

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

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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.