

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 92
 INTRODUCER: Senator Book
 SUBJECT: C-51 Reservoir Project
 DATE: January 18, 2019 REVISED: _____

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

I. Summary:

SB 92 revises provisions relating to the C-51 reservoir project, a water storage facility located in western Palm Beach County. The following provisions, currently applicable only to Phase II of the C-51 project, are extended to apply to the entire project. The revisions authorize the South Florida Water Management District (SFWMD) to:

- Acquire any portion of the C-51 reservoir project not already committed to utilities for alternative water supply purposes;
- Acquire land near the C-51 reservoir as necessary to implement any part of the project; and
- Provide funds from the Land Acquisition Trust Fund for any phase of the C-51 project if those designated funds are not used for the Everglades Agricultural Area Reservoir.

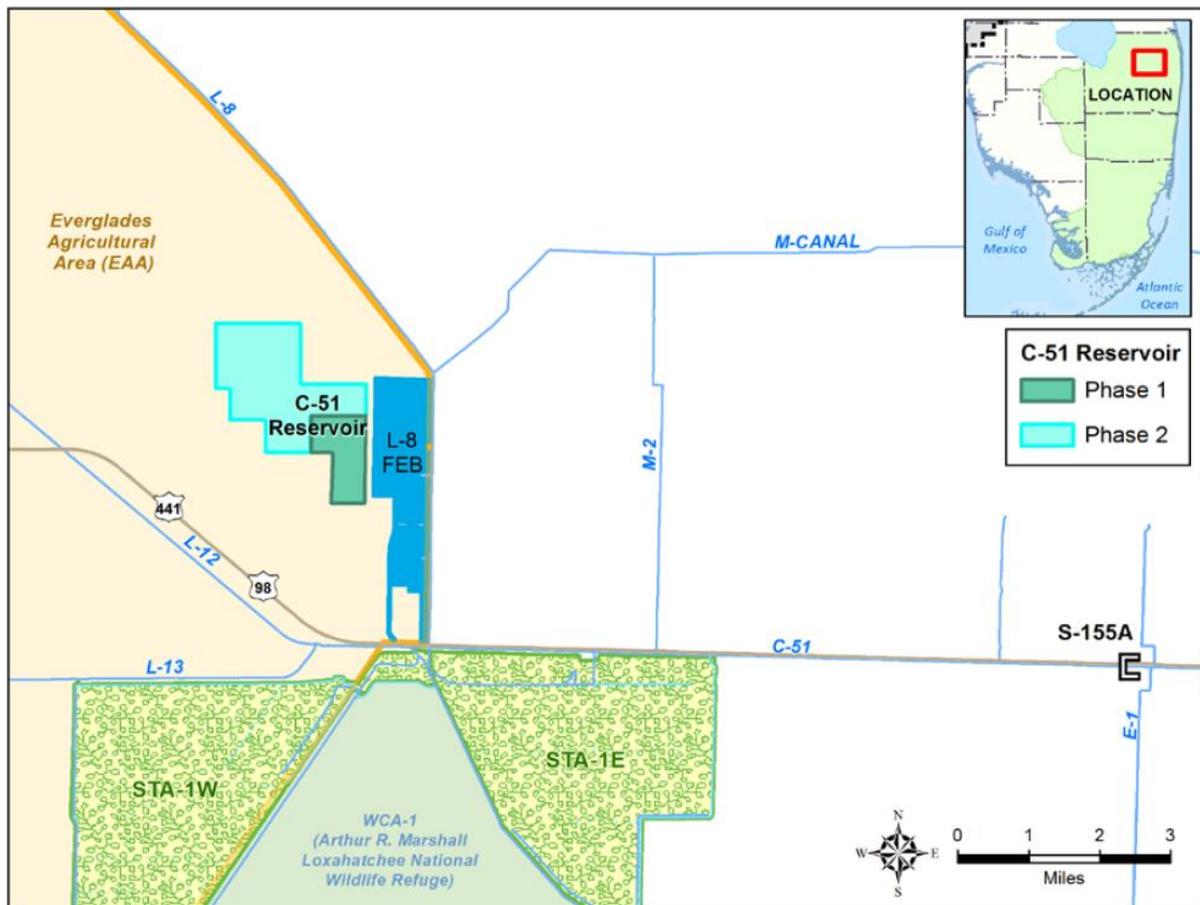
Additionally, the bill:

