

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 1256

INTRODUCER: Senator Montford

SUBJECT: Apalachicola Bay Area of Critical State Concern

DATE: March 11, 2019

REVISED: _____

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

I. Summary:

SB 1256 creates a statutory distribution from the Land Acquisition Trust Fund requiring \$20 million to be appropriated annually through the 2029-2030 fiscal year to the Apalachicola Bay Area of Critical State Concern. The bill authorizes the use of funds for land acquisition and projects that improve surface and groundwater quality in the Apalachicola River and Bay, including projects such as:

- Construction and replacement of stormwater management facilities;
- Central sewage collection and disposal facilities;
- Installation of onsite sewage treatment and disposal systems;
- Direct and indirect potable reuse; and
- Other water quality and water supply projects.

The bill requires that at least 25 percent of the appropriated funds be spent on land acquisition and requires that land acquisition be given increased priority if it achieves a combination of conservation goals, including protecting and preserving fisheries and wildlife habitats, recreational spaces, nearshore water quality, surface water resources, and groundwater recharge.

The bill requires that at least 3 percent, but no more than 10 percent, of the funds for land acquisition be spent on projects identified during the time of acquisition, including projects for land management, increased public access and recreational opportunities, and greenways.

The bill adds a principle for guiding development in the Apalachicola Bay Area, which requires that water quality be protected and improved by 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; indirect and direct potable reuse; and other water quality and water supply projects.

II. Present Situation:

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 \$100.¹

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration. 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). 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; 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.²

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 the Department of Environmental Protection (DEP) as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.³

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:

¹ See ss. 201.02 and 201.08, F.S.

² FLA. CONST. art. X, s. 28(b)(1).

³ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- Payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds.
- Then, 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; and
 - \$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 CERP, the Long Term Plan, or NEEPP.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁴

The General Revenue Estimating Conference in December of 2018 estimated that for the 2019-2020 Fiscal Year a total of \$2.76 billion would be collected in documentary stamp taxes.⁵ Thirty-three percent of the net revenues collected, or approximately \$906.6 million, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution.

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.⁶ The cases were consolidated and a hearing was held in June of 2018.⁷ The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the constitutional language. The 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

⁴ Section 375.041(3)-(4), F.S.

⁵ Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Executive Summary*, 3 (2018), available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Mar. 5, 2019).

⁶ *Florida Wildlife Federation, Inc. v. Negron*, No. 2015-CA-001423 (Fla. 2nd Cir. Ct.); *Florida Defenders of the Environment, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2nd Cir. Ct.).

⁷ *Florida Wildlife Federation, Inc. v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. June 28, 2018).

access to conservation lands acquired after the effective date of the amendment.⁸ The decision described how LATF funds may be used, and ruled numerous appropriations from 2015 and 2016 unconstitutional.⁹ The case was appealed and is currently in the First District Court of Appeal.¹⁰

Area of Critical State Concern

The Areas of Critical State Concern Program was created in the "Florida Environmental Land and Water Management Act of 1972."¹¹ The purpose of the program is to ensure that the state, in accordance with s. 7, Art. II of the State Constitution, ensures a water management system that will reverse the deterioration of water quality and provide optimum utilization of the state's limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of residents of this state.¹²

The current designated Areas of Critical State Concern are the Apalachicola Bay Area, the Green Swamp Area, the Big Cypress Area, and the Florida Keys Area and the City of Key West Area.

Apalachicola Bay Area of Critical State Concern

The Legislature designated the Apalachicola Bay Area as an Area of Critical State Concern in 1985.¹³ The initial designation of the Apalachicola Bay Area included the City of Apalachicola, the City of Carrabelle, and unincorporated Franklin County (excluding Alligator Point).¹⁴ All of the designation was repealed in 1993 except for the City of Apalachicola.¹⁵

The Apalachicola River is the largest river in Florida and provides 35 percent of the freshwater entering the northeastern Gulf of Mexico.¹⁶ The Apalachicola River and the adjoining Chattahoochee and Flint Rivers comprise a drainage system encompassing more than 19,000 square miles of southern Georgia, eastern Alabama, and northern Florida.¹⁷ The area harbors one of the highest concentrations of threatened and endangered species in the United States.¹⁸ Apalachicola Bay is a productive estuary, supplying approximately 90% of the oysters in Florida and 10% nationally, and is an important nursery ground for numerous commercially and recreationally important fish and invertebrate species.¹⁹

⁸ *Id.* at 3.

⁹ *Id.* at 7–8.

¹⁰ *Oliva v. Florida Wildlife Federation, Inc.*, 1D18-3141 (Fla. 1st Dist. Ct. App.).

¹¹ Chapter 72-317, s. 1, Laws of Fla.

¹² Section 380.021, F.S.

¹³ Chapter 85-360, ss. 1-10, Laws of Fla.

¹⁴ *Id.*

¹⁵ Chapter 93-135, s. 1, Laws of Fla.

