

1 A bill to be entitled
2 An act relating to the Central and Southern Florida
3 Project for Flood Control and Other Purposes; defining
4 terms; providing legislative findings; directing the
5 South Florida Water Management District to take
6 control of discharges of water from Lake Okeechobee
7 and take a leadership role in the rehabilitation of
8 the Herbert Hoover Dike; directing the district to
9 request that the United States Army Corps of Engineers
10 revise a study and summary and to rehabilitate,
11 repair, improve, and strengthen the Herbert Hoover
12 Dike; specifying a deadline for implementation;
13 requiring the district to ensure that the release of
14 lake water is executed only as part of a specified
15 schedule; requiring the district to set a goal of
16 increasing lake storage up to a specified amount to
17 reduce certain discharges; providing an extension;
18 requiring the district to take all steps necessary to
19 accomplish specified dike improvements under certain
20 circumstances; directing the district to request the
21 Corps of Engineers to jointly develop a general
22 reevaluation report for the Comprehensive Everglades
23 Restoration Plan (CERP) with the purpose of optimizing
24 storage in the authorized Everglades Agricultural Area
25 Storage Reservoir on A-1 and A-2 lands; clarifying

26 | that the development of this report does not preclude
27 | the implementation of approved CERP project
28 | components; specifying that implementation of the plan
29 | developed in the report is subject to congressional
30 | authorization and adherence with all other state and
31 | federal CERP project procedures; specifying that the
32 | state does not waive sovereign immunity for torts
33 | relating to the dike or project; providing that moneys
34 | expended for specified purposes by the district or
35 | another state agency in excess of state financial
36 | obligations qualify for certain state cost-share
37 | credits; requiring the district to seek recovery of
38 | such moneys; providing an appropriation; providing an
39 | effective date.

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41 | WHEREAS, federal participation in flood control efforts,
42 | while not previously a function of the Federal Government, began
43 | after the disastrous hurricanes of 1926 and 1928, with states
44 | requesting assistance from the Federal Government and with the
45 | enactment of the River and Harbor Act of 1930, and

46 | WHEREAS, the Central and Southern Florida Project for Flood
47 | Control and Other Purposes (C&SF) was developed pursuant to the
48 | federal Flood Control Act of 1948, and

49 | WHEREAS, in 1949, the State of Florida established a
50 | partnership with the United States Government to implement the

51 C&SF, and
 52 WHEREAS, the State of Florida provided significant funds,
 53 lands, and other contributions to the C&SF, and
 54 WHEREAS, the C&SF is a function of state and federal
 55 authorization, and initiation of the project was premised on the
 56 State of Florida's partnership with the Federal Government, and
 57 WHEREAS, all title to the easements and rights-of-way upon
 58 which the C&SF structures operate belongs to the state, and
 59 WHEREAS, while the United States Army Corps of Engineers
 60 and the South Florida Water Management District work jointly to
 61 operate and maintain the C&SF, the Corps maintains its
 62 decisionmaking responsibility for the C&SF and operates and
 63 maintains the levees, channels, locks, and control works of the
 64 St. Lucie Canal, Lake Okeechobee, and Caloosahatchee River and
 65 the main spillways of C&SF's water conservation areas only under
 66 the partnership terms with the state, and
 67 WHEREAS, the United States Eleventh Circuit Court of
 68 Appeals in 2013 ruled that "[d]espite the Corps exercising
 69 control over these systems, either directly or by issuing
 70 regulations to the SFWMD, the project is a function of state
 71 authorization. The federal government's initiation of the
 72 project was premised on the State of Florida's permission; all
 73 title to the easements and rights-of-way upon which the C&SF
 74 Project structures operate belong to the State of Florida; and
 75 the United States Army Corps of Engineers administers the C&SF

76 Project pursuant to an agreement between the United States and
 77 the State of Florida," and

78 WHEREAS, the State of Florida, therefore, has the ultimate
 79 right of decisionmaking regarding this partnership between the
 80 United States and the state, and when the United States Army
 81 Corps of Engineers' conduct, as a result of the funding
 82 limitations imposed upon it, is jeopardizing the life, safety,
 83 welfare, economy, and environment of this state, the state, by
 84 virtue of its ultimate contractual right of control of the C&SF
 85 and its inherent constitutional right to protect its residents,
 86 may direct and assist the Corps to make revisions of the
 87 operations within the C&SF, and

