

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: SB 2508 Environmental Resources

SPONSOR(S): Appropriations

TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 99 Y's

8 N's

GOVERNOR'S ACTION: Vetoes

SUMMARY ANALYSIS

SB 2508 passed the House on March 14, 2022, as amended by the conference committee.

The bill makes the following changes to provisions governing environmental resources:

- Requires the South Florida Water Management District (SFWMD) to certify before the release of state funds for the implementation of certain project components or plans related to the Central and Southern Florida Project that its recommendations to the United States Army Corps of Engineers are consistent with all district programs and plans.
- Requires the SFWMD to submit to the secretary of the Department of Environmental Protection (DEP) for review and approval any modifications to the district's annual work plan included in its consolidated annual report.
- Requires water shortages within the Lake Okeechobee Region to be managed pursuant to certain rules and requires any change to such rules to be ratified by the Legislature; however, the rules must take effect if the Legislature fails to act during the next regular legislative session.
- Authorizes DEP to enter into agreements with public entities to expedite evaluation of environmental resource permits and Section 404 permits related to a project or activity that serves a public purpose.
- Expands the Rural and Family Lands Protection Program within the Department of Agriculture and Consumer Services (DACS) to authorize DACS to purchase full fee interests in land.
- Transfers, through a type II transfer, the William J. "Billy Joe" Rish Recreational Park from the Agency for Persons with Disabilities to DEP.
- Reenacts a cost-share program for agricultural irrigation systems.

The bill conforms to the Fiscal Year 2022-2023 General Appropriations Act. See *Fiscal Comments*.

The effective date of the bill was July 1, 2022, except as otherwise provided; however, this bill was vetoed by the Governor on June 8, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

State Water Resource Plan

Chapter 373, F.S., authorizes the Department of Environmental Protection (DEP) to collaborate with the South Florida Water Management District (SFWMD) to implement the comprehensive plan, which is defined as the recommended comprehensive plan contained within the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, April 1999” (Restudy) and submitted to Congress in July 1999. This comprehensive plan is known as the Comprehensive Everglades Restoration Plan (CERP). DEP must approve each project component before it is submitted to Congress. Prior to the release of state funds for the implementation of the comprehensive plan, DEP approval must be based on whether the SFWMD complied with s. 373.1501(5), F.S., which requires the district, in part, to:

- Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs;
- Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed; and
- Consistent with ch., 373, F.S., the purposes for the Restudy, and other applicable federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment.

Consolidated Water Management District Annual Report

There are five regional water management districts (WMDs) set up largely by hydrologic boundaries: the Northwest Florida WMD, Suwannee River WMD, St. Johns River WMD, Southwest Florida WMD, and South Florida WMD. Each WMD is governed by a board appointed by the Governor and confirmed by the Senate. DEP also provides general oversight of WMDs at the state level.

The WMDs are required to submit a Consolidated Water Management District Annual Report by March 1, annually, to the Office of Economic and Demographic Research, DEP, the Governor, the President of the Senate, and the Speaker of the House of Representatives on the management of water resources. The report must contain the following elements, as appropriate to the WMD:

- A district water management plan annual report or an annual work plan report on the implementation of the strategic plan for the previous fiscal year, addressing success indicators, deliverables, and milestones.
- The department-approved minimum flows and minimum water levels annual priority list and schedule required by s. 373.042(3), F.S.
- The annual five-year capital improvements plan required by s. 373.536(6)(a)3, F.S.
- The alternative water supplies annual report required by s. 373.707(8)(n), F.S.
- The final annual five-year water resource development work program required by s. 373.536(6)(a)4, F.S.
- The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7), F.S.
- The mitigation donation annual report required by s. 373.414(1)(b)2, F.S.
- Information on all projects related to water quality or water quantity as part of a five-year work program.

- A grade for each watershed, water body, or water segment in which a project listed under the five-year work program is located representing the level of impairment and violations of adopted minimum flow or minimum water levels.

