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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/06/2017	.	
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The Committee on Appropriations (Simmons) recommended the following:

1           **Senate Amendment to Amendment (920390) (with title**  
2 **amendment)**

3  
4           Delete lines 5 - 769  
5 and insert:

6           Section 1. Emergency rehabilitation of the Central and  
7 Southern Florida Project for Flood Control and Other Purposes.-

8           (1) As used in this section, the term:

9           (a) "A-1 and A-2 lands" means the approximately 31,000  
10 acres in Compartment A acquired pursuant to the March 1999



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11 Talisman Exchange and Purchase and Sale Agreement.

12 (b) "CERP" has the same meaning as the term "comprehensive  
13 plan" as defined in s. 373.470, Florida Statutes.

14 (c) "Corps of Engineers" or "Corps" means the United States  
15 Army Corps of Engineers.

16 (d) "C&SF" means the Central and Southern Florida Project  
17 for Flood Control and Other Purposes.

18 (e) "C&SF agreement" means the agreement entered into  
19 between the state and the Federal Government to operate the  
20 C&SF.

21 (f) "Department" means the Department of Environmental  
22 Protection.

23 (g) "Dike" means the Herbert Hoover Dike.

24 (h) "District" means the South Florida Water Management  
25 District.

26 (i) "DSADS" means the Dam Safety Action Decision Summary  
27 for the Herbert Hoover Dike compiled by the Corps of Engineers.

28 (j) "Everglades Agricultural Area" or "EAA" has the same  
29 meaning as in s. 373.4592, Florida Statutes.

30 (k) "EAA Storage Reservoir" means the above-ground  
31 reservoir located in the Everglades Agricultural Area, which is  
32 included in the comprehensive plan as defined in s.

33 373.470(2)(b), Florida Statutes, and subsequently modified by  
34 the project implementation reports approved pursuant to s.  
35 601(b)(1)(D)(i) of Pub. L. No. 106-541, December 11, 2000.

36 (l) "Interim LORS08 Schedule" means the 2008 Lake  
37 Okeechobee Interim Regulation Schedule approved by the Corps on  
38 April 28, 2008.

39 (m) "Modification study" means the Corps of Engineers



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40 evaluation known as the Herbert Hoover Dike Dam Safety  
41 Modification Study.

42 (2) The Legislature finds that the dike, a major component  
43 of the C&SF, is designated by the Corps of Engineers as meeting  
44 Dam Safety Classification Level 1, the highest risk designation  
45 used by the Corps. Because of the instability of the dike, the  
46 Corps implemented the Interim LORS08 Schedule, a lower lake  
47 schedule, while dike repairs were completed. The Interim LORS08  
48 Schedule has resulted in regular releases of significant amounts  
49 of lake water into the St. Lucie River and Caloosahatchee River  
50 systems to reduce pressure on the dike. These releases, combined  
51 with local basin runoff, have resulted in significant negative  
52 impacts to public health, water supply, property, and the  
53 environment for residents throughout South Florida. Furthermore,  
54 the current critical state of the dike presents significant risk  
55 of major injury, loss of life, property destruction, and  
56 environmental damage for communities and other interests near  
57 Lake Okeechobee. These negative impacts can be ameliorated with  
58 the expeditious completion of the dike repairs and  
59 implementation of a new lake regulation schedule. Therefore,  
60 given the inadequate response of the Corps to these known risks  
61 and the significant and unacceptable potential for harm to the  
62 state and its residents, the Legislature finds that an emergency  
63 situation exists in the C&SF which the state must address  
64 immediately.

65 (3) The district is directed to immediately attempt to  
66 negotiate with the Corps of Engineers to develop an  
67 intergovernmental agreement to reduce the discharges of water  
68 from Lake Okeechobee and expedite the rehabilitation of the dike



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69 and any other work in order to comply with the purposes and  
70 intent of the C&SF agreement. As part of the agreement, the  
71 district shall negotiate with the Corps to:

72 (a) Revise and expedite the Modification Study and DSADS in  
73 support of the directives in paragraphs (b) and (c);

74 (b) Materially rehabilitate, repair, improve, and  
75 strengthen the dike on an expedited schedule so as to reach  
76 substantial completion on or before July 1, 2021. This expedited  
77 rehabilitation, repair, improvement, and strengthening shall be  
78 implemented, as deemed reasonable by the district and the Corps  
79 given the complexity of the project and the significant risks of  
80 further delay, in such a manner as to accomplish all of the  
81 goals of the C&SF, including, but not limited to, protecting the  
82 residents of this state and limiting the harmful discharges of  
83 water from Lake Okeechobee; and

84 (c) Ensure that the Corps of Engineers' release of lake  
85 water into the St. Lucie River and Caloosahatchee River systems  
86 is executed only as part of a schedule jointly developed with  
87 input from the district.

88  
89 As part of the negotiations conducted pursuant to this  
90 subsection, the district is authorized to require that provision  
91 be made for adequate assurances from the Corps that funds  
92 advanced will be repaid by the Corps, or on the Corps' behalf.  
93 However, if circumstances are such that an advancement of funds  
94 is necessary to address an emergency situation relating to the  
95 goals and directives of this act, the district may advance funds  
96 without such assurances.

97 (4) If the district is unable to reach an agreement by



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98 October 1, 2017, to, at a minimum, meet the objectives provided  
99 in paragraphs (3) (a), (b), and (c), the district is authorized,  
100 if it deems such action necessary and appropriate to satisfy the  
101 objectives of this section, to immediately declare the rights of  
102 the state to ultimately control discharges of water from Lake  
103 Okeechobee and to assume a leadership role in the rehabilitation  
104 of the dike and any other work in order to comply with the  
105 purposes and intent of the C&SF agreement. As part of its  
106 leadership role, the district may request the Corps of Engineers  
107 to meet the objectives provided in paragraphs (3) (a), (b), and  
108 (c). If the Corps refuses or fails to take action on this  
109 request, or refuses or fails to achieve the objectives provided  
110 in paragraphs (3) (a), (b), and (c), the district is authorized  
111 to take all steps necessary to accomplish such action or achieve  
112 such objectives itself. The district is also authorized to  
113 extend the time period for reaching an agreement with the Corps  
114 pursuant to this subsection for a reasonable period of time if  
115 the district determines that the parties are negotiating in good  
116 faith and are nearing an agreement.

117 (5) In the process of rehabilitation, repair, improvement,  
118 and strengthening of the dike, the district shall set a goal of  
119 adding up to an additional 1.25 feet of short-term water storage  
120 capacity above that provided by the current Interim LORS08  
121 Schedule to Lake Okeechobee in order to reduce the need for  
122 high-volume release of lake water into the St. Lucie River and  
123 Caloosahatchee River systems to ensure that the maximum stage  
124 does not exceed 18.5 feet NGVD, taking into consideration all  
125 relevant circumstances, including the ecology of the lake.

126 (6) If the district determines that it or the Corps of



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127 Engineers is unable, after due diligence, to accomplish the  
128 substantial completion of the work specified in subsection (3)  
129 on or before July 1, 2021, the district may, upon application to  
130 the department and good cause shown, obtain extensions of time  
131 in increments of up to 1 year in order to attain, as  
132 expeditiously as reasonably possible, substantial completion of  
133 the dike rehabilitation, repair, improvement, and strengthening.

134 (7) (a) The district is directed to request that the Corps  
135 of Engineers jointly develop with the district a general  
136 reevaluation report for CERP with the purpose of increasing  
137 storage and providing water quality treatment within the  
138 boundary of the A-1 and A-2 lands in the authorized EAA Storage  
139 Reservoir to achieve a total storage capacity of a minimum of  
140 240,000 acre feet and up to a maximum of 360,000 acre-feet, if  
141 practicable, on such lands. The development of the General  
142 Reevaluation Report must be consistent with CERP, the Master  
143 Implementation Sequencing Plan required under 33 C.F.R. s.  
144 385.30, and the Integrated Delivery Schedule adopted by the  
145 United States Army Corps of Engineers, dated December 2016. The  
146 development of the general reevaluation report does not preclude  
147 implementation of the remaining CERP project components  
148 authorized as part of the Central Everglades Planning Process.  
149 All recommended modifications to the EAA Storage Reservoir on  
150 A-1 and A-2 lands must include sufficient water quality  
151 treatment features within the A-1 and A-2 lands to meet state  
152 water quality standards in the Everglades Protection Area.  
153 Implementation of the recommended plan in the general  
154 reevaluation report is subject to congressional authorization  
155 and adherence to all other state and federal CERP project



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156 procedures.

157 (b) The district may not exercise eminent domain for the  
158 purpose of implementing the EAA Storage Reservoir or any of the  
159 provisions of this subsection.

160 (8) Notwithstanding s. 768.28, Florida Statutes, the state,  
161 for itself and for its agencies and subdivisions, does not waive  
162 sovereign immunity for torts arising from the implementation of  
163 this section. Such torts include, but are not limited to, those  
164 arising from the failure or breach of the dike, operation of the  
165 dike, or impacts related to the failure, breach, or operation of  
166 the dike or other C&SF project-related structures repaired,  
167 replaced, or operated pursuant to this section.

168 (9) (a) Any moneys expended by the district or another state  
169 agency to comply with this section in excess of existing state  
170 obligation under the C&SF agreement are declared by this state  
171 to be an interest-free loan or advance to the United States. The  
172 district shall seek recovery of these moneys as authorized by  
173 law. Funds recovered pursuant to this subsection shall be used  
174 by the district solely for the purposes of this section.

175 (10) The Legislature finds that aquifer storage and  
176 recovery (ASR) wells are an integral part of CERP and the  
177 primary CERP project component designed to manage Lake  
178 Okeechobee levels and high discharges to the estuaries and  
179 address other C&SF purposes. Subject to the appropriation of  
180 funds by the Legislature, the district is directed to  
181 immediately begin planning and to construct and operate on lands  
182 owned by the district on the effective date of this act a  
183 minimum of 40 ASR wells consistent with the findings in the May  
184 2015 report entitled "Central and South Florida Project,



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185 Comprehensive Everglades Restoration Plan, Final Technical Data  
186 Report, Aquifer Storage and Recovery Regional Study.”

187 Section 2. For the 2017-2018 fiscal year, the sum of \$64  
188 million in recurring funds, and for the 2018-2019 through 2020-  
189 2021 fiscal years, the sum of \$100 million, annually, in  
190 recurring funds, is appropriated from the Land Acquisition Trust  
191 Fund to the South Florida Water Management District for the  
192 purpose of implementing section 1 of this act.

193  
194 ===== T I T L E A M E N D M E N T =====

195 And the title is amended as follows:

196 Delete lines 777 - 867

197 and insert:

198 An act relating to the Central and Southern Florida  
199 Project for Flood Control and Other Purposes; defining  
200 terms; providing legislative findings; directing the  
201 South Florida Water Management District to attempt to  
202 negotiate an agreement with the United States Army  
203 Corps of Engineers to reduce discharges of water from  
204 Lake Okeechobee and expedite the rehabilitation of the  
205 Herbert Hoover Dike, to revise and expedite a certain  
206 study and a certain summary, to rehabilitate, repair,  
207 improve, and strengthen the dike, and to ensure that  
208 the release of lake water is executed only as part of  
209 a specified schedule; authorizing the district, as  
210 part of such negotiations, to seek certain assurances  
211 from the Corps before advancing funds unless the  
212 advancing of funds is necessary to address an  
213 emergency; directing the district to declare its right





214 to take control of discharges of water from Lake  
215 Okeechobee and take a leadership role in the  
216 rehabilitation of the dike under certain conditions;  
217 authorizing the district to take steps necessary to  
218 meet specified objectives if the Corps of Engineers  
219 refuses or fails to take specified action, or refuses  
220 or fails to achieve specified objectives; providing  
221 for extensions to reach an agreement; requiring the  
222 district to set a goal of increasing lake storage up  
223 to a specified amount to reduce certain high-volume  
224 discharges; providing for extensions; directing the  
225 district to request the Corps of Engineers to jointly  
226 develop a general reevaluation report for the  
227 Comprehensive Everglades Restoration Plan (CERP) with  
228 the purpose of increasing storage in the authorized  
229 Everglades Agricultural Area Storage Reservoir on A-1  
230 and A-2 lands consistent with certain plans and a  
231 schedule; clarifying that the development of this  
232 report does not preclude the implementation of  
233 approved CERP project components; specifying that  
234 implementation of the plan developed in the report is  
235 subject to congressional authorization and adherence  
236 with all other state and federal CERP project  
237 procedures; prohibiting the district from exercising  
238 imminent domain; specifying that the state does not  
239 waive sovereign immunity for torts relating to the  
240 dike or project; providing that moneys expended for  
241 specified purposes by the district or another state  
242 agency in excess of state financial obligations are an



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243 interest-free loan or advance to the United States;  
244 requiring the district to seek recovery of such  
245 moneys; specifying how recovered funds are to be used;  
246 providing an exception in certain emergency  
247 situations; providing a legislative finding; subject  
248 to the appropriation of funds, directing the district  
249 to immediately construct and operate a specified  
250 minimum number of aquifer storage and recovery wells  
251 that are consistent with the findings in a specified  
252 report; providing appropriations; providing an  
253 effective date.

254  
255 WHEREAS, federal participation in flood control efforts,  
256 while not previously a function of the Federal Government, began  
257 after the disastrous hurricanes of 1926 and 1928, with states  
258 requesting assistance from the Federal Government and with the  
259 enactment of the River and Harbor Act of 1930, and

260 WHEREAS, the Central and Southern Florida Project for Flood  
261 Control and Other Purposes (C&SF) was developed pursuant to the  
262 federal Flood Control Act of 1948, and

263 WHEREAS, in 1949, the State of Florida established a  
264 partnership with the United States Government to implement the  
265 C&SF, and

266 WHEREAS, the State of Florida provided significant funds,  
267 lands, and other contributions to the C&SF, and

268 WHEREAS, the C&SF is a function of state and federal  
269 authorization, and initiation of the project was premised on the  
270 State of Florida's partnership with the Federal Government, and

271 WHEREAS, all title to the easements and rights-of-way upon



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272 which the C&SF structures operate belongs to the state, and  
273       WHEREAS, while the United States Army Corps of Engineers  
274 and the South Florida Water Management District work jointly to  
275 operate and maintain the C&SF, the Corps maintains its  
276 decisionmaking responsibility for the C&SF and operates and  
277 maintains the levees, channels, locks, and control works of the  
278 St. Lucie Canal, Lake Okeechobee, and Caloosahatchee River and  
279 the main spillways of C&SF's water conservation areas only under  
280 the partnership terms with the state, and

281       WHEREAS, the United States Eleventh Circuit Court of  
282 Appeals in 2013 ruled that "[d]espite the Corps exercising  
283 control over these systems, either directly or by issuing  
284 regulations to the SFWMD, the project is a function of state  
285 authorization. The federal government's initiation of the  
286 project was premised on the State of Florida's permission; all  
287 title to the easements and rights-of-way upon which the C&SF  
288 Project structures operate belong to the State of Florida; and  
289 the United States Army Corps of Engineers administers the C&SF  
290 Project pursuant to an agreement between the United States and  
291 the State of Florida," and

292       WHEREAS, the State of Florida, therefore, has the ultimate  
293 right of decisionmaking regarding this partnership between the  
294 United States and the state, and when the United States Army  
295 Corps of Engineers' conduct, as a result of the funding  
296 limitations imposed upon it, is jeopardizing the life, safety,  
297 welfare, economy, and environment of this state, the state, by  
298 virtue of its ultimate contractual right of control of the C&SF  
299 and its inherent constitutional right to protect its residents,  
300 may direct and assist the Corps to make revisions of the



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301 operations within the C&SF, and

302 WHEREAS, the United States Eleventh Circuit Court of  
303 Appeals has further held that the authorized purposes of the  
304 C&SF Project include absorbing water for flood control,  
305 maintaining water supplies for agriculture, restoring hydrologic  
306 conditions in the Everglades National Park, ensuring water  
307 quality, and maintaining fish, wildlife, and marsh vegetation,  
308 and

309 WHEREAS, the C&SF Project therefore clearly includes the  
310 purpose of protecting the St. Lucie River and the Caloosahatchee  
311 River and their estuaries from the destructive impacts of high-  
312 volume discharges from Lake Okeechobee, and, consequently, in  
313 protecting the Everglades and operating within the limitations  
314 and parameters of the C&SF, the United States Army Corps of  
315 Engineers and the State of Florida must not ignore these  
316 critical environmental treasures, and

317 WHEREAS, the lives, safety, and livelihood of the state's  
318 residents who live around Lake Okeechobee depend upon a properly  
319 maintained water level, the strength and integrity of the  
320 Herbert Hoover Dike, the protection of the Everglades and  
321 endangered species in and surrounding the Everglades, the  
322 protection of the St. Lucie River and Caloosahatchee River and  
323 their estuaries, and the protection of agriculture and other  
324 private property rights—all as provided by the applicable  
325 statutes and agreements creating the C&SF—and these are not  
326 mutually exclusive goals, but instead must be achieved together,  
327 and

328 WHEREAS, the Herbert Hoover Dike, a component of the C&SF,  
329 is an approximately 143-mile levee system surrounding Lake



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330 Okeechobee developed and built starting in 1930, as authorized  
331 under the federal River and Harbor Act of 1930, to provide flood  
332 protection and other development benefits to South Florida, and

333 WHEREAS, one of the central requirements of the C&SF is to  
334 protect the structural integrity of the Herbert Hoover Dike, and

335 WHEREAS, since at least the late 1980s, the United States  
336 Army Corps of Engineers has been aware of significant structural  
337 vulnerabilities in the dike due to slope instability, piping,  
338 and seepage, and

339 WHEREAS, the United States Army Corps of Engineers, in its  
340 June 2016 Environmental Impact Statement submitted pursuant to  
341 its intended dike modifications, classified the dike as  
342 "critically near failure or extremely high risk" and that "a  
343 failure of the dike could result in human suffering, immense  
344 property damage, destruction of the natural habitat, and loss of  
345 human life," and

346 WHEREAS, despite this well-known and ongoing risk, due to  
347 funding or other limitations, the United States Army Corps of  
348 Engineers has been unable to timely and adequately rehabilitate  
349 the dike, resulting in an unjustifiable, significant, and  
350 intolerable risk of major injury, loss of life, property  
351 destruction, and environmental damage for communities and other  
352 interests near Lake Okeechobee, and

353 WHEREAS, the poor condition of the dike has resulted in  
354 "seepage and internal erosion ... during high reservoir events,"  
355 thus causing the United States Army Corps of Engineers in April  
356 2008 to revise its prior discharge schedule, creating its  
357 current interim Lake Okeechobee Regulation Schedule (LORS08),  
358 which was intended to be a temporary schedule while dike repairs



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359 were completed, and which has caused significant and damaging  
360 releases of polluted lake water into the St. Lucie River and  
361 Caloosahatchee River systems, while diminishing water storage  
362 and supply, and

363 WHEREAS, the National Academies of Sciences, Engineering,  
364 and Medicine in 2016 published their report on the "Progress  
365 Toward Restoring the Everglades: The Sixth Biennial Review,  
366 2016," and

