

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 Appropriations Subcommittee on General Government

BILL: CS/SB 1168

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Negron and others

SUBJECT: Implementation of the Water and Land Conservation Constitutional Amendment

DATE: February 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1168 requires specified minimum distributions from the Land Acquisition Trust Fund (LATF) to fund Everglades projects that implement the Comprehensive Everglades Restoration Plan, including the Central Everglades Planning Project, the Long-Term Plan, and the Northern Everglades and Estuaries Protection Program. In addition, the bill requires a minimum distribution from the LATF to fund springs restoration, protection, and management projects.

The Revenue Estimating Conference for Documentary Stamp Tax Collection Distributions on January 19, 2016, determined that the bill would allocate a minimum of \$163,125,000 for Everglades projects and \$49,590,000 for springs projects (see Section V. Fiscal Impact Statement for a detailed analysis).

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Documentary Stamp Tax Revenues

Chapter 201, F.S., levies a tax 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 Revenue from the excise tax on documents, collectively known as documentary stamp tax revenues, is divided between the General Revenue Fund and various trust funds.

In 2014, Florida voters approved a constitutional amendment to provide a dedicated funding source for water and land conservation and restoration. The amendment required that starting on July 1, 2015, for 20 years, 33 percent of net revenues derived from the existing excise tax on documents be deposited into the Land Acquisition Trust Fund (LATF).

The amendment required that funds in the LATF be expended only, as provided by law, to finance or refinance the following:

- 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;
- Beaches and shores;
- Outdoor recreation lands, including recreational trails, parks, and urban open space;
- Rural landscapes;
- Working farms and ranches; and
- Historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.²

The amendment was approved by 75 percent of the electors voting on the issue and created Art. X, section 28 of the Florida Constitution. To comply with the constitutional requirements, the Legislature in the 2015 Special Session A passed chapter 2015-229 Laws of Florida.³

As part of chapter 2015-229, Laws of Florida, s. 201.15, F.S., was amended to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from the existing excise tax on documents.⁴ Section 201.15, F.S., requires documentary stamp tax revenues be pledged and first made available to make payments on Florida Forever and Everglades restoration bonds.⁵

Chapter 2015-229, Laws of Florida, amended s. 375.041, F.S., to designate the LATF within the Department of Environmental Protection as the trust fund that serves as the depository for the constitutionally required funds.⁶ The revenue deposited into the LATF is required to be utilized in the following order:

¹ See ss. 201.02 and 201.08, F.S.

² FLA. CONST. art. X, s. 28.

³ Ch. 2015-229, Laws of Fla.

⁴ Ch. 2015-229, s. 9, Laws of Fla.

⁵ Section 201.15, F.S.

⁶ Ch. 2015-229, s. 50, Laws of Fla.

- Obligations relating to debt service, specifically:
 - First to payments relating to Florida Forever Bonds and Everglades restoration bonds; and
 - Then, to payments relating to bonds issued before February 1, 2009, by the South Florida Water Management District and the St. Johns River Water Management District;
- A distribution of \$32 million each fiscal year to the South Florida Water Management District for the Long-Term Plan defined in s. 373.59, F.S.; and
- Then any remaining moneys are authorized to be appropriated from time to time for the purposes set forth in Art. X, section 28 of the Florida Constitution.⁷

Everglades Restoration Projects

The Florida Water Resources Act, ch. 373, F.S., directs the roles and responsibilities of the Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) for plans authorized through the Everglades Forever Act, the Comprehensive Everglades Restoration Plan, and the Northern Everglades and Estuaries Protection Program.⁸

Everglades Forever Act

In 1994, the Legislature passed the Everglades Forever Act (EFA), which outlines the state's commitment to restore the Everglades by improving water quality and quantity.⁹ The primary goals of the EFA are to improve water quality by reducing phosphorus levels, restore the hydrology of the ecosystem, and restore and protect native plant and animal species.¹⁰ In 2003, the EFA was amended to implement the "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-term Water Quality Goals," also known as the Long-Term Plan.¹¹

The Long-Term Plan identifies the best available phosphorous reduction technology to be used in combination with Best Management Practices (BMPs) to achieve the phosphorus criterion in the Everglades Protection Area.¹² The Long-Term Plan is to be implemented in two phases: the initial phase from 2003 to 2016, followed by an additional 10-year phase.¹³ In 2013, the EFA was amended to include the "Restoration Strategies Regional Water Quality Plan," the second phase of the Long-Term Plan."¹⁴ The Plan includes additional stormwater treatment areas and storage reservoirs at a cost of \$880 million to be jointly funded over a 13-year period by the state

⁷ Section 375.041, F.S.