South Florida Water Management District

The SFWMD manages the water resources in the southern half of the state, covering 18,000 square-miles in all of part of 16 counties from Orlando to the Florida Keys. The SFWMD is responsible for the operation and maintenance of a multi-purpose water management system comprising approximately 2,179 miles of canals and 2,131 miles of levees/berms, 89 pumping stations, 918 water control structures and weirs, and 621 project culverts, including the Central and Southern Florida Project (C&SF Project).¹

The C&SF Project was first authorized by Congress in 1948 and is a multi-purpose project that includes flood control, regional water supply for agricultural and urban areas, prevention of salt water intrusion, water supply to Everglades National Park, preservation of fish and wildlife, recreation, and navigation.² The primary system includes about 1,000 miles each of levees and canals, 150 water control structures, and 16 major pump stations.³ While the C&SF Project has performed its authorized functions well, the project has also had major unintended impacts to the natural system, including:

- Extreme fluctuations in high and low water levels in Lake Okeechobee that have a major adverse impact on the lake's littoral and pelagic zones and fish and wildlife habitats;
- Extreme fluctuations between too much and too little freshwater discharge into the Caloosahatchee and St. Lucie estuaries that result in detrimental salinity conditions and physical alterations of fish and wildlife habitat;
- Detrimental hydrologic conditions in freshwater wetland habitats that cause major adverse impacts on plant and animal communities of the native Everglades; and
- Unsuitable freshwater flows to Florida and Biscayne bays and Lake Worth Lagoon that adversely impact salinity and physically alter fish and wildlife habitat.⁴

In light of the unintended consequences of the C&SF project, the federal Water Resources Development Act of 1996 required the United States Army Corps of Engineers (corps) to reevaluate the performance and impacts of the project and to provide recommended improvements and modifications to restore the south Florida ecosystem and to protect the water quality in, and reduce the loss of, freshwater from the Everglades and Florida Bay. The corps, in coordination with the state, developed the Central and Southern Florida Project Comprehensive Review Study which provided a recommended plan for Everglades restoration. The CERP was approved by Congress in the Water Resources Development Act of 2000. The SFWMD is the local sponsor to a majority of the CERP projects.

Water Shortage Plan

The Water Shortage Plan is intended to protect the SFWMD's water resources from harm; to assure equitable distribution of available water resources among all water users during water shortages; and to provide advance knowledge of the means by which water apportionments and reductions will be made during times of shortage and to promote security for water use permittees.⁵

¹ SFWMD, *Fiscal Year 2022-23 Preliminary Budget Submission*, https://www.sfwmd.gov/sites/default/files/South_Florida_Water_Management_District_FY2022-2023_Preliminary_Budget_January_14_2022.pdf (last visited March 11, 2022).

² SFWMD, *Central and Southern Florida Project Comprehensive Review Study, Final Integrated Feasibility Report and Programmatic Environmental Impact Statement*, available at https://www.sfwmd.gov/sites/default/files/documents/CENTRAL_AND_SOUTHERN_FLORIDA_PROJECT_COMPREHENSIVE_REVIEW_STUDY.pdf (last visited March 11, 2022).

³ *Id.*

⁴ *Id.*

⁵ Fla. Admin. Code R. 40E-21.011.

The Water Shortage Plan directs the SFWMD to periodically evaluate water conditions within the SFWMD to determine if a water shortage should be declared.⁶ If the SFWMD determines that there is a possibility that insufficient water will be available to meet estimated present and anticipated user demands from that source, or to protect water resources from serious harm, the SFWMD may declare a water shortage for the affected source class.⁷

The Water Shortage Plan groups surface water use basins by region, including the Lake Okeechobee Surface Water Use Basin, which includes the following sub basins: the Everglades Agricultural Area Water Use Basin, the Caloosahatchee River Water Use Basin, the St. Lucie River Water Use Basin, and the Lakeshore Perimeter Water Use Basin.⁸ The Regional Water Shortage Plan for the Lake Okeechobee Region identifies water levels within Lake Okeechobee that are used to determine whether the district must declare a water shortage.⁹

Lake Okeechobee Regulation Schedule

The corps, in conjunction with the SFWMD, manages Lake Okeechobee water levels. After back-to-back hurricanes in South Florida in 2004 and 2005 and the devastation in Louisiana caused by Hurricane Katrina, the corps launched a major effort to rehabilitate the Herbert Hoover Dike in light of concerns regarding its structural integrity. Additionally, the Lake Okeechobee Regulation Schedule Study was initiated to design an alternative schedule to lower the normal operating limits of the lake.¹⁰