- Requires the operation of Phase I of the reservoir project to be in accordance with any operation and maintenance agreement adopted by SFWMD;
- Requires that water made available by the reservoir project be used for natural systems in addition to any permitted, rather than allocated, amounts for water supply;
- Authorizes using water from the reservoir project received from Lake Okeechobee to support consumptive use permits if such use is in accordance with SFWMD rules;
- Authorizes SFWMD to enter into a capacity allocation agreement with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and request the Department of Environmental Protection (DEP) to waive repayment of all or a portion of the loan issued through the water storage facility revolving loan fund to the water supply entity (up to \$30 million); and
- Clarifies that SFWMD is not responsible for repaying any portion of a loan that is waived pursuant to this bill.

II. Present Situation:

C-51 Reservoir Project

The C-51 reservoir project is a proposed water storage facility located in western Palm Beach County, on lands that are currently a rock mine owned by Palm Beach Aggregates, LLC (PBA). The project consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities, while also providing environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.¹ The project currently exists in two phases: Phase I, for which the mining operation is complete, and a consumptive use permit and an environmental resource permit have been issued; and Phase II, which is still in the conceptual stages.²



¹ Section 373.4598(9)(a), F.S.; See Palm Beach County, *Lake Worth Lagoon Management Plan Revision*, 68 (2008), available at <http://www.lwli.org/pdfs/LWLMP.pdf> (last visited Jan. 16, 2019). Discharges from the C-51 Canal into the Lake Worth Lagoon account for approximately 50 percent of the freshwater inflows into the lagoon.

² South Florida Water Management District, *Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1*, 1–2, available at <https://www.sfwmd.gov/sites/default/files/documents/C-51%20Reservoir%20Ph%201.pdf> (last visited Jan. 16, 2019); South Florida Water Management District, *Lower East Coast Water Supply Plan Update, Planning Document*, 188–190 (2018), available at https://www.sfwmd.gov/sites/default/files/documents/2018_lec_plan_planning_doc.pdf (last visited Jan. 16, 2019).

Phase I of the project will provide approximately 14,000 acre-feet of water storage and will be connected hydraulically to the adjacent L-8 Flow Equalization Basin, which is part of SFWMD's regional system for conveying and managing water.³ SFWMD has designated Phase I as a pilot alternative water supply project, and the project is located in the Lower East Coast Regional Planning Area, in a restricted allocation area.⁴ Water from Phase I will be conveyed via coordinated operation of canal systems to individual utility wellfields to provide direct aquifer recharge.⁵ Phase I will capture and store excess stormwater runoff, and reduce freshwater discharges from the C-51 Canal into the Lake Worth Lagoon on the east coast, while increasing available water supply for consumptive uses.⁶ The project will provide 35 million gallons of water per day (mgd) for public water supply.⁷ The estimated cost of constructing the project is approximately \$161 million.⁸ Once funding is secured, the project can be delivered within 24 months.⁹

In February of 2017, SFWMD entered into an Operation and Maintenance Agreement with PBA for Phase I of the C-51 reservoir project.¹⁰ Under the agreement, PBA is responsible for construction of Phase I of the C-51 reservoir project. Since Phase I is dependent on SFWMD's regional system, SFWMD agreed to operate, maintain, repair, replace, and rehabilitate the project. SFWMD must be compensated for these services.¹¹ When PBA has completed the Phase I project, PBA will transfer ownership of the project to C-51 Reservoir, Inc. (C-51 NFP), a Florida not-for-profit corporation.¹² C-51 NFP will be governed by the water supply utilities and other water users who have contracted for capacity in the Phase I project.¹³

Phase II of the C-51 reservoir project is located immediately west of Phase I. Phase II could potentially provide a total of 46,000 acre-feet of water storage, and is estimated to cost a total of approximately \$286 million.¹⁴ Potential uses for Phase II are still being considered.¹⁵

³ Section 373.4598(9)(b), F.S.