⁸ DEP, *Everglades, Overview of restoration programs*, <http://www.dep.state.fl.us/everglades/default.htm> (last visited Feb. 4, 2016).

⁹ Chapter 1994-115, Laws of Fla.

¹⁰ Section 373.4592, F.S.

¹¹ Chapter 2003-12, Laws of Fla.

¹² Section 373.4592, F.S.

¹³ SFWMD, *Long-Term Plan for Achieving Water Quality Goals, Questions and Answers*, http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/q_and_a_long_term_plan.pdf (last visited Feb. 4, 2016).

¹⁴ Chapter 2013-59, s. 1, Laws of Fla.

and the SFWMD.¹⁵ In 2013, the Legislature appropriated \$32 million on a recurring basis through the 2023-2024 fiscal year to support the implementation of the plan.¹⁶

Comprehensive Everglades Restoration Plan

The Comprehensive Everglades Restoration Plan (CERP) is a state-federal partnership that was created to restore the Everglades. The plan works in conjunction with other state and federal efforts to revitalize wetlands, lakes, bays, and estuaries across South Florida, for the purpose of improving the Everglades and ensuring that the area's water supply can meet future needs. The DEP, the U.S. Army Corps of Engineers, and the SFWMD work jointly to review each program proposal. CERP serves as the framework and guide for the restoration, protection, and preservation of the South Florida ecosystem, including providing for the water-related needs of the region, such as water supply and flood protection.¹⁷ The plan encompasses 16 counties over an 18,000-square-mile area.¹⁸ The goal of CERP is to capture fresh water that now flows unused to the ocean and redirect it to areas that need it most.¹⁹

CERP includes the Central Everglades Planning Project (CEPP), which incorporates updated science and technical information gained over the last decade to identify a recommended plan and prepare a Project Implementation Report (PIR) for congressional authorization. CEPP will develop the next set of project components that focus on restoring more natural water flow, depth, and duration into and within the Central Everglades.²⁰ The draft PIR was completed in August 2013.²¹ The U.S. Army Corps signed the Record of Decision for CEPP in August 2015, signifying the completion of the final administrative review for the ecosystem restoration project's report.²² The report will be transmitted to Congress for authorization.²³

Northern Everglades and Estuaries Protection Program

The Northern Everglades and Estuaries Protection Program (NEEPP) was established to promote a comprehensive, interconnected watershed approach to protect Lake Okeechobee and the Caloosahatchee and St. Lucie River watersheds. It includes the Lake Okeechobee Watershed Protection Program and the Caloosahatchee and St. Lucie River Watershed Protection Program.²⁴ The NEEPP led to the creation of the Phase II Technical Plan which provided the measures of quality, quantity, timing, and distribution of water in the northern Everglades

¹⁵ DEP, *Everglades Water Quality Improvements, Questions & Answers*, http://www.dep.state.fl.us/secretary/news/2012/06/everglades_wq_improvements.pdf (last visited Feb. 4, 2016).

¹⁶ Ch. 2013-59, s. 2, Laws of Fla.

¹⁷ SFWMD, *South Florida Environmental Report 2015, Executive Summary*, Glossary (Mar. 1, 2015) available at http://www.sfwmd.gov/portal/page/portal/pg_grp_sfwmd_sfer/portlet_prevreport/2015_sfer_final/2015_sfer_executive_summary_final.pdf.

¹⁸ DEP, *Projects and Goals*, <http://www.dep.state.fl.us/evergladesforever/restoration/projects.htm> (last visited Feb. 4, 2016).

¹⁹ *Id.*

²⁰ U.S. Army Corps of Engineers, *Central Everglades Planning Project (CEPP), Facts & Information*, (Sept. 2013) http://www.evergladesrestoration.gov/content/cepp/documents/CEPP_FS_September2013_508.pdf (last visited Feb. 4, 2016).

²¹ *Id.*

²² U.S. Army Corps of Engineers, *Record of Decision signed for Central Everglades Planning Project*, <http://www.saj.usace.army.mil/DesktopModules/ArticleCS/Print.aspx?PortalId=44&ModuleId=16629&Article=615490> (last visited Feb 4, 2016).

²³ *Id.*

²⁴ Section 373.4595, F.S.

ecosystem necessary for restoration.²⁵ The St. Lucie River and Caloosahatchee River Watershed Protection plans were developed under the NEEPP. The plans include a construction project, pollution control program, and research and water quality monitoring programs, and build upon existing and planned programs and projects to consolidate previous restoration efforts.²⁶

The 2016 Legislature enacted legislation, chapter 2016-1, Laws of Florida, which updates and restructures the NEEPP to reflect and build upon the DEP's implementation of basin management action plans (BMAPs) for Lake Okeechobee, the Caloosahatchee River and Estuary, and the St. Lucie River and Estuary. The BMAP will include the construction of water projects, water monitoring programs, and the implementation, verification, and enforcement of best management practices (BMPs) within these watersheds. The BMAPs will now be required to include 5-, 10-, and 15-year milestones toward achieving the total maximum daily loads for those water basins within 20-years.²⁷

Springs Restoration, Protection, and Management Projects

Springs form when groundwater is forced out through natural openings in the ground. Florida has more than 700 recognized springs, categorized by flow in cubic feet per second. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges, primarily from the Floridan aquifer, are used to determine groundwater quality and the degree of human impact on a spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to groundwater chemistry.

Excessive nutrient levels, particularly nitrate, are the primary water quality threat to springs.²⁸ High nitrate levels result from urban and agricultural stormwater runoff and leaching, and inadequately treated wastewater.²⁹ Spring system water quality is regularly assessed to determine whether it is meeting Florida's standards. When a spring system is not meeting the standard, the system is formally identified as impaired, and the DEP is required to adopt a Total Maximum Daily Load (TMDL).³⁰ A TMDL is a scientific determination of the maximum amount of a given pollutant that a surface water can absorb and still meet the water quality standards that protect human health and aquatic life.³¹ To achieve a TMDL, the DEP works with local stakeholders to adopt and implement comprehensive BMAPs.³² BMAPs represent a comprehensive set of strategies, including permit limits on wastewater facilities, urban and agricultural best management practices, conservation programs, financial assistance and revenue generating activities, designed to implement the pollutant reductions established by the TMDL.³³

²⁵ DEP, *Everglades, Northern Everglades and Estuaries Protection Program (NEEPP)*, <http://www.dep.state.fl.us/everglades/neepp.htm> (last visited Feb. 4, 2016).

²⁶ Section 373.4595, F.S.

²⁷ Chapter 2016-1, Laws of Fla.

²⁸ DEP, *Progress Report: Select First Magnitude Springs and Springs of Regional Significance*, pg. 2 (Nov. 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

²⁹ *Id.*

³⁰ Section 403.067, F.S.

³¹ DEP, *Total Maximum Daily Loads*, <http://www.dep.state.fl.us/water/tmdl/index.htm> (last visited Feb. 10, 2016).

³² Section 403.067, F.S.

³³ DEP, *Total Maximum Daily Loads*, <http://www.dep.state.fl.us/water/tmdl/index.htm> (last visited Feb. 10, 2016).

Water quantity or spring flows are affected by drought and other long-term climate conditions and may be affected by excessive water withdrawals.³⁴ The water management districts (WMDs) or the DEP are required to establish minimum flows and levels (MFLs) for surface and ground waters. The “minimum flow” is the limit at which further withdrawals from a watercourse would significantly harm water resources or ecology; the “minimum level” is the level of a groundwater or surface water body at which further withdrawals would significantly harm water resources.³⁵ If the flow or level is currently below, or within 20 years will fall below an applicable MFL, the water management district (WMD) is required to implement a recovery or prevention strategy.³⁶

The Best Management Practices (BMPs) are established to conserve water and minimize nutrient loss to the environment, particularly through fertilizer application and land and animal management.³⁷ In coordination with the DEP, the WMDs, and other stakeholders, the Department of Agriculture and Consumer Service’s Office of Agriculture Water Policy works to identify and prioritize restoration efforts in springs, including ways to manage more effectively water and nutrient applications in springs protection areas.³⁸

Spring restoration, protection, and management projects may be used to achieve TMDLs through a BMAP, address MFLs through a recovery or prevention strategy, or implement BMPs. Examples of such projects include, but are not limited to: investments to wastewater treatment facilities; water quality improvement projects; aquifer recharge projects; reclaimed water projects; purchase of conservation lands for water quality protection; stormwater improvement; water quality sampling or monitoring; meter implementation; or irrigation system efficiency upgrades.

III. Effect of Proposed Changes:

The bill amends s. 375.041, F.S., to require specified minimum distributions from the Land Acquisition Trust Fund (LATF) to be used to fund Everglades restoration projects and spring restoration, protection, and management projects.

Everglades restoration projects

The bill requires an appropriation of funds to be used for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan, or the Northern Everglades and Estuaries Protection Program (NEEPP).

The bill requires an annual appropriation of a minimum of the lesser of 25 percent of the funds remaining in the LATF after the payment of debt service or \$200 million for Everglades projects in the following manner:

- \$32 million to the South Florida Water Management District for the Long-Term Plan each fiscal year through the 2023-2024 fiscal year;

³⁴ DEP, *Progress Report: Select First Magnitude Springs and Springs of Regional Significance*, pg. 3 (Nov. 2015).

³⁵ Section 373.042, F.S.

³⁶ Section 373.0421, F.S.

³⁷ DEP, *Progress Report: Select First Magnitude Springs and Springs of Regional Significance*, pg. 3 (Nov. 2015).

³⁸ DEP, *Progress Report: Select First Magnitude Springs and Springs of Regional Significance*, Attachment 3 (Nov. 2015).

- Then, after deducting the \$32 million, a minimum of the lesser of 76.5 percent of the funds remaining or \$100 million for the planning, design, engineering, and construction of the CERP, including the Central Everglades Planning Project, subject to congressional authorization, each fiscal year through the 2025-2026 fiscal year;
- Then, funds remaining are to be available for distribution to CERP or NEEPP projects.

The bill requires the DEP and the SFWMD to give preference to Everglades restoration projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner.

The bill deletes language that is set to expire July 1, 2016, relating to the payment of debt service on bonds issued before February 1, 2009, by the South Florida Water Management District.

Spring restoration, protection, and management projects

The bill requires an annual appropriation of a minimum of the lesser of 7.6 percent of the funds remaining in the LATF after the payment of debt service or \$75 million for spring restoration, protection, and management projects.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1168 requires specified distributions from the Land Acquisition Trust Fund (LATF) within the Department of Environmental Protection as follows:

Estimated Documentary Stamp Tax Revenue:			\$2,506,250,000*		As estimated for FY 2016-2017
	LATF distribution (33% of estimated tax revenue):		\$823,830,000*		As required under Art. X, s. 28 of the Florida Constitution.
	Payment on debt service:		\$171,330,000*		As required under Art. X, s. 28 of the Florida Constitution.
	Remainder of LATF after subtracting debt service	X	\$652,500,000*		
			% Amount	Cap Amount	
Allocation for Everglades Projects:	A minimum of the lesser of 25% or \$200 million	25% of X = Y	\$163,125,000	\$200 million	As required under CS/SB 1168.
<u>Distribution:</u>	Long-Term Plan		N/A	\$32 million	As required under s. 375.041, F.S.
<u>Distribution:</u>	A minimum of the lesser of 76.5% or \$100 million	76.5% of (Y minus \$32 million)	\$100,310,625	\$100 million	For the planning, design, engineering, and construction of CERP projects as required under CS/SB 1168.
<u>Balance:</u>			\$30,814,375	\$68 million	Available for Everglades projects as required under CS/SB 1168.
Allocation for Springs projects:	A minimum of the lesser of 7.6% or \$75 million	7.6% of X	\$49,590,000	\$75 million	Available for spring restoration, protection, and management projects as required under CS/SB 1168
Balance of LATF:			\$439,785,000**	\$377,500,000**	Available for appropriation for the purposes set forth in Art. X, s. 28 of the Florida Constitution.

*Based on the Revenue Estimating Conference for Documentary Stamp Tax Collection and Distributions adopted January 19, 2016.

** Based on estimates for Fiscal Year 2016-2017 as provided by the Senate Appropriations Committee staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 375.041 of the Florida Statutes.

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 Environmental Preservation and Conservation on February 9, 2016:

The CS adds a specified minimum distribution from the Land Acquisition Trust Fund to fund spring restoration, protection, and management projects.

- B. **Amendments:**

None.