88 WHEREAS, the United States Eleventh Circuit Court of
 89 Appeals has further held that the authorized purposes of the
 90 C&SF Project include absorbing water for flood control,
 91 maintaining water supplies for agriculture, restoring hydrologic
 92 conditions in the Everglades National Park, ensuring water
 93 quality, and maintaining fish, wildlife, and marsh vegetation,
 94 and

95 WHEREAS, the C&SF Project therefore clearly includes the
 96 purpose of protecting the St. Lucie River and the Caloosahatchee
 97 River and their estuaries from the destructive impacts of high-
 98 volume discharges from Lake Okeechobee, and, consequently, in
 99 protecting the Everglades and operating within the limitations
 100 and parameters of the C&SF, the United States Army Corps of

101 Engineers and the State of Florida must not ignore these
 102 critical environmental treasures, and

103 WHEREAS, the lives, safety, and livelihood of the state's
 104 residents who live around Lake Okeechobee depend upon a properly
 105 maintained water level, the strength and integrity of the
 106 Herbert Hoover Dike, the protection of the Everglades and
 107 endangered species in and surrounding the Everglades, the
 108 protection of the St. Lucie River and Caloosahatchee River and
 109 their estuaries, and the protection of agriculture and other
 110 private property rights—all as provided by the applicable
 111 statutes and agreements creating the C&SF—and these are not
 112 mutually exclusive goals, but instead must be achieved together,
 113 and

114 WHEREAS, the Herbert Hoover Dike, a component of the C&SF,
 115 is an approximately 143-mile levee system surrounding Lake
 116 Okeechobee developed and built starting in 1930, as authorized
 117 under the federal River and Harbor Act of 1930, to provide flood
 118 protection and other development benefits to South Florida, and

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

121 WHEREAS, since at least the late 1980s, the United States
 122 Army Corps of Engineers has been aware of significant structural
 123 vulnerabilities in the dike due to slope instability, piping,
 124 and seepage, and

125 WHEREAS, the United States Army Corps of Engineers, in its

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126 June 2016 Environmental Impact Statement submitted pursuant to
127 its intended dike modifications, classified the dike as
128 "critically near failure or extremely high risk" and that "a
129 failure of the dike could result in human suffering, immense
130 property damage, destruction of the natural habitat, and loss of
131 human life," and

132 WHEREAS, despite this well-known and ongoing risk, due to
133 funding or other limitations, the United States Army Corps of
134 Engineers has been unable to timely and adequately rehabilitate
135 the dike, resulting in an unjustifiable, significant, and
136 intolerable risk of major injury, loss of life, property
137 destruction, and environmental damage for communities and other
138 interests near Lake Okeechobee, and

139 WHEREAS, the poor condition of the dike has resulted in
140 "seepage and internal erosion ... during high reservoir events,"
141 thus causing the United States Army Corps of Engineers in April
142 2008 to revise its prior discharge schedule, creating its
143 current interim Lake Okeechobee Regulation Schedule (LORS08),
144 which was intended to be a temporary schedule while dike repairs
145 were completed, and which has caused significant and damaging
146 releases of polluted lake water into the St. Lucie River and
147 Caloosahatchee River systems, while diminishing water storage
148 and supply, and

149 WHEREAS, the National Academies of Sciences, Engineering,
150 and Medicine in 2016 published their report on the "Progress

151 | Toward Restoring the Everglades: The Sixth Biennial Review,
152 | 2016," and

153 | WHEREAS, "[t]he National Academies of Sciences,
154 | Engineering, and Medicine established the Committee on
155 | Independent Scientific Review of Everglades Restoration Progress
156 | in 2004 in response to a request from the United States Army
157 | Corps of Engineers ..., with support from the South Florida
158 | Water Management District ..., and the U.S. Department of the
159 | Interior ..., based on Congress's mandate in the Water Resources
160 | Development Act of 2000," and

161 | WHEREAS, as stated by the National Academies of Sciences,
162 | Engineering, and Medicine, integrity issues and concerns that
163 | led to the United States Army Corps of Engineers' Dam Safety
164 | Modification Study also resulted in the new water discharge
165 | regulation schedule that was designed to limit high water levels
166 | in the lake and thereby reduce the risk of catastrophic levee
167 | failure until substantial progress is made in the dike
168 | rehabilitation, and

169 | WHEREAS, the National Academies of Sciences, Engineering,
170 | and Medicine state that the Interim LORS08 Schedule implemented
171 | in April 2008 lowered the maximum stage from 18.5 feet to 17.25
172 | feet (National Geodetic Survey Vertical Datum), resulting in a
173 | significant loss of water storage and supply, and