⁴ Section 373.037, F.S.; Lower East Coast Water Supply Plan Update, *supra* note 2, at 25.

⁵ Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 1; *See* Lower East Coast Water Supply Plan Update, *supra* note 2, at 189. The water from Phase I will be conveyed and managed through coordination between SFWMD, the Lake Worth Drainage District, and/or other local water control districts.

⁶ Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 1.

⁷ *Id.*

⁸ Lenhart J. Lindahl, P.E., Assistant Executive Director, South Florida Water Management District, Governing Board Meetings, *C-51 Reservoir O&M Agreement*, slide 3 (Feb. 9, 2017), available at <http://my.sfwmd.gov/webapps/publicMeetings/viewFile/10427> (last visited Jan. 16, 2019).

⁹ Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 2.

¹⁰ South Florida Water Management District, Governing Board Monthly Meeting Agenda, *Operation and Maintenance Agreement for Phase 1 of the C-51 Reservoir Project Between the South Florida Water Management District and Palm Beach Aggregates, LLC*, Packet Pg. 77 (2017), available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10423> (last visited Jan. 16, 2019); South Florida Water Management District, *Governing Board Monthly Meeting Minutes*, 7–8 (February 9, 2017), available at <https://apps.sfwmd.gov/webapps/publicMeetings/viewFile/10485> (last visited Jan. 16, 2019).

¹¹ Operation and Maintenance Agreement, *supra* note 10, at Packet Pg. 85.

¹² *Id.* at Packet Pg. 80.

¹³ *Id.*

¹⁴ Section 373.4598(9)(b), F.S.; Lindahl, *supra* note 8, at slide 3.

¹⁵ *See* Brian J. Accardo, General Counsel, South Florida Water Management District, Governing Board Meetings, Videos, *Constructing the Senate Bill 10 Reservoirs: Opportunities and Challenges in 2019* (Nov. 8, 2018), available at <http://sfwmd.igm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1878&Format=Agenda> (last visited Jan. 15, 2019). The presentation discussing Phase II of the C-51 reservoir project begins around 1:16:00.

In 2017, the state passed a number of provisions pertaining to the C-51 reservoir in Senate Bill 10.¹⁶ For Phase II of the C-51 reservoir project, SFWMD is authorized to negotiate with the owners of the C-51 reservoir project site for the acquisition of the project or to enter into a public-private partnership.¹⁷ SFWMD is authorized to acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the district or the state as necessary to implement Phase II of the project.¹⁸ The state and SFWMD are authorized to consider potential swaps of land that is owned by the state or SFWMD to achieve an optimal combination of water quality and water storage.¹⁹ SFWMD is prohibited from exercising eminent domain for the purpose of implementing the C-51 reservoir project.²⁰

If state funds are appropriated for Phase I or Phase II of the C-51 reservoir project, state law requires that:

- SFWMD must operate the reservoir to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries in addition to providing relief to the Lake Worth Lagoon;
- Water made available by the reservoir must be used for natural systems in addition to any allocated amounts for water supply; and
- Any water received from Lake Okeechobee may not be made available to support consumptive use permits.²¹

Phase I of the C-51 reservoir project is authorized to be funded through specific appropriation or through the water storage facility revolving loan fund, as provided in s. 373.475, F.S.²² Phase II of the C-51 reservoir project is authorized to be funded using Florida Forever bonds, pursuant to the water storage revolving loan fund, as a project component of the Comprehensive Everglades Restoration Program, or pursuant to s. 375.041(3)(b)4., F.S.²³

In 2017, the state authorized a \$30 million loan to implement Phase I of the C-51 reservoir project.²⁴ The loan would be administered through the water storage facility revolving loan fund, which allows DEP to provide funding assistance to local governments or water supply entities for the development and construction of water storage facilities.²⁵ The loan is to be repaid from the proceeds of the sale of unreserved capacity in the water storage facility, or other appropriate payment, at time of receipt. The loan is required to have a 30-year term, may be prepaid at any time, and accrues interest until repayment. The loan is secured by a first mortgage lien on the water storage facility and a collateral assignment of unreserved capacity as adequate security for the loan. The loan does not reserve for use by the state or SFWMD any capacity authorized pursuant to the consumptive use permit for Phase I of the C-51 reservoir.²⁶

¹⁶ Chapter 2017-10, s. 3, Laws of Fla.

¹⁷ Section 373.4598(9)(c), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at (d).

²² *Id.* at (e).

²³ *Id.*

²⁴ Chapter 2017-10, s. 12, Laws of Fla.

²⁵ Section 373.475, F.S.

²⁶ Chapter 2017-10, s. 12, Laws of Fla.

Through capacity allocation agreements between PBA and public water utilities or other water users, participants can contribute a pro rata share of the capital costs, and operating and maintenance costs, in exchange for a contractual allocation of the permitted storage capacity in the Phase I project as an alternative water supply.²⁷ As of fall 2018, four utilities have entered into capacity allocation agreements with PBA: Broward County, the City of Sunrise, the City of Dania Beach, and the City of Hallandale Beach.²⁸ These agreements cover a total of 13 mgd of the available 35 mgd in Phase I.²⁹

Restricted Allocation Areas

The term “restricted allocation area” is defined as an area within a water supply planning region of SFWMD, the Southwest Florida Water Management District, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for a planning period of at least 20 years, and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water.³⁰ Florida law authorizes water management districts to designate and implement alternative water supply projects within restricted allocation areas.³¹

Due to concerns regarding water availability, SFWMD has declared the Lake Okeechobee Service Area a restricted allocation area.³² Therefore, additional restrictions apply when allocating surface water derived from the Lake Okeechobee Waterbody for consumptive use within the Lake Okeechobee Basin. This rule is a component of the recovery strategy for minimum flows and levels for Lake Okeechobee, as set forth in Chapter 40E-8 of the Florida Administrative Code, to address lower lake management levels and storage under the U.S. Army Corps of Engineers’ Lake Okeechobee Regulation Schedule.³³

The subsection of SFWMD’s permit applicant’s handbook titled Lower East Coast Regional Water Availability also establishes restricted allocation areas.³⁴ As a component of the recovery

²⁷ Broward County, *Agreement for Capacity Allocation in Phase 1 of the C-51 Reservoir*, 2 (2017), available at http://cragenda.broward.org/docs/2017/CCCM/20170502_537/24471_2017-04-26%20C-51%20Capacity%20Allocation%20Agreement%20-%20AI%2024471.pdf (last visited Jan. 10, 2019); See Broward County, *County Commission, Meeting Agendas, Meeting of May 2nd, 2017*, http://cragenda.broward.org/agenda_publish.cfm?id=&mt=ALL&get_month=5&get_year=2017&dsp=ag&seq=535 (last visited Jan. 16, 2019); See generally City of Hallandale Beach, *Agreement for Capacity Allocation in Phase 1 of the C-51 Reservoir*, (2018), available at http://apps.sfwmd.gov/entsb/docdownload?object_id=0900eeea8aac3958 (last visited Jan. 10, 2019).

²⁸ Lower East Coast Water Supply Plan Update, *supra* note 2, at 189.

²⁹ *Id.*

³⁰ Section 373.037(1)(c), F.S.

³¹ Section 373.037, F.S.

³² South Florida Water Management District, *Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District*, 63 (Sept. 7, 2015), available at https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf (last visited Jan. 15, 2019).

³³ *Id.*

³⁴ *Id.* at 55; Alternative Water Supply Pilot Project Designation Request – C-51 Reservoir Phase 1, *supra* note 2, at 1. The Lower East Coast Regional Water Availability Rule applies to Phase I.

strategy for the minimum flows and levels for the Everglades and the Northwest Fork of the Loxahatchee River, additional restrictions have been adopted for the permitted allocations of water use withdrawals. These restrictions assist in implementing the objective of SFWMD to ensure that water necessary for Everglades restoration and the restoration of the Loxahatchee River Watershed is not allocated for consumptive use upon permit renewal or modification.³⁵

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 \$100.³⁶

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.³⁷

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

³⁵ *Id.*

³⁶ *See* ss. 201.02 and 201.08, F.S.

³⁷ FLA. CONST. art. X, s. 28(b)(1).

- Section 375.041, F.S., to designate the LATF within DEP as the trust fund to serve as the constitutionally mandated depository for the percentage of documentary stamp tax revenues.³⁸

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:
 - 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; and
 - 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.
 - 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.³⁹

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. 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.⁴⁰

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.⁴¹ The cases were consolidated and a hearing was held

³⁸ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

³⁹ Section 375.041(3)-(4), F.S.

⁴⁰ 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 Jan. 15, 2019).

⁴¹ *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.).

in June of 2018.⁴² 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 access to conservation lands acquired after the effective date of the amendment.⁴³ The decision described how LATF funds may be used, and ruled numerous appropriations from 2015 and 2016 unconstitutional.⁴⁴ The case was appealed and is currently in the First District Court of Appeal.⁴⁵

III. Effect of Proposed Changes:

Section 1 amends s. 373.4598(9), F.S., to revise the following provisions that are currently restricted to Phase II of the C-51 project to apply to all phases of the project:

- SFWMD may acquire any portion of the C-51 project not already committed to utilities for alternative water supply; and
- SFWMD may acquire land near the C-51 reservoir project to implement any part of the project.

The bill also requires the operation of Phase I to be in accordance with any operation and maintenance agreement adopted by SFWMD. At present, this would require SFWMD to operate the C-51 reservoir project in accordance with the Operation and Maintenance Agreement that SFWMD entered into with PBA in February of 2017. In addition, the existing requirement for the reservoir project to be operated in a way that reduces regulatory releases from Lake Okeechobee is relaxed by clarifying that the C-51 reservoir need only be operated to reduce such regulatory releases to the extent practicable. This gives greater flexibility to SFWMD in its operation of the project. It is not yet fully known how the C-51 reservoir project's functions will impact regulatory releases from Lake Okeechobee.

The bill clarifies that water from the C-51 reservoir project would be available for use in natural systems in addition to any "permitted," rather than "allocated," amounts for water supply, so that SFWMD would make deliveries consistent with district rules and permits. Also, water from the C-51 reservoir project received from Lake Okeechobee would be available to support consumptive use permits, but only if such use is in accordance with SFWMD rules.

SFWMD would be authorized to enter into a capacity allocation agreement with PBA, and receive a pro rata share of unreserved capacity in Phase I. SFWMD would have authority to request that DEP waive repayment of any or all of the \$30 million loan the state authorized in 2017 for the implementation of Phase I, if a loan for Phase I is issued through the water storage facility revolving loan fund. DEP can authorize such a waiver if DEP determines that reasonable value has been received. SFWMD would not be responsible for repaying any portion of a loan that is waived in such a manner.

⁴² *Florida Wildlife Federation, Inc. v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2nd Cir. Ct. June 28, 2018).

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 7–8.

⁴⁵ *Oliva v. Florida Wildlife Federation, Inc.*, 1D18-3141 (Fla. 1st Dist. Ct. App.).

Section 2 amends s. 375.041(3)(b)4., F.S., authorizing certain allocation of LATF funding to the entire C-51 reservoir project, where currently the requirements only apply to Phase II of the project.

An appropriation from the 2018-2019 fiscal year is deleted from the statute as a technical change.

Section 3 provides that the bill takes 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:

This bill expands the uses of the LATF to authorize funding for all phases of the C-51 reservoir project. The 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:

Depending on whether DEP approves of a waiver of any or all of the loan amount and what reasonable value DEP deems appropriate, the loan recipient may receive a positive fiscal impact. The owners of any portions of the C-51 reservoir project, or any lands near the project, may be impacted if SFWMD decides to acquire a portion of the project or lands near the project.

C. **Government Sector Impact:**

If any or all of the loan is waived, DEP will not receive repayment of up to \$30 million for the water storage facility revolving loan fund depending on what reasonable value DEP deems appropriate.

VI. Technical Deficiencies:

Art. II, s. 6 of the State Constitution requires that each subject be briefly expressed in the title. The title states that the revision to s. 375.041, F.S. is “clarifying.” However, the revision expands the uses of the LATF to all phases of the project. Changing the title to include the following language would address this issue: “expanding the authorization for certain distributions from the Land Acquisition Trust Fund to include the entire C-51 reservoir project.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.4598, 375.041.

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.