As a result of the study, the 2008 Lake Okeechobee Regulation Schedule (LORS) was implemented. The revised schedule lowered the maximum stage of the lake from 18.5 ft. to 17.25 ft. with the primary goal of maintaining the lake between 12.5 ft. and 15.5 ft. The areas most affected by a change to the lake's regulation schedule were the lake itself, particularly the littoral and marsh areas of the lake, and the St. Lucie and Caloosahatchee estuaries.¹¹

Additionally, because the LORS high management band is 1.00 to 1.75 ft. lower than the previous schedule, the revision to the schedule resulted in a loss of storage ranging from 460,000 to 800,000 acre-feet depending on the time of year.¹² Additionally, the loss in storage affected water supply users and led to a reduced level of certainty for surface water users in the Lake Okeechobee Region.¹³

The corps began development of a new Lake Okeechobee System Operation Manual (LOSOM) to reevaluate and define operation for the Lake Okeechobee regulation schedule taking into consideration added water storage capacity within the lake as a result of the Herbert Hoover Dike rehabilitation, as well as improvements made around the lake through various CERP project components.¹⁴ Such additional water is expected to return the lake to a minimum flow and prevention strategy, enhance the level of certainty for existing permitted users receiving less than a 1-in-10-year level of certainty, and support environmental objectives.¹⁵

⁶ Fla. Admin. Code R. 40E-21.221.

⁷ Fla. Admin. Code R. 40E-21.231.

⁸ Fla. Admin. Code R. 40E-21.631.

⁹ *Id.*

¹⁰ Corps, *Lake Okeechobee Regulation Schedule, Final Supplemental Environmental Impact Statement*, (Nov. 2007), available at https://www.saj.usace.army.mil/Portals/44/docs/h2omgmt/LORSdocs/ACOE_STATEMENT_APPENDICES_A-G.pdf (last visited March 11, 2022).

¹¹ *Id.*

¹² The National Academies of Sciences, Engineering, and Medicine, *Progress Toward Restoring the Everglades: The Sixth Biennial Review*, (2016), available at <https://www.nap.edu/catalog/23672/progress-toward-restoring-the-everglades-the-sixth-biennial-review-2016> (last visited March 11, 2022).

¹³ Corps, *LOWRP Final Integrated Project Implementation Report and Environmental Impact Statement*, (August 2020), available at <https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/15175> (last visited March 11, 2022).

¹⁴ Corps, *Lake Okeechobee System Operating Manual (LOSOM), a component of the Central & Southern Florida (C&SF) System Operating Plan*, <https://www.saj.usace.army.mil/LOSOM/> (last visited March 11, 2022).

¹⁵ Corps, *LOWRP Final Integrated Project Implementation Report and Environmental Impact Statement*, (August 2020), available at <https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/15175> (last visited March 11, 2022).

Board of Trustees of the Internal Improvement Trust Fund

The Board of Trustees of the Internal Improvement Trust Fund (board) consists of the Governor as chair, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture.¹⁶ All lands held in the name of the board must continue to be held in trust for the use and benefit of the people of the state.¹⁷ The board holds title over three million acres of conservation land.¹⁸

Florida Forever

As a successor to Preservation 2000 (P2000), the Legislature created the Florida Forever program in 1999 to be Florida's premier conservation and recreation lands acquisition program. More than 2.6 million acres have been purchased under the Florida Forever and P2000 programs.¹⁹ Florida Forever encompasses a wide range of goals, including environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land by acquisition of conservation easements, including rural-lands-protection easements acquired by the Department of Agriculture and Consumer Services (DACS) pursuant to s. 570.71, F.S.²⁰ Since the inception of the Florida Forever program in July 2001, the state has purchased over 899,510 acres of land with over \$3.3 billion in funding.²¹

Rural and Family Lands Protection Program

The Rural and Family Lands Protection Program (RFLPP) within DACS is an agricultural land preservation program designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements.²² DACS, on behalf of the board, may allocate funds to acquire perpetual, less-than-fee interests in land, to enter into agricultural protection agreements, and to enter into resource conservation agreements for the following purposes:

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or
- Protection of agricultural lands threatened by conversion to other uses.²³

Environmental Resource Permits

DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters.²⁴ ERP

¹⁶ Art. IV, s. 4, Fla. Const.

¹⁷ Section 253.001, F.S.