174 | WHEREAS, the United States Army Corps of Engineers'
175 | implementation of its dike modifications is not expected to be

176 completed before fiscal year 2025 at the earliest, depending on
177 funding, and

178 WHEREAS, the National Academies of Sciences, Engineering,
179 and Medicine state that the United States Army Corps of
180 Engineers' future lake discharge schedule is critically
181 important to future Comprehensive Everglades Restoration Plan
182 (CERP) decisions regarding storage north and south of the lake,
183 and that the "adoption of the LORS 2008 schedule, intended to
184 reduce life safety risks in light of structural problems with
185 the Herbert Hoover Dike ... alone reduced potential storage by
186 564,000 [acre-feet]," and

187 WHEREAS, the National Academies of Sciences, Engineering,
188 and Medicine concluded and recommended that "[t]he process to
189 revise the Lake Okeechobee regulation schedule should be
190 initiated as soon as possible in parallel with the Herbert
191 Hoover Dike modifications to inform near-term project planning
192 involving water storage north and south of the lake. The large
193 impacts on water storage with just modest changes in the lake
194 regulation schedule suggest that Lake Okeechobee is a central
195 factor in future considerations of water storage. Decisions made
196 on the future regulation schedule will affect storage needs both
197 north and south of the lake and overall restoration outcomes and
198 costs.... Expediting the revision to the lake regulation
199 schedule would also ensure that the process is complete
200 (including a required dam safety risk assessment) so that the

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201 new schedule can be put into place as soon as the Herbert Hoover
202 Dike repairs are determined to be sufficient to sustain higher
203 water levels, thereby expediting ecological benefits to the
204 northern estuaries. Once other storage elements are constructed,
205 the lake schedule will likely need to be revisited to optimize
206 its operations considering the additional storage features," and

207 WHEREAS, in making its decisions, apparently due to funding
208 or other limitations, the United States Army Corps of Engineers
209 has not been able to adequately respond to the consequences of
210 algal blooms resulting from its high-volume discharges into both
211 the St. Lucie River and Caloosahatchee River, their estuaries,
212 and the communities surrounding those invaluable rivers and
213 estuaries, and

214 WHEREAS, the United States Army Corps of Engineers' high-
215 volume water releases into the St. Lucie River and
216 Caloosahatchee River systems have resulted in impacts to public
217 health, property, and the environment for residents living along
218 and near these river and estuary systems, and

219 WHEREAS, the state, which has the ownership and ultimate
220 right of control over the C&SF to protect its residents, the
221 environment, and the public health, safety, and welfare, has a
222 right and obligation to alter the management, construction, and
223 maintenance of the dike and the C&SF overall to reduce the risks
224 of continuing harm to its residents and the environment, NOW,
225 THEREFORE,

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Be It Enacted by the Legislature of the State of Florida:

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

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

(a) "A-1 and A-2 lands" means the approximately 31,000 acres in Compartment A acquired pursuant to the March 1999 Talisman Exchange and Purchase and Sale Agreement.

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

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

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

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

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

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

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

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

251 (j) "Interim LORS08 Schedule" means the 2008 Lake
252 Okeechobee Interim Regulation Schedule approved by the Corps on
253 April 28, 2008.

254 (k) "Modification Study" means the Corps of Engineers
255 evaluation known as the Herbert Hoover Dike Dam Safety
256 Modification Study.

257 (2) The Legislature finds that the dike, a major component
258 of the C&SF, is designated by the Corps of Engineers as meeting
259 Dam Safety Classification Level 1, the highest risk designation
260 used by the Corps. Because of the instability of the dike, the
261 Corps implemented the Interim LORS08 Schedule, a lower lake
262 schedule, while dike repairs were completed. The Interim LORS08
263 Schedule has resulted in regular releases of significant amounts
264 of lake water into the St. Lucie River and Caloosahatchee River
265 systems to reduce pressure on the dike. These releases, combined
266 with local basin runoff, have resulted in significant negative
267 impacts to public health, water supply, property, and the
268 environment for residents throughout South Florida. Furthermore,
269 the current critical state of the dike presents significant risk
270 of major injury, loss of life, property destruction, and
271 environmental damage for communities and other interests near
272 Lake Okeechobee. These negative impacts can be ameliorated with
273 the expeditious completion of the dike repairs and
274 implementation of a new lake regulation schedule. Therefore,
275 given the inadequate response of the Corps to these known risks

276 and the significant and unacceptable potential for harm to the
277 state and its residents, the Legislature finds that an emergency
278 situation exists in the C&SF which the state must address
279 immediately.