¹⁶ Department of Economic Opportunity, *Apalachicola Bay Area*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-apalachicola> (last visited Mar. 6, 2019); *see also*, U.S. Fish and Wildlife Service, *Next Steps for a Healthy Gulf of Mexico Watershed*, <https://www.fws.gov/southeast/gulf-restoration/next-steps/focal-area/greater-apalachicola-basin/> (last visited Mar. 8, 2019).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

The designated area is shown below:²⁰

- Provide affordable housing in close proximity to places of employment in the Apalachicola Bay Area; and
- Protect and improve the water quality of the Apalachicola Bay Area through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet state requirements.²¹

State, regional, and local agencies and units of government in the Apalachicola Bay Area are required to coordinate their plans and conduct their programs and regulatory activities consistently using principles for guiding development of the area.²² These principles require that:

- Land development be guided so that the basic functions and productivity of the Apalachicola Bay Area's natural land and water systems be conserved to reduce or avoid health, safety, and economic problems for present and future residents of the Apalachicola Bay Area;
- Land development be consistent with a safe environment, adequate community facilities, a superior quality of life, and a desire to minimize environmental hazards;
- Growth and diversification of the local economy be fostered only if it is consistent with protecting the natural resources of the Apalachicola Bay Area through appropriate management of the land and water systems;
- Aquatic habitats and wildlife resources of the Apalachicola Bay Area be conserved and protected;
- Water quantity be managed to conserve and protect the natural resources and the scenic beauty of the Apalachicola Bay Area;
- Water quality be protected, maintained, and improved for public water supply, propagation of aquatic life, and recreational and other uses;
- No wastes be discharged into any waters of the Apalachicola Bay Area without first being given the degree of treatment necessary to protect water uses;
- Stormwater discharges be managed in order to minimize impacts on the bay system and protect its uses;
- Coastal dune systems, specifically the area extending landward from the extreme high-tide line to the beginning of the pinelands of the Apalachicola Bay Area, be protected; and
- Public lands be managed, enhanced, and protected so that the public may continue to enjoy the traditional use of such lands.²³

III. Effect of Proposed Changes:

Section 1 of the bill creates a statutory distribution from the Land Acquisition Trust Fund requiring \$20 million to be appropriated annually through the 2029-2030 fiscal year to the Apalachicola Bay Area of Critical State Concern. The bill authorizes the use of funds for land acquisition and projects that improve surface and groundwater quality in the Apalachicola River and Bay, including projects such as:

- Construction and replacement of stormwater management facilities;
- Central sewage collection and disposal facilities;
- Installation of onsite sewage treatment and disposal systems;
- Direct and indirect potable reuse; and

²¹ Section 380.0555(2), F.S.

²² Section 380.0555(7), F.S.

²³ *Id.*

- Other water quality and water supply projects.

The bill requires that at least 25 percent, or \$5 million, of the appropriated funds be spent on land acquisition. The bill requires that land acquisition be given increased priority if it achieves a combination of conservation goals, including protecting and preserving fisheries and wildlife habitats, recreational spaces, nearshore water quality, surface water resources, and groundwater recharge.

The bill requires that at least 3 percent, but no more than 10 percent, of the funds for land acquisition (at least \$150,000 but no more than \$500,000) be spent on projects and activities identified during the time of acquisition, including for land management, increased public access and recreational opportunities, and greenways.

Section 2 of the bill adds an additional principle for guiding development in the Apalachicola Bay Area, which requires that water quality be protected and improved by 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; indirect and direct potable reuse; and other water quality and water supply projects.

Section 3 of the bill requires that the bill take effect on July 1, 2019.

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.

E. Other Constitutional Issues:

The bill creates a new distribution from LATF to use funds for land acquisition and projects that improve surface and groundwater quality in the Apalachicola River and Bay. LATF has constitutionally restricted uses, which are discussed in the Present Situation section of this bill analysis.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a specific annual distribution from the Land Acquisition Trust Fund through the 2029-2030 fiscal year, which may affect other programs that are funded through the trust fund.

Local governments in the Apalachicola Bay Area of Critical State Concern may have a positive fiscal impact by receiving funds to use for land acquisition and projects that improve surface and groundwater quality.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Other allocations from the Land Acquisition Trust Fund (LATF) require the allocations to be reduced to the extent of any debt service on bonds issued for the same purpose after a date certain. This bill does not contain language to reduce the distribution based on any debt service paid on bonds issued for the Florida Forever program. As a result, the new \$20 million distribution to the Apalachicola Bay Area of Critical State Concern will be in addition to any payment of debt service for bonds issued for the Apalachicola Bay Area of Critical State Concern. If the legislature wants to treat the allocation authorized in this bill similar to other allocations of LATF moneys, the following language could be inserted: "This distribution shall be reduced by an amount equal to the debt service paid pursuant to paragraph (a) on bonds issued after July 1, 2019, for the purposes set forth in this subparagraph."

VIII. Statutes Affected:

This bill substantially amends sections 375.041 and 380.0555 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.

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