367 WHEREAS, "[t]he National Academies of Sciences,  
368 Engineering, and Medicine established the Committee on  
369 Independent Scientific Review of Everglades Restoration Progress  
370 in 2004 in response to a request from the United States Army  
371 Corps of Engineers ..., with support from the South Florida  
372 Water Management District ..., and the U.S. Department of the  
373 Interior ..., based on Congress's mandate in the Water Resources  
374 Development Act of 2000," and

375 WHEREAS, as stated by the National Academies of Sciences,  
376 Engineering, and Medicine, integrity issues and concerns that  
377 led to the United States Army Corps of Engineers' Dam Safety  
378 Modification Study also resulted in the new water discharge  
379 regulation schedule that was designed to limit high water levels  
380 in the lake and thereby reduce the risk of catastrophic levee  
381 failure until substantial progress is made in the dike  
382 rehabilitation, and

383 WHEREAS, the National Academies of Sciences, Engineering,  
384 and Medicine state that the Interim LORS08 Schedule implemented  
385 in April 2008 lowered the maximum stage from 18.5 feet to 17.25  
386 feet (National Geodetic Survey Vertical Datum), resulting in a  
387 significant loss of water storage and supply, and



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388           WHEREAS, the United States Army Corps of Engineers'  
389 implementation of its dike modifications is not expected to be  
390 completed before fiscal year 2025 at the earliest, depending on  
391 funding, and

392           WHEREAS, the National Academies of Sciences, Engineering,  
393 and Medicine state that the United States Army Corps of  
394 Engineers' future lake discharge schedule is critically  
395 important to future Comprehensive Everglades Restoration Plan  
396 (CERP) decisions regarding storage north and south of the lake,  
397 and that the "adoption of the LORS 2008 schedule, intended to  
398 reduce life safety risks in light of structural problems with  
399 the Herbert Hoover Dike ... alone reduced potential storage by  
400 564,000 [acre-feet]," and

401           WHEREAS, the National Academies of Sciences, Engineering,  
402 and Medicine concluded and recommended that "[t]he process to  
403 revise the Lake Okeechobee regulation schedule should be  
404 initiated as soon as possible in parallel with the Herbert  
405 Hoover Dike modifications to inform near-term project planning  
406 involving water storage north and south of the lake. The large  
407 impacts on water storage with just modest changes in the lake  
408 regulation schedule suggest that Lake Okeechobee is a central  
409 factor in future considerations of water storage. Decisions made  
410 on the future regulation schedule will affect storage needs both  
411 north and south of the lake and overall restoration outcomes and  
412 costs.... Expediting the revision to the lake regulation  
413 schedule would also ensure that the process is complete  
414 (including a required dam safety risk assessment) so that the  
415 new schedule can be put into place as soon as the Herbert Hoover  
416 Dike repairs are determined to be sufficient to sustain higher



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417 water levels, thereby expediting ecological benefits to the  
418 northern estuaries. Once other storage elements are constructed,  
419 the lake schedule will likely need to be revisited to optimize  
420 its operations considering the additional storage features," and

421 WHEREAS, in making its decisions, apparently due to funding  
422 or other limitations, the United States Army Corps of Engineers  
423 has not been able to adequately respond to the tragic and  
424 destructive consequences of its high-volume discharges into both  
425 the St. Lucie River and Caloosahatchee River, their estuaries,  
426 and the communities surrounding those invaluable rivers and  
427 estuaries, and

428 WHEREAS, the United States Army Corps of Engineers' high-  
429 volume water releases into the St. Lucie River and  
430 Caloosahatchee River systems have resulted in disastrous impacts  
431 to public health, property, and the environment for residents  
432 living along and near these river and estuary systems, and

433 WHEREAS, the state, which has the ownership and ultimate  
434 right of control over the C&SF to protect its residents, the  
435 environment, and the public health, safety, and welfare, has a  
436 right and obligation to alter the management, construction, and  
437 maintenance of the dike and the C&SF overall to reduce the risks  
438 of continuing harm to its residents and the environment, NOW,  
439 THEREFORE,