

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 320

INTRODUCER: Senator Harrell

SUBJECT: Land Acquisition Trust Fund

DATE: February 20, 2023

REVISED: _____

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

I. Summary:

SB 320 appropriates from the Land Acquisition Trust Fund a minimum of the lesser of 7.6 percent¹ of the funds remaining after debt service or \$50 million annually for projects dedicated to the conservation of the Indian River Lagoon. The Department of Environmental Protection (DEP) will use the funds to provide grants for projects that implement the 2008 updated Indian River Lagoon Comprehensive Conservation and Management Plan. Priority must be given to projects for ecosystem monitoring and habitat restoration, septic to sewer conversion, and management of stormwater, freshwater, and agricultural discharges. Grants for septic to sewer conversion and discharge management projects must require a minimum 50 percent local match.

Beginning January 1, 2024, DEP must annually submit a report regarding the projects to the Governor and the Legislature.

II. Present Situation:

The Indian River Lagoon

The Indian River Lagoon (IRL) is a 156-mile-long estuary spanning approximately 40 percent of Florida's east coast.² There are six coastal counties in the IRL watershed: Volusia, Brevard, Indian River, St. Lucie, Martin, and Palm Beach.³ The IRL extends from Ponce de Leon Inlet near New Smyrna Beach in Volusia County to the southern border of Jupiter Inlet in Martin

¹ Approximately \$93 million based on estimates for Fiscal Year 2023-2024.

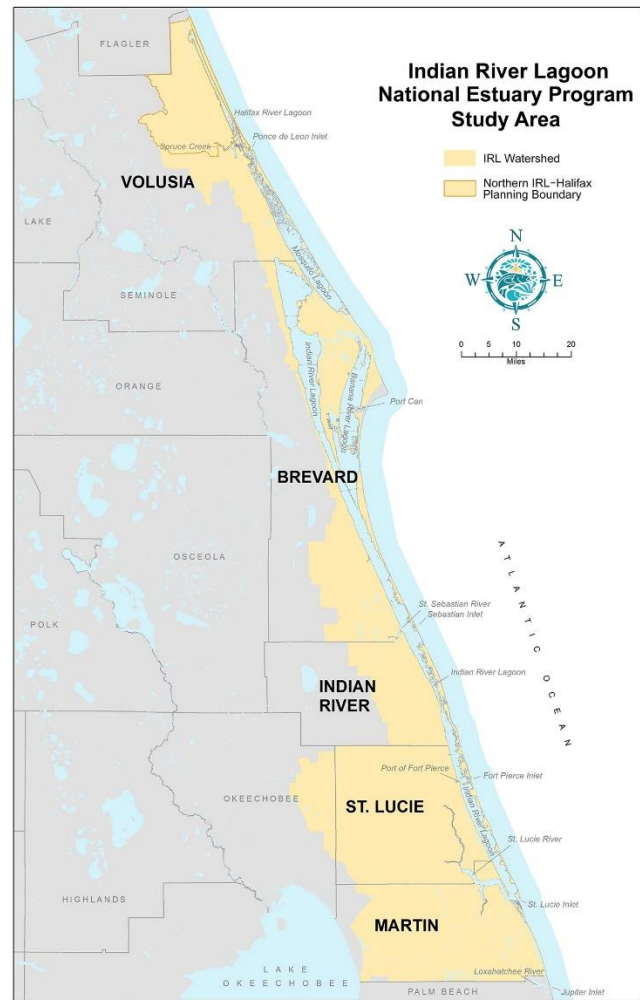
² DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021), available at https://publicfiles.dep.state.fl.us/DEAR/BMAP/IndianRiverLagoon/BMAP_Documents/2021_IRL_BMAP_Final/CIRL/Final_CIRL_BMAP_02102021.pdf; IRLNEP, *Importance*, <https://onelagoon.org/importance/> (last visited Feb. 15, 2023).

³ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 14 (2021).

County.⁴ There are three interconnected lagoons in the IRL basin: Mosquito Lagoon, Banana River Lagoon, and Indian River Lagoon.⁵ Seventy-one percent of its area and nearly half its length is within Brevard County.⁶

The IRL is considered the most biologically diverse estuary in North America.⁷ It is home to more than 2,000 species of plants, 600 species of fish, 300 species of birds, and 53 threatened or endangered species.⁸ In 2014, the estimated annual economic value received from the IRL was approximately \$7.6 billion, around \$1.57 billion of which was attributable to recreation and visitor-related activity.⁹ Industry groups directly influenced by the IRL supported nearly 72,000 jobs.¹⁰

The IRL ecosystem has been harmed by human activities in the region. Stormwater runoff from urban and agricultural areas, wastewater treatment facility discharges, canal discharges, septic systems, