

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: CS/SB 1772

INTRODUCER: Environment and Natural Resources Committee and Senators Bracy and Stewart

SUBJECT: Little Wekiva River

DATE: April 2, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1772 designates the wetlands in a particular area in Orlando as the headwaters of the Little Wekiva River. The St. Johns River Water Management District (WMD) will conduct a study that identifies the impact of this area on the Wekiva River System, the St. Johns River, and the Floridan Aquifer. The study will consider the following related to the Little Wekiva headwaters:

- The environmental significance to connected waters.
- The environmental impact of industrial development located at the intersection of Princeton Street and John Young Parkway on the Little Wekiva headwaters and connected waters.
- The importance to overall water quality and the preservation of natural systems.
- The risks of future development on the wetlands.
- The importance of preserving natural systems related to the Little Wekiva River to prevent nutrient algae blooms in the Wekiva River System and St. Johns River.

The findings will be submitted to the Acquisition and Restoration Council (ARC) and the Board of Trustees of the Internal Improvement Trust Fund by October 1, 2020. The WMD must develop a plan to purchase and restore wetlands related to the Little Wekiva River headwaters and the Wekiva River System and must submit the plan to the Governor and Legislature before January 1, 2021.

ARC will determine if the lands related to the Little Wekiva headwaters and other areas within the Wekiva River System should be included in a Florida Forever project.

Except for permits approving water quality projects that are part of a local government capital improvement, any development permits for the wetlands related to the Wekiva River headwaters and the Wekiva River system may not be approved or issued, and permitted development projects on wetlands related to the Little Wekiva River headwaters and the Wekiva River System for which construction has not begun may not begin, until ARC decides whether to include the area in a Florida Forever project.

II. Present Situation:

Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.¹ The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.² Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.³ The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.⁴

Under Florida Forever, the issuance of up to \$5.3 billion in Florida Forever bonds is authorized to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements⁵ to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.⁶

¹ Chapter 99-247, Laws of Fla.

² Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2018), available at http://publicfiles.dep.state.fl.us/DSL/OESWeb/FF2017/FLDEP_DSL_SOLI_2018FloridaForever5YrPlan_20180706.pdf (last visited Mar. 7, 2019).

³ Section 259.105, F.S.

⁴ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Mar. 7, 2019). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (February 2019), available at https://www.fnai.org/PDF/Maacres_201902_FCL_plus_LTF.pdf (last visited Mar. 4, 2019) for a complete summary of the total amount of conservation lands in Florida.

⁵ As defined in s. 259.03, F.S., the terms "capital improvement" or "capital project expenditure" when used in ch. 259, F.S. mean "those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities' signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter."

⁶ Section 215.618, F.S.

The Acquisition and Restoration Council

The Acquisition and Restoration Council (ARC) is a 10-member body⁷ that makes recommendations on the acquisition, management, and disposal of state-owned lands.⁸ ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida Forever funding. In evaluating each application, ARC is required to consider whether the project:

- Meets multiple program goals;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- Has funding sources that are identified and assured through at least the first 2 years of the project;
- Contributes to the solution of water resource problems on a regional basis;
- Has a significant portion of its land area in imminent danger of development, losing its significant natural attributes or recreational open space, or subdivision that would result in multiple ownership and make acquisition of the project more costly or less likely to be accomplished;
- Implements an element from a plan developed by an ecosystem management team;
- Is one of the components of Everglades restoration efforts;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple; and
- Is a joint acquisition.⁹

ARC is required to give higher priority to:

- Projects for which matching funds are available;
- Project elements previously identified on an acquisition list which can be acquired at 80 percent or less of appraised value;
- Projects that can be acquired in less than fee ownership (acquiring land at less than fee ownership means acquisition of an interest in the property which allows the conservation and protection of resources on the property at less cost while keeping the land in private ownership);
- Projects that contribute to improving the quality or quantity of surface water or groundwater;
- Projects that contribute to improving the water quality and flow of springs; and

⁷ Section 259.035(1), F.S. Four of ARC's 10 members are appointed by the Governor, three from scientific disciplines related to land, water, or environmental sciences and one with least five years of experience in managing lands for both active and passive types of recreation. Four of the members are the Secretary of Environmental Protection, the director of the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State, or their respective designees. One member is appointed by the Commissioner of Agriculture from a discipline related to agriculture, including silviculture, and one member is appointed by the Fish and Wildlife Conservation Commission from a discipline related to wildlife management or wildlife ecology.

⁸ DEP, *Florida Forever Five Year Plan*, 50 (2018), available at http://publicfiles.dep.state.fl.us/DSL/OESWeb/FF2017/FLDEP_DSL_SOLI_2018FloridaForever5YrPlan_20180706.pdf (last visited Mar. 7, 2019).

⁹ Section 259.105(9), F.S.

- Projects for which the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.¹⁰

Using its established criteria, ARC develops a priority list of applications submitted. An affirmative vote of at least five members of ARC is required to place a proposed project on the priority list. ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.¹¹ Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural lands, less-than-fee, partnerships or regional incentives, and substantially complete (greater than 85 percent complete).¹² Projects are ranked within each category from highest to lowest priority.

The priority list is presented to the Governor and the Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund (BOT).¹³ The BOT is responsible for acting on ARC's recommendations by approving the acquisition of each parcel.¹⁴ While the BOT is authorized to remove projects from the priority list, the BOT may not add or rearrange projects on the priority list.¹⁵

The Division of State Lands within DEP prepares an annual work plan based on the priority list developed by ARC, which outlines the specific projects and acquisitions within projects that will be negotiated for purchase with Florida Forever funds available for that fiscal year for land acquisition.¹⁶

Wekiva River System

The Wekiva River begins at the junction of Wekiwa Spring Run and Rock Springs Run and runs north for 15 miles.¹⁷ It is a Florida and National Scenic and Wild River¹⁸ and a state designated paddling trail.¹⁹ The Little Wekiva River, Blackwater Creek, and more than 30 springs contribute their waters to the Wekiva as it winds its way north.²⁰ The Wekiva River Basin is a complex ecological system of rivers, springs, seepage areas, lakes, streams, sinkholes, wetland prairies, hardwood hammocks, pine flatwoods, and sand pine scrub communities.²¹ The Wekiva and its

¹⁰ Section 259.105(10), F.S.

¹¹ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Mar. 7, 2019).

¹² Section 259.105(17), F.S.

¹³ Section 259.105(14), F.S.

¹⁴ DEP, *Florida Forever Five Year Plan*, 51 (2018), available at http://publicfiles.dep.state.fl.us/DSL/OESWeb/FF2017/FLDEP_DSL_SOLI_2018FloridaForever5YrPlan_20180706.pdf (last visited Mar. 29, 2019).

¹⁵ Section 259.105(14), F.S.

¹⁶ Section 259.105(17), F.S.

¹⁷ DEP, *Wekiva River Aquatic Preserve*, <https://floridadep.gov/rcp/aquatic-preserve/locations/wekiva-river-aquatic-preserve> (last visited Mar. 29, 2019).

¹⁸ National Wild and Scenic Rivers System, *Florida*, <https://www.rivers.gov/florida.php> (last visited Mar. 29, 2019).

¹⁹ DEP, *Florida's Designated Paddling Trails*, <https://floridadep.gov/parks/ogt/content/floridas-designated-paddling-trails> (last visited Mar. 29, 2019).

²⁰ DEP, *Wekiva River Aquatic Preserve*, <https://floridadep.gov/rcp/aquatic-preserve/locations/wekiva-river-aquatic-preserve> (last visited Mar. 29, 2019).

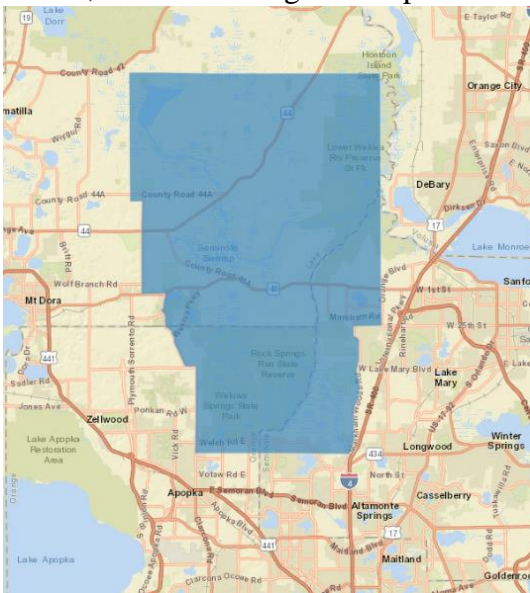
²¹ National Wild and Scenic Rivers System, *Wekiva River, Florida*, <https://www.rivers.gov/wekiva.php> (last visited Mar. 29, 2019).

tributaries are in superb ecological condition. The basin supports many species of plant and animal life, some of which are endangered, threatened, or of special concern.²²

The Little Wekiva River is a tributary to the Wekiva River. It is approximately 15 miles long, and its main stem flows northward from Lake Lawne in Orlando.²³

Wekiva River Protection Act

In 1988, the Florida Legislature passed the Wekiva River Protection Act, which requires the river's surrounding counties to amend their comprehensive plans and land development rules to deter wetlands losses, promote protection of wildlife and their habitats, and provide long-term protection for the area.²⁴ A small portion of the Little Wekiva River Basin is within this protection area, namely the area of the basin that is to the north of S.R. 434 and to the west of Markham Woods Road.²⁵ The adjacent map shows the Wekiva River Protection Area.²⁶



The Wekiva-Ocala Greenway Project

The Wekiva-Ocala Greenway is a Florida Forever Project.²⁷ The purpose for state acquisition is stated as follows:

The springs, rivers, lakes, swamps, and uplands stretching north from Orlando to the Ocala National Forest are an important refuge for the Florida black bear, as well as other wildlife such as the bald eagle, swallow-tailed kite, Florida scrub jay, and wading birds. The Wekiva-Ocala Greenway will protect these animals and the Wekiva and St. Johns River basins by protecting natural corridors connecting Wekiwa Springs State Park, Rock Springs Run State Reserve, the Lower Wekiva River State Reserve, and Hontoon Island State Park with the Ocala National Forest. It will also provide the people of the booming Orlando area with a large, nearby natural area in which to enjoy camping, fishing, swimming,

²² *Id.*

²³ Seminole County, *Seminole County Water Atlas*, available at <http://www.seminole.wateratlas.usf.edu/macro/waterbody.aspx?wbodyid=1013> (last visited Mar. 29, 2019).

²⁴ Sections 369.301-369.309, F.S. See St. John's WMD, *Little Wekiva River Watershed Management Plan* (Nov. 2005), available at http://www.orange.wateratlas.usf.edu/upload/documents/Basinreport_LittleWekiva_ExecSumm.pdf (last visited Mar. 29, 2019).

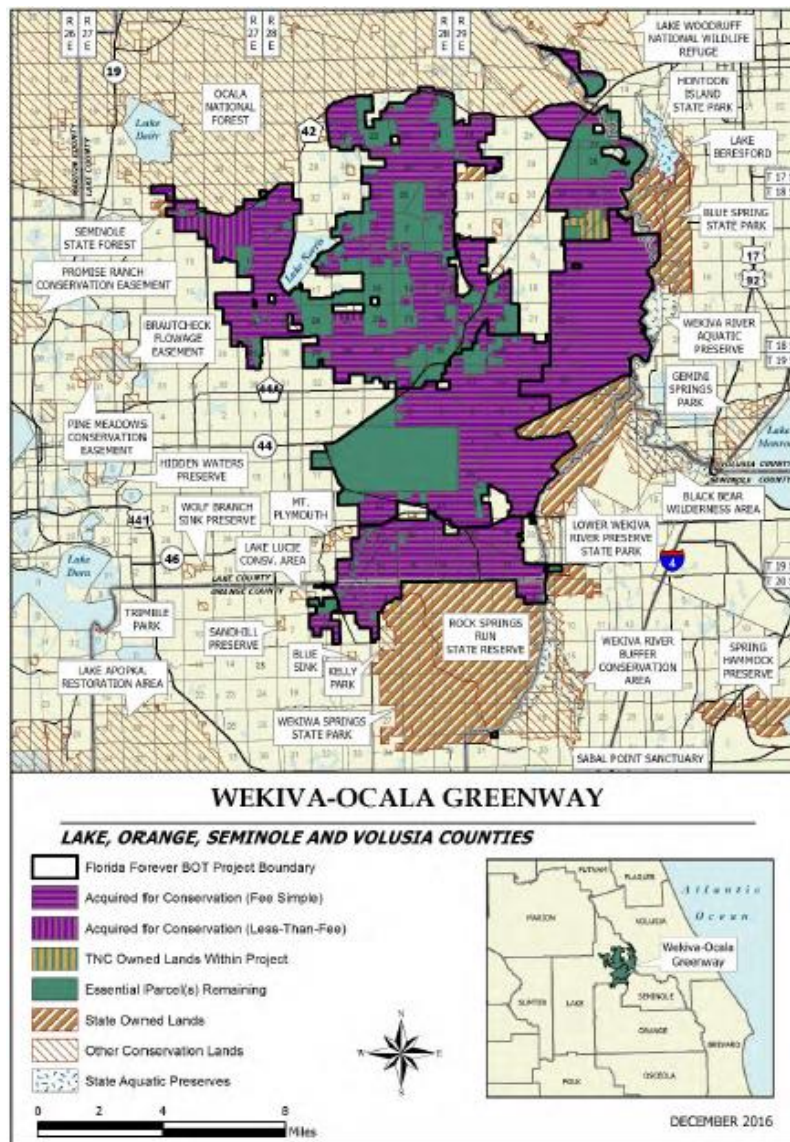
²⁵ *Id.*

²⁶ St. Johns WMD, *Wekiva River Protection Area*, http://data-floridaswater.opendata.arcgis.com/datasets/9e518b719548416eb6a0ef46c80ad612_23?mapSize=map-maximize&geometry=-82.075%2C28.589%2C-80.769%2C29.064 (last visited Mar. 29, 2019).

²⁷ DEP, *Florida Forever Five Year Plan*, 862-869 (2018), available at http://publicfiles.dep.state.fl.us/DSL/OESWeb/FF2017/FLDEP_DSL_SOLI_2018FloridaForever5YrPlan_20180706.pdf (last visited Mar. 29, 2019).

hiking, canoeing, and other recreational pursuits. The Florida National Scenic Trail, a cross-Florida hiking and non-motorized trail, is also planned to cross this project. The trail is a congressionally designated national scenic trail.²⁸

The Wekiva-Ocala Connector is one part of the project. It provides a wildlife movement corridor between the Ocala National Forest and the other portions of the projects along the Wekiva River. The project is primarily managed by the Florida Forest Service within DACS and the Division of Recreation and Parks within DEP. The majority of land acquisition for the project is complete.²⁹



²⁸ *Id.*

²⁹ *Id.*

Planned Development in Orlando

There is a planned park project, located in the City of Orlando, called “Packing District Park.”³⁰ It has been proposed by Dr. Phillips Inc. and the City of Orlando, Florida. It has recently received a permit from the St. Johns River Water Management District and is currently under permit review by the United States Army Corps of Engineers. There is an effort to stop the project from going forward. Citizens have expressed concern that the headwaters of the Little Wekiva will be degraded by the project. The City of Orlando asserts that it has done studies that actually indicated that conditions in the headwaters will be improved as a result of this project, which includes retrofitting stormwater facilities that will provide stormwater treatment for existing facilities in addition to the planned facility.³¹

Although the Wekiva-Ocala Connector and the Wekiva Protection Area are north of the area where the proposed project is located, the project is within the Wekiva River Hydrologic Basin. Within that basin, Rule 40C-41.063 of the Florida Administrative Code sets out a heightened level of protection that applies to stormwater permits issued in that area.³² The St. Johns Water Management District has monitored the water quality in the area for many years and uses that monitoring program to inform its permitting decisions.³³

III. Effect of Proposed Changes:

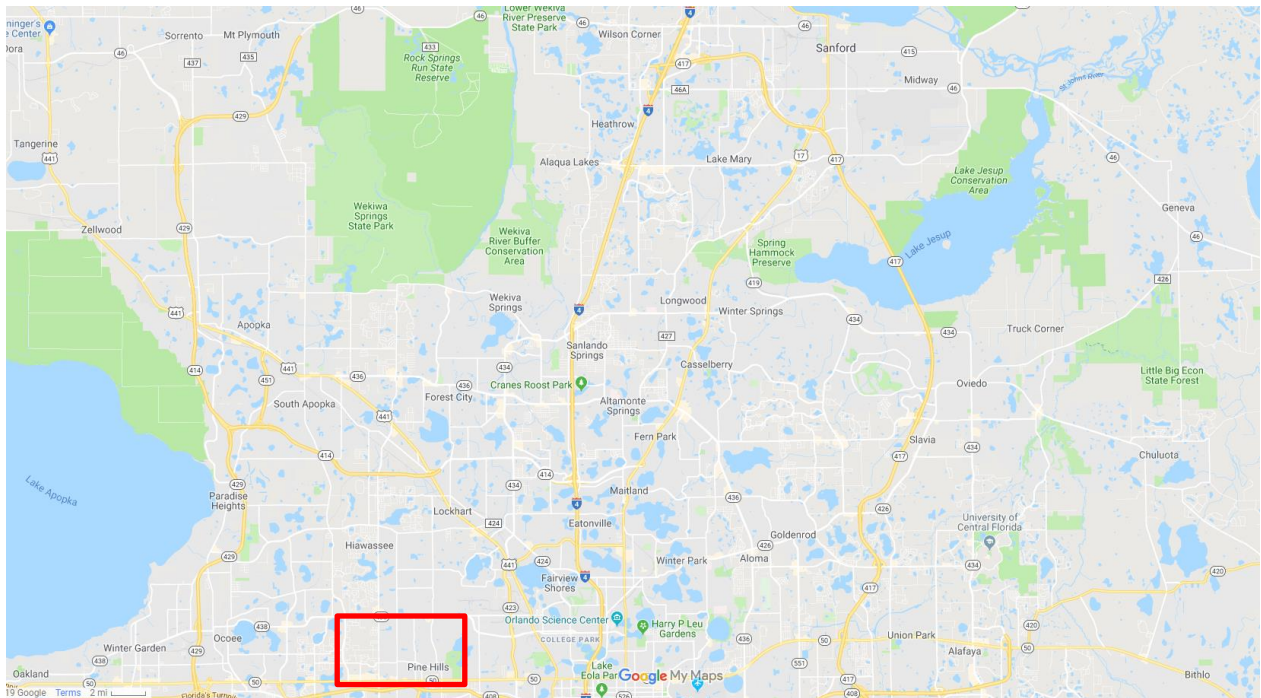
CS/SB 1772 designates the wetlands located in the area south of State Road 416, north of State Road 50, east of State Road 431, and west of State Road 441 in the City of Orlando in Orange County, Florida, as the headwaters of the Little Wekiva River. The bill creates a statement of legislative intent that these headwaters be considered in the restoration efforts of the Wekiva River System.

³⁰ Frank Martz, City Manager, Letter: Re: City of Orlando Project and Impact on the Little Wekiva River (Mar. 27, 2019) (on file with the Senate Committee of Environment and Natural Resources).

³¹ *Id.*

³² Fla. Admin. Code s. 40C-41.063. Note that DEP sets out protections in its ERP rules that require applicants to provide reasonable assurance that construction will not cause: adverse water quantity impacts to receiving water and adjacent lands, flooding, or adverse impacts to existing surface water storage and conveyance capabilities. Fla. Admin. Code s. 62-330.301. DEP and the water management districts must require applicants to provide reasonable assurance that state water quality standards will not be violated in order to issue an ERP. Sections 373.414(1), 373.403(11), F.S.

³³ St. Johns Water Management District, 2018 Status and Trends – Surface Water, *available at* <https://floridaswater.maps.arcgis.com/apps/MapSeries/index.html?appid=229a09b80d714064a950fce02b8c47b5> (last visited April 1, 2019).



The St. Johns River Water Management District (WMD) is tasked with conducting a study that identifies the impact of the Little Wekiva River headwaters and the surrounding wetlands on the Wekiva River System, the St. Johns River, and the Floridan Aquifer.

The study will consider:

- The environmental significance of the headwaters and wetlands related to the Little Wekiva River, the Wekiva River System, the Wekiva Spring, the St. Johns River, and the Floridan Aquifer.
- The environmental impact of industrial development on the Little Wekiva headwaters located at the intersection of Princeton Street and John Young Parkway on the Wekiva River System, the St. Johns River, and the Floridan Aquifer.
- The importance of the Little Wekiva River headwaters and related wetlands to overall water quality in the district and the preservation of natural systems.
- The risks of future development on the wetlands related to the Little Wekiva River headwaters and other wetlands along the Little Wekiva River.
- The importance of preserving natural systems related to the Little Wekiva River to prevent nutrient algae blooms in the Wekiva River System and St. Johns River.

Based on their findings, the WMD must develop a plan to purchase and restore wetlands related to the Little Wekiva River headwaters and the Wekiva River System and must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives before January 1, 2021. The WMD shall submit a report detailing its findings to the Acquisition and Restoration Council (ARC) and the Board of Trustees of the Internal Improvement Trust Fund before October 1, 2020.

At the next scheduled meeting of the ARC after receiving the report from the WMD, the council shall determine if the lands related to the Little Wekiva headwaters and other areas within the Wekiva River System should be included in the existing Wekiva-Ocala Connector Project and if any lands relating to the Little Wekiva River headwaters constitute a new project under the Florida Forever program.

Except for permits approving water quality projects that are part of a local government capital improvement, any permit for development projects on wetlands related to the Little Wekiva River headwaters and the Wekiva River System may not be approved or issued, and permitted development projects on wetlands related to the Little Wekiva River headwaters and the Wekiva River System for which construction has not begun may not begin, until ARC makes a determination on whether to include the area in a Florida Forever project.

The bill provides an effective date of 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:

Art. III, s. 10 of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published or a referendum is conducted. A special law or “local law” relates to or operates upon a particular person, thing, or part of the state; it does not apply with geographic uniformity across the state and bears no reasonable relationship to differences in population or other legitimate criteria.³⁴ On the other hand, a general law of local application relates to a class of persons or things or subdivisions of the state, based upon distinctions or differences that are inherent or particular to the class or location. The Legislature is granted wide discretion in making such classifications.³⁵ If a particular condition exists in only a portion of the state, enactments that reference the

³⁴ See *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); and *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).

³⁵ *Shelton v. Reeder*, 121 So. 2d 145, 151 (Fla. 1960). But see also Art. X, s. 11 of the Florida Constitution.

limited geographic area may be general laws.³⁶ “[I]f a law utilizes a classification that is geographical in its terms but the purpose of the statute is one of statewide importance and impact, and the classification is reasonably related to the law’s purpose, it is a valid general law.”³⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a negative financial impact on businesses within the area described by the bill that may not develop until the ARC determines whether to include the area in a Florida Forever project.

C. Government Sector Impact:

There will be a negative fiscal impact on the WMD in conducting the study and in developing a plan to purchase and restore the wetlands. There may be a negative fiscal impact to the state if the state decides to purchase parcels in the area.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear what happens to development permits in the area after ARC makes its decision. Even a decision by ARC to include the area in a Florida Forever project may not result in immediate purchase of the property. Furthermore, since the bill does not employ eminent domain, there is no requirement for the property owner to sell the property. It is possible that even if the WMD conducts the study and ARC includes the property in a Florida Forever project, development of the area may continue but with some delay as a result of the bill.

VIII. Statutes Affected:

The bill creates an undesignated section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on April 2, 2019:

³⁶ *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

³⁷ *Id.* at 1056.

Provides an exception for permits approving water quality projects that are part of a local government capital improvement from the moratorium on building permits in a specified area.

B. Amendments:

None.

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