUCA) was established in 1992 by the Southwest Florida Water Management District (SWFWMD) in response to growing water demands from public supply, agriculture, mining, power generation, and recreational uses and to the environmental concerns related to these groundwater withdrawals.⁴ It encompasses approximately 5,100 square miles, including all of DeSoto, Hardee, Manatee, and Sarasota counties, and parts of Charlotte, Highlands, Hillsborough, and Polk counties.⁵

In 2006, the SWFWMD adopted the SWUCA Recovery Strategy,⁶ which has four main goals:

- Achieve minimum flows in the upper Peace River;
- Achieve minimum lake levels in lakes along the Lake Wales Ridge, which extends roughly 90 miles along the center of the state in Polk and Highlands counties;⁷
- Achieve the saltwater intrusion minimum aquifer level; and
- Ensure water supply needs are met for existing and projected reasonable and beneficial uses.⁸

Central Florida Water Initiative

The Central Florida Water Initiative (CFWI) is a collaborative water supply planning effort involving the Department of Environmental Protection (DEP), the St. Johns River Water Management District, the South Florida Water Management District (SFWMDC), SWFWMD, the Department of Agriculture and Consumer Services, regional public water supply utilities, and other stakeholders.⁹ These groups have been tasked with addressing the current and long-term water supply needs of Central Florida without causing harm to the water resources and associated natural systems.¹⁰

³ *Id.*

⁴ Section 373.0363(2)(a), F.S.; SWFWMD, *Southern Water Use Caution Area*, <https://www.swfwmd.state.fl.us/projects/southern-water-use-caution-area> (last visited Feb 23, 2023).

⁵ Section 373.0363(1)(c), F.S.; SWFWMD, *Southern Water Use Caution Area*.

⁶ The “Southern Water Use Caution Area Recovery Strategy” is the SWFWMD’s planning, regulatory, and financial strategy for ensuring that adequate water supplies are available to meet growing demands while protecting and restoring the water and related natural resources of the area. Section 373.0363(1)(d), F.S.

⁷ SWFWMD, *Ridge Lakes Stakeholder Workgroup*, <https://www.swfwmd.state.fl.us/projects/ridge-lakes-stakeholder-workgroup> (last visited Feb. 23, 2023).

⁸ SWFWMD, *Southern Water Use Caution Area*.

⁹ Section 373.0465(1)(c), F.S. Stakeholders include water utilities, environmental groups, business organizations, agricultural communities, and others.

¹⁰ Section 373.0465(1)(c), F.S.

The CFWI Initiative Area, also known as the CFWI Planning Area, includes Orange, Osceola, Polk, Seminole, and southern Lake counties.¹¹ It is home to approximately 2.9 million people and supports tourism, agriculture, and the industrial and commercial sector.¹²

The areas encompassed by the CFWI Planning Area have traditionally relied on groundwater from the Floridan aquifer system as their primary source of water.¹³ Evaluations predict that fresh groundwater resources alone will be insufficient to meet 2040 projected water demands and currently permitted allocations for withdrawal without resulting in unacceptable impacts to water resources and related natural systems.¹⁴ These impacts can include drying wetlands, reducing spring flows, lowering lake levels, and the degradation of groundwater quality due to saltwater intrusion.¹⁵ Alternative water sources will need to be developed to meet the projected demands.¹⁶

Polk County Regional Water Cooperative

The Polk Regional Water Cooperative (PRWC) was created in 2016 through an interlocal agreement and consists of Polk County and 15 municipal member governments.¹⁷ It was formed to provide for regional cooperation on the development and delivery of water resources to meet future water demands within Polk County. The majority of the PRWC jurisdiction is located within the SWUCA, while the entirety of its jurisdiction is located within the CFWI Planning Area.¹⁸

Funding of Polk Regional Water Cooperative Projects

According to the Heartland Headwaters Protection and Sustainability Act Annual Comprehensive Water Resources Report (fiscal year 2023-24), the projects that are most important to the PRWC members are:

- The Southeast Wellfield Construction and Land Acquisition project, estimated to cost \$14,153,000 million in fiscal year 2023-2024;
- The West Polk Wellfield Final Design and Construction project, estimated to cost \$3,477,000 million in fiscal year 2023-2024; and
- The Demand Management Implementation Program, estimated to cost \$140,000 in fiscal year 2023-2024.¹⁹

¹¹ Section 373.0465(2)(a), F.S.; Central Florida Water Initiative (CFWI), *What is CFWI?*, https://cfwiwater.com/what_is_CFWI.html (last visited Feb. 23, 2023).

¹² CFWI, *Regional Water Supply Plan 2020 Planning Document*, ii, available at https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf.

¹³ CFWI, *Value of Water*, https://cfwiwater.com/value_of_water.html (last visited Feb. 23, 2023).

¹⁴ CFWI, *Regional Water Supply Plan 2020 Planning Document*, 89-90, available at https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf.

¹⁵ CFWI, *Value of Water*.

¹⁶ *See id.*

¹⁷ SWFWMD, *Consolidated Annual Report (March 1, 2021)*, 7-1, available at <https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/CAR%202022%20Master%20Report.pdf>.

¹⁸ *Id.*

¹⁹ Polk Regional Water Cooperative, *Heartland Headwaters Protection and Sustainability Act Annual Comprehensive Water Resources Report (FY 2022-23)*, Table C (2023) (on file with the Senate Committee on Environment and Natural Resources).

The report lists 45 other local member government projects (48 total), including total project cost, requested state funding, local government funding, and other funding sources.²⁰

Heartland Headwaters Protection and Sustainability Act

The Heartland Water Supply Planning Region covers approximately 2,569 square miles and includes Hardee County and those portions of Polk and Highlands counties within the SWFWMD.²¹ The Region is underlain by three aquifer systems: the surficial, intermediate, and Floridan. The latter is the primary source of water in the Region and in the entire SWFWMD area.²²

In 2017, the Legislature enacted the Heartland Headwaters Protection and Sustainability Act (Act).²³ The purpose of the Act was to recognize the critical importance of Polk County's aquifers to the economic and ecological health of the region as headwaters for six of Florida's major river systems.²⁴ The Act required the development of a comprehensive annual report to be completed by the PRWC and submitted to the Governor, President of the Senate, Speaker of the House, DEP, and the water management districts (WMDs) by December 1 of each year.²⁵ In addition, the Act directed the PRWC to coordinate with the appropriate WMDs to provide a status report on projects receiving priority state funding and to include such status report in the consolidated WMD annual report.²⁶

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 \$100.²⁷

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.²⁸ 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).²⁹ Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

²⁰ *Id.* at Table B.

²¹ SWFWMD, *RWSP Heartland Planning Region*, <https://www.swfwmd.state.fl.us/resources/plans-reports/rwsp/rwsp-heartland-planning-region> (last visited Feb. 23, 2023).

²² *Id.*

²³ Ch. 2017-111, s. 1, Laws of Fla., codified in ss. 373.462-.463, F.S.

²⁴ Section 373.462(1)-(6), F.S.

²⁵ Section 373.463(1)-(2), F.S.

²⁶ Section 373.463(3), F.S.

²⁷ *See* ss. 201.02(1)(a) and 201.08(1)(a), F.S.

²⁸ The Florida Senate, *Water and Land Conservation*, <https://www.flsenate.gov/media/topics/WLC> (last visited Jan. 4, 2023).

²⁹ *Id.*

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.

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.³⁰

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;

³⁰ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- \$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
- \$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.³¹

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.³² 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.³³ 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.³⁴

Litigation

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.³⁵ The cases were consolidated and a hearing was held in June of 2018.³⁶ 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.³⁷ The decision described how the LATF funds may be used, and ruled that numerous appropriations from 2015 and 2016 were unconstitutional.³⁸

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

³¹ Section 375.041(3)-(4), F.S.

³² Chapter 2022-157, Laws of Fla.

³³ 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).

