

**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 Appropriations Committee on Agriculture, Environment, and General Government

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BILL: SB 1210

INTRODUCER: Senator Martin

SUBJECT: Estero Bay Aquatic Preserve

DATE: February 7, 2024

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 1210 revises the boundaries of the Estero Bay Aquatic Preserve.

The bill has no fiscal impact on state resources or expenditures.

The bill takes effect July 1, 2024.

**II. Present Situation:**

**Aquatic Preserves**

The State of Florida passed the Aquatic Preserve Act in 1975 to ensure that the state-owned submerged lands in areas with exceptional biological, aesthetic, and scientific value were set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.<sup>1</sup> There are currently 42 aquatic preserves encompassing about 2.2 million acres.<sup>2</sup> All but four are located along Florida's 8,400 miles of coastline.<sup>3</sup>

Aquatic preserves only include lands or water bottoms owned by the state. The Aquatic Preserve Act excludes any privately owned lands or water bottoms, or any publicly owned and maintained navigation channel or other public works project authorized by the U.S. Congress designed to

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<sup>1</sup> Section 258.36, F.S.; DEP, *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 18, 2024).

<sup>2</sup> DEP, *Aquatic Preserve Program*; DEP, Geospatial Open Data, *Florida Aquatic Preserves*, <https://geodata.dep.state.fl.us/datasets/FDEP::florida-aquatic-preserves/explore?location=27.492338%2C-83.860873%2C5.95> (last visited Jan. 18, 2024); DEP, Office of Resilience and Coastal Protection, *Aquatic Preserve Program*, [https://floridaapdata.org/about\\_FCO.php](https://floridaapdata.org/about_FCO.php) (last visited Jan. 18, 2024).

<sup>3</sup> DEP ORCP, *Aquatic Preserve Program*.

improve or maintain commerce and navigation.<sup>4</sup> Further, the Aquatic Preserve Act excludes all lands lost by avulsion or artificially induced erosion.<sup>5</sup>

The Board of Trustees of the Internal Improvement Trust Fund (Board) may establish additional aquatic preserves, subject to confirmation by the Legislature.<sup>6</sup> Following public notice and public hearing in the county or counties in which the proposed preserve is to be located, the Board may adopt a resolution formally setting aside such areas. The resolution must include:

- A legal description of the area to be included;
- The designation of the type of aquatic preserve being set aside;
- A general statement of what is sought to be preserved; and
- A clear statement of the management responsibilities for the area.<sup>7</sup>

Except for the termination of a lease, no aquatic preserve or any part thereof shall be withdrawn from the state aquatic preserve system except by an act of the Legislature. Notice of such proposed legislation shall be published in each county in which the affected area is located, in the manner prescribed by law relating to local legislation.<sup>8</sup> The Board published a notice of legislation regarding the Estero Bay Aquatic Preserve boundary change in the News-Press on November 9, 2023.<sup>9</sup>

Current law restricts certain activities in aquatic preserves, including the construction of utility cables and pipes and spoil disposal.<sup>10</sup> Further, the Board may not:

- Sell, lease, or transfer sovereign submerged lands<sup>11</sup> unless it is in the public interest.
- Approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve, except when public road and bridge construction projects have no reasonable alternative and it is not contrary to the public interest.
- Approve further dredging or filling of submerged lands, except for certain activities that must be authorized pursuant to a permit.<sup>12</sup>

Only minimal or maintenance dredging is permitted in an aquatic preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally.<sup>13</sup> Oil and gas well drilling is prohibited, however, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside

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<sup>4</sup> Section 258.40, F.S.

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

<sup>6</sup> Section 258.41, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Board of Trustees of the Internal Improvement Trust Fund, News-Press, *Notice of Legislation* (Nov. 9, 2023), available at <https://www.news-press.com/public-notices>

<sup>10</sup> Section 258.42, F.S.

<sup>11</sup> Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally influenced waters. The Board holds title to sovereign submerged lands. The DEP, *Submerged Lands Management*, <https://floridadep.gov/lands/bureau-public-land-administration> (last visited Jan 18, 2024).

<sup>12</sup> Section 258.42, F.S.

<sup>13</sup> Fla. Admin. Code R. 18-20.004. Note that every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code and/or ch. 258, F.S.

the preserve to explore for oil and gas if approved by the Board. Docking facilities and structures for shore protection are restricted as to size and location.<sup>14</sup>

No wastes or effluents may be discharged into an aquatic preserve if they substantially inhibit the accomplishment of the purposes of the Aquatic Preserve Act. Riparian owners may selectively trim or alter mangroves on adjacent publicly owned submerged lands, provided that the selective trimming or alteration is in compliance with the requirements of state law including permit requirements for mangrove trimming.<sup>15</sup>

Leases of sovereign submerged lands are significantly higher within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.<sup>16</sup>

The Board has a duty to conserve and improve state-owned lands and the products thereof, which includes the preservation and regeneration of seagrass.<sup>17</sup> A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve, with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction. The Nature Coast Aquatic Preserve is also not included. The penalties are as follows:

- \$100 for a first offense;
- \$250 for a second offense occurring within 12 months of a prior conviction;
- \$500 for a third offense occurring within 36 months of a prior conviction; and
- \$1,000 for a fourth or subsequent offense occurring within 72 months of a prior conviction.<sup>18</sup>

### ***Estero Bay Aquatic Preserve***

The Estero Bay Aquatic Preserve was Florida's first aquatic preserve and was dedicated in December 1966.<sup>19</sup> At that time, the preserve encompassed only the northern half of Estero Bay. In 1983, the Legislature added the southern half of Estero Bay down to the Lee County line.<sup>20</sup> Today the preserve covers a total of 13,829 acres and nearly 11,000 acres of state-owned sovereign submerged lands occurring below the mean high water line to which the state holds title.<sup>21</sup>

The area around the preserve has experienced heavy development, however the preserve is surrounded by state parks and other recreational sites, which offer access to the bay for boating, kayaking, fishing, and more. These include Estero Bay Preserve State Park, Koreshan State Park,

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<sup>14</sup> Section 258.42, F.S. Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria.

<sup>15</sup> Section 258.42, F.S.

<sup>16</sup> Fla. Admin. Code Rule 18-21.011(1)(b)5.

<sup>17</sup> Section 253.04(3), F.S.

<sup>18</sup> Section 327.73(x), F.S.

<sup>19</sup> DEP, *Estero Bay Aquatic Preserve*, <https://floridadep.gov/rcp/aquatic-preserve/locations/estero-bay-aquatic-preserve> (last visited Jan. 18, 2024).

<sup>20</sup> *Id.*

<sup>21</sup> DEP, *Estero Bay Aquatic Preserve Management Plan* (2015), 15, available at <https://publicfiles.dep.state.fl.us/cama/plans/aquatic/Estero-Bay-AP-Management-Plan.pdf>.

Lovers Key State Park, Matanzas Pass Preserve, Mound Key Archaeological State Park, and the Mound House.<sup>22</sup>



<sup>22</sup> DEP, *Estero Bay Aquatic Preserve*.

The waters of Estero Bay were found to be worthy of special protection, in part because of their exceptional ecological significance.<sup>23</sup> The bay contains several distinct natural community types. The dominant community is mangrove forest, but seagrass beds, salt marshes, tidal flats, oyster bars, and others are also present. The combination of subtropical climate, the lagoon configuration, and vegetation make the Estero Bay estuarine complex one of the most productive in the state.<sup>24</sup> The bay is home to approximately 40 percent of the state's endangered and threatened species, and is an important home for bird nesting colonies and provides a valuable resting area for migrating birds. The bay also supports a variety of commercial and sport fisheries by providing nursery area, which supports the local economy.<sup>25</sup>

### ***Shrimping Industry***

Southwest Florida's commercial seafood has been vitally important to its economic based for decades.<sup>26</sup> The waters off the coast of Lee County provide the necessary conditions for shrimp to thrive because shrimp rely on nearshore waters and use estuaries like Estero Bay for their nursery grounds. There are three commercially important shrimp species caught along Florida's coastlines and off Lee County: brown shrimp (*Farfantepenaeus aztecus*), white shrimp, (*Litopenaeus setiferus*), and pink shrimp (*Farfantepenaeus duorarum*).<sup>27</sup>