¹⁸ Department of Environmental Protection, *State of Florida Lands and Facilities Inventory Search* (data as of March 10, 2022), available at [https://prodenv.dep.state.fl.us/DsIPi/stateLandPiChart.action?agencyName=Department%20of%20Environmental%20Protection%20\(BOT\)](https://prodenv.dep.state.fl.us/DsIPi/stateLandPiChart.action?agencyName=Department%20of%20Environmental%20Protection%20(BOT)) (last visited March 11, 2022).

¹⁹ Department of Environmental Protection, *Florida Forever*, available at <https://floridadep.gov/lands/environmental-services/content/florida-forever> (last visited March 11, 2022).

²⁰ Department of Environmental Protection, *2021 Florida Forever Five-Year Plan*, available at https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_2021Abstract_2.pdf (last visited March 11, 2022).

²¹ Department of Environmental Protection, *Florida Forever Funding Status as of January 31, 2022*, available at https://floridadep.gov/sites/default/files/2022_01_SUM.pdf (last visited March 11, 2022).

²² Department of Agriculture & Consumer Services, *Rural and Family Lands Protection Program*, available at <https://www.fdacs.gov/Consumer-Resources/Protect-Our-Environment/Rural-and-Family-Lands-Protection-Program> (last visited March 11, 2022).

²³ Section 570.71, F.S.

²⁴ South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited March 11, 2022).

applications are processed by either DEP or one of the state's WMDs in accordance with the division of responsibilities specified in operating agreements between DEP and the WMDs.²⁵

Environmental Impact Mitigation

Mitigation Regulations

Mitigation serves as the third step in a sequence of permitting actions²⁶ that must be followed to offset the adverse impacts to surface waters resulting from the construction activities allowed by an ERP. When evaluating a proposed project for permitting, the Clean Water Act first requires DEP, as the permitting agency, to determine if the project would have an adverse impact. If the project has an adverse impact and there is a practicable alternative, the project must avoid the adverse impacts altogether and be reconfigured using the alternative. If impacts cannot be avoided, appropriate and practicable steps must be taken to minimize the impact. If any unavoidable impacts remain, they require appropriate and practicable mitigation.²⁷

Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof and is accomplished by providing onsite mitigation, offsite mitigation, or purchasing mitigation credits from permitted mitigation banks. The ecological benefits of mitigation compensate for the functional loss resulting from the ERP impact.²⁸ The Uniform Mitigation Assessment Method (UMAM) provides a standardized procedure for assessing the ecological functions provided by surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. The UMAM evaluates functions by considering an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag, and mitigation risk. The UMAM is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.²⁹

Mitigation Banking

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. A mitigation bank consists of a wetland, stream, or other aquatic resource area that has been restored, established, or preserved to offset such environmental impacts. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit. The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a WMD. Mitigation banks are authorized by a state permit, which is issued by either a WMD or DEP depending on the location of the bank and the activity it mitigates, and by the corps.³⁰

William J. "Billy Joe" Rish Recreational Park

The Billy Joe Rish Recreational Park is a 100-acre park in Cape San Blas, Florida that is designated to provide recreational opportunities for people with disabilities, their families, and their caregivers. The park sustained heavy damage from Hurricane Michael and partially reopened for access to the beach and bay on January 31, 2022.

²⁵ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited March 11, 2022).

²⁶ 40 C.F.R. § 230.

²⁷ EPA, *Wetlands Compensatory Mitigation*, available at https://www.epa.gov/sites/production/files/2015-08/documents/compensatory_mitigation_factsheet.pdf (last visited March 11, 2022).

²⁸ DEP, *Mitigation*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation> (last visited March 11, 2022).

²⁹ DEP, *The Uniform Mitigation Assessment Method (UMAM)*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment> (last visited March 11, 2022).

³⁰ DEP, *Mitigation and Mitigation Banking*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited March 11, 2022).

Agricultural Water Conservation Program

DACS is required to create an agricultural water conservation program. As part of the program, DACS is required to establish a cost-share program for irrigation system retrofit and application of mobile irrigation laboratory evaluations and for water conservation and water quality improvements. This cost-share program requirement has been included in the General Appropriations Act Implementing Bill since 2019. Currently, there are eight DACS-funded agricultural mobile irrigation labs providing service to agricultural producers throughout the state.³¹

Effect of the Bill

The bill requires each budget amendment requesting the release of state funds for the implementation of a CERP project component or a water control plan or regulation schedule required for the operation of the C&SF project to be contingent upon the submission of the SFWMD certification required in s. 373.1501(7), F.S. The bill provides that notwithstanding s. 373.026(8)(b), F.S., the release of state funds is authorized for the Everglades Agricultural Area reservoir project, the Lake Okeechobee Watershed project, the C-43 West Basin Reservoir Storage project, and the Indian River Lagoon-South project.

The bill requires the SFWMD to submit to the secretary of DEP for review and approval any modifications to the district's annual work plan included in its consolidated annual report.

The bill requires the SFWMD to certify to the President of the Senate and the Speaker of the House of Representatives, with a copy to DEP, in the Consolidated Water Management District Annual Report that its recommendations made to the corps during the previous 12 months when developing or implementing water control plans or regulation schedules are consistent with all district programs and plans.

The bill provides legislative findings that the Lake Okeechobee Regulation Schedule and any operating manual must balance the different interests across the system, including, but not limited to, safeguarding the water supply to society and the environment, reducing high-volume discharges to coastal estuaries, and providing for flood control.

The bill requires water shortages within the Lake Okeechobee Region to be managed in accordance with Chapters 40E-21 and 40E-22, Florida Administrative Code. The bill prohibits any changes to such rules from taking effect until ratified by the Legislature and presented to the Governor, or if the Legislature fails to act and present to the Governor during the next regular legislative session, such rules will take effect after the next regular legislative session and must otherwise comply with s. 120.541, F.S.

The bill authorizes DEP to enter into an agreement or a contract with a public entity, including a utility regulated under ch. 366, F.S., to expedite the evaluation of ERPs or section 404 permits related to a project or activity that serves a public purpose. Any agreement or contract entered into must be effective for at least three years, and DEP is required to ensure that any agreement or contract entered into does not affect impartial decision-making, either substantively or procedurally. All active agreements must be made available on DEP's website. The bill authorizes DEP to receive funds pursuant to an agreement or contract and requires any such funds to be deposited into the Grants and Donations Trust Fund.

The bill expands the RFLPP to include the acquisition of land or related interests in land. The bill adds the preservation and protection of natural and working landscapes and the preservation, protection, and enhancement of wildlife corridors and linkages to the purposes for which lands may be acquired under the program.

³¹ DACS, *Mobile Irrigation Labs*, available at <https://www.fdacs.gov/Agriculture-Industry/Water/Mobile-Irrigation-Labs> (last visited March 11, 2022).

The bill clarifies rights or interests in lands must include a prohibition on activities that detrimentally affect the natural hydrology of the land. The bill prohibits easements purchased under the program from, at the request of the landowner, restricting a landowner's ability to use, or authorize the use of by third parties, specific parcels of land within a conservation easement for conservation banking or recipient sites for imperiled species or wetlands mitigation banking, provided the specific parcels of land include wetland or upland areas that may be enhanced, restored, or created under the conditions of a wetlands mitigation permit.

The bill removes the requirement that DACS give preference to ranch and timber lands when considering priorities for the use of land acquisition funding.

The bill provides for a Type II transfer of William J. "Billy Joe" Rish Recreational Park from the Agency for Persons with Disabilities (APD) to DEP. The bill requires any binding contract or interagency agreement existing before July 1, 2022, between APD and any other agency, entity, or person relating to the park to continue as binding for the remainder of the term of the contract or agreement.

The bill reenacts s. 570.93, F.S., to require DACS to establish an agricultural water conservation program that includes a cost-share program for irrigation system retrofit and application of mobile irrigation laboratory evaluations, and for water conservation and water quality improvement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There may be an indeterminate positive fiscal impact to DEP from increased revenues if DEP enters into an agreement or contract to expedite ERP or section 404 permits.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill conforms to the Fiscal Year 2022-2023 General Appropriations Act, which includes the following appropriations:

- \$300 million for the RFLPP in DACS.
- \$3.3 million and 33 full-time equivalent positions for environmental permitting.
- \$1.0 billion for Everglades restoration projects.
- \$7.5 million and four full-time equivalent positions for the Billy Joe Rish Recreational Park.