³⁴ *Id.*

³⁵ *Fla. Wildlife Fed'n v. Negron*, No. 2015-CA-001423 (Fla. 2d Cir. Ct. 2015); *Fla. Defenders of the Env't, Inc. v. Detzner*, No. 2015-CA-002682 (Fla. 2d Cir. Ct. 2015).

³⁶ *Fla. Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. 2018).

³⁷ *Id.* at 3.

³⁸ *Id.* at 7-8.

amendment took effect in 2015.³⁹ 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.⁴⁰ The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.⁴¹

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.⁴² In 2022, the Florida Wildlife Federation filed a motion to reopen the case.⁴³ The case is now on appeal in the First District Court of Appeal.⁴⁴

III. Effect of Proposed Changes:

Section 1 provides the following legislative findings:

- The Legislature unanimously approved CS/CS/HB 573, the Heartland Headwater Protection and Sustainability Act (Act), in 2017, to protect the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers located in the Green Swamp and Polk County, which are some of the most important and vulnerable water resources in the state.
- In the Act, the Legislature declared that it is an important state interest to partner with regional water supply authorities and local governments, in accordance with the water resource and water supply development provision in state law, to protect the water resources of the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers and the surrounding areas.
- In 2020, the Central Florida Water Initiative (CFWI) Regional Water Supply Plan (RWSP), which is developed pursuant to state law, projected the population of the region to reach 4.4 million by 2040, which is a 49 percent increase from a 2015 estimate. The total average of surface water and groundwater use in the CFWI Planning Area is projected to increase 36 percent from 667 million gallons per day in 2015 to 908 million gallons per day in 2040.⁴⁵
- The CFWI RWSP concluded that in some areas of the CFWI Planning Area, fresh groundwater is near or has exceeded the limits of groundwater availability and that alternative water sources will need to be developed along with additional water conservation efforts and local management strategies to meet the 2040 projected water demands or currently permitted allocations while allowing currently stressed water resources and natural systems to recover.⁴⁶
- Consistent funding support is required in order to support the efforts of the water management districts to protect the rivers, springs, and wetlands in the region while

³⁹ *Oliva v. Fla. Wildlife Fed'n*, 281 So. 3d 531, 539 (Fla. 1st DCA 2019).

⁴⁰ *Id.* at 537.

⁴¹ *Id.* at 539.

⁴² *Fla Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d 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).

⁴³ *Fla. Wildlife Fed'n v. Fla. Legislature*, No. 1D22-3142 (Fla. 1st DCA 2022).

⁴⁴ *Id.*

⁴⁵ These figures are taken from the CFWI 2020 *Regional Water Supply Plan*. See CFWI, *Regional Water Supply Plan 2020 Planning Document*, 4, available at https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf.

⁴⁶ This conclusion was taken from the CFWI 2020 *Regional Water Supply Plan*. *Id.* at v.

providing for responsible development of these water resources to support growth and provide for public health and safety.

Section 2 amends s. 375.041, F.S., to appropriate \$20 million annually to the Department of Environmental Protection to implement the Heartland Headwaters Protection and Sustainability Act. The funds must be used to enter into financial assistance agreements and must be distributed in accordance with the projects identified in the Heartland Headwaters Annual Report submitted to the Legislature to finance the cost of designing or constructing projects that protect, restore, or enhance the headwaters of the river systems located in the Heartland Region of Central Florida.

The bill requires the distribution of the \$20 million to be reduced by an amount equal to the debt service paid out of the Land Acquisition Trust Fund (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 years as provided in the General Appropriations Act.

Section 3 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.

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 provides an annual appropriation of \$20 million to the Department of Environmental Protection to implement the Heartland Headwater and Sustainability Act. The funds must be used to enter into financial assistance agreements and distributed in accordance with the projects identified in the heartland headwaters annual report submitted to the Legislature pursuant to s. 373.463, F.S., to finance the cost of designing or constructing projects that protect, restore, or enhance the headwaters of the river systems located in the Heartland Region of Central Florida. The distribution must be reduced by an amount equal to the debt service paid on bonds issued after July 1, 2022 for these purposes.

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.