280 (3) The district is directed to immediately declare the
281 rights of the state to ultimately control discharges of water
282 from Lake Okeechobee and assume a leadership role in the
283 rehabilitation of the dike and any other work in order to comply
284 with the purposes and intent of the C&SF agreement. By July 1,
285 2017, the district shall request the Corps of Engineers to:

286 (a) Revise the Modification Study and DSADS in support of
287 the directives in paragraphs (b) and (c);

288 (b) Materially rehabilitate, repair, improve, and
289 strengthen the dike on an expedited schedule so as to reach
290 substantial completion on or before July 1, 2021. This expedited
291 rehabilitation, repair, improvement, and strengthening shall be
292 implemented, as deemed reasonable by the district given the
293 complexity of the project and the significant risks of further
294 delay, in such a manner as to accomplish all of the goals of the
295 C&SF, including, but not limited to, protecting the residents of
296 this state and limiting the harmful discharges of water from
297 Lake Okeechobee; and

298 (c) Ensure that the Corps of Engineers' release of lake
299 water into the St. Lucie River and Caloosahatchee River systems
300 is executed only as part of a schedule approved by the district.

301 (4) In the process of rehabilitation, repair, improvement,
302 and strengthening of the dike, the district shall set a goal of
303 adding up to an additional 1.25 feet of short-term water storage
304 capacity above that provided by the current Interim LORS08
305 Schedule to Lake Okeechobee in order to reduce the need for high
306 volume release of lake water into the St. Lucie River and
307 Caloosahatchee River systems to ensure that the maximum stage
308 does not exceed 18.5 feet NGVD.

309 (5) If the district determines that it or the Corps of
310 Engineers is unable, after due diligence, to accomplish the
311 substantial completion of the work specified in subsection (3)
312 on or before July 1, 2021, the district may, upon application to
313 the department and good cause shown, obtain an extension of time
314 of up to 1 year to attain substantial completion of the dike
315 rehabilitation, repair, improvement, and strengthening.

316 (6) If the Corps of Engineers refuses or fails to take
317 action consistent with this section, or refuses or fails to
318 achieve the objectives of this section, the district shall take
319 all steps necessary to accomplish such action or achieve such
320 objectives itself.

321 (7) The district is directed to request the Corps of
322 Engineers to jointly develop a general reevaluation report for
323 CERP with the purpose of optimizing storage in the authorized
324 Everglades Agricultural Area Storage Reservoir on A-1 and A-2
325 lands and to provide required water quality treatment. The

326 development of the general reevaluation report does not preclude
327 implementation of the remaining CERP project components
328 authorized as part of the Central Everglades Planning Process.
329 All recommended modifications to the Everglades Agricultural
330 Area Storage Reservoir on A-1 and A-2 lands must include
331 sufficient water quality treatment to meet state water quality
332 standards. Implementation of the recommended plan in the general
333 reevaluation report is subject to congressional authorization
334 and adherence to all other state and federal CERP project
335 procedures.

336 (8) Notwithstanding s. 768.28, Florida Statutes, the
337 state, for itself and for its agencies and subdivisions, does
338 not waive sovereign immunity for torts arising from the
339 implementation of this section. Such torts include, but are not
340 limited to, those arising from the failure or breach of the
341 dike, operation of the dike, or impacts related to the failure,
342 breach, or operation of the dike or other C&SF project-related
343 structures repaired, replaced, or operated pursuant to this
344 section.

345 (9) Any moneys expended by the district or another state
346 agency to comply with this section in excess of existing state
347 obligation under the C&SF agreement are declared by this state
348 to qualify for state cost-share credits for future CERP and C&SF
349 projects. The district shall seek recovery of these moneys as
350 authorized by law and shall use such funds solely for the

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351 purposes of this section.

352 (10) Beginning in the 2017-2018 fiscal year, the sum of
353 \$100 million in recurring funds from the Land Acquisition Trust
354 Fund shall be appropriated annually, through the 2020-2021
355 fiscal year, to the South Florida Water Management District for
356 the rehabilitation, repair, improvement, and strengthening of
357 the Herbert Hoover Dike conducted in conjunction with the United
358 States Army Corps of Engineers.

359 Section 2. This act shall take effect upon becoming a law.