San Carlos Island, which is located on the northern side of Matanzas Pass and can be seen in the map on the previous page, is home to a large fleet of shrimping vessels that operate in the Gulf of Mexico.<sup>28</sup> The island is one of the most important off-loading sites for shrimp trawlers because of its proximity to fishing grounds, the presence of several processing and packing firms, the availability of a wide range of repair and maintenance services, the availability of fuel and ice, and room for off-loading and mooring.<sup>29</sup> Because Hurricane Bay and Matanzas Pass are heavily used by shrimp trawlers and other commercial and recreational vessels and are adjacent to commercial and residential locations, this section of the aquatic preserve is heavily disturbed.<sup>30</sup> This area is referred to as "ruderal"<sup>31</sup> because it is an anthropogenic "altered" community.<sup>32</sup> Most ruderal locations contain seawalls or docks.<sup>33</sup>

### ***Boundaries of Estero Bay Aquatic Preserve***

The Estero Bay Aquatic Preserve is in Lee County and includes all of those sovereign submerged lands located bayward of the mean high-water line in:

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<sup>23</sup> DEP, *Estero Bay Aquatic Preserve Management Plan* at 13. The image of Estero Bay can be found in the Estero Bay Aquatic Preserve Management Plan. DEP, *Estero Bay Aquatic Preserve Management Plan* at 14.

<sup>24</sup> DEP, *Estero Bay Aquatic Preserve*.

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

<sup>26</sup> *Id.* at 41.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 14.

<sup>29</sup> *Id.* at 41.

<sup>30</sup> *Id.* at 32.

<sup>31</sup> The term "ruderal" means pertaining to or living amongst rubbish or debris, or inhabiting disturbed sites. The Florida Natural Areas Inventory describes ruderal as areas impacted by development measures such as roadways, drainage ditches, navigation channels. *Id.* at 148.

<sup>32</sup> *Id.* at 29.

<sup>33</sup> *Id.* at 32.

- Sections 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35, and 36, Township 46 South, Range 24 East;
- Sections 19, 20, 28, 29, and 34, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel;
- Sections 19, 30, and 31, Township 46 South, Range 25 East;
- Sections 6, 7, 17, 18, 19, 20, 29, 30, 31, and 32, Township 47 South, Range 25 East;
- Sections 1, 2, 3, 11, 12, 13, 14, 24, and 25, Township 47 South, Range 24 East.<sup>34</sup>

The map on the right shows Section 19, Township 46 South, Range 24 East.<sup>35</sup>



<sup>34</sup> Section 258.39(28), F.S.

<sup>35</sup> Lee County Maps and Apps, ArcGIS Map Viewer, *Section-Township-Range Untitled Map*, <https://www.arcgis.com/apps/mapviewer/index.html?panel=gallery&layers=ade8d7ba1a7345808b44df1b90e0681c> (last visited Jan. 18, 2024).

The map to the right shows where the boundary of the Estero Bay Aquatic Preserve currently lies in the area affected by the bill.<sup>36</sup>



### III. Effect of Proposed Changes:

**Section 1** amends s. 258.39, F.S., to revise the boundaries of the Estero Bay Aquatic Preserve. Specifically, the bill removes from the preserve all sovereign submerged lands located bayward of the mean high-water line in Section 19, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel.

**Section 2** provides an effective date of July 1, 2024.

### 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.

<sup>36</sup> DEP, *Estero Bay Aquatic Preserve Management Plan* at 20.

**E. Other Constitutional Issues:**

Article III, s. 10 of the Florida Constitution prohibits the Legislature from enacting any special act or local bill unless notice is first published or a referendum is conducted in the area effected or if the purpose of the bill is one of statewide importance and impact.<sup>37</sup> A special or local law does not apply with geographic uniformity across the state; it operates only upon designated persons or discrete regions; and it bears no reasonable relationship to differences in population or other legitimate criteria.<sup>38</sup> This legislation seems to have complied with the noticing requirements and is of statewide importance.<sup>39</sup>

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 258.39 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.

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<sup>37</sup> FLA. CONST. art. III, s. 10; *see Schrader v. Fla. Keys Aqueduct Auth.*, 840 So. 2d 1050 (Fla. 2003).

<sup>38</sup> *See State ex rel. City of Pompano Beach v. Lewis*, 368 So. 2d 1298 (Fla. 1979) (statute relating to particular persons or things or other particular subjects of a class is a special law); *Hous. Auth. v. City of St. Petersburg*, 287 So. 2d 307 (Fla. 1973) (defining a special law).

<sup>39</sup> Board of Trustees of the Internal Improvement Trust Fund, News-Press, *Notice of Legislation* (Nov. 9, 2023), available at <https://www.news-press.com/public-notices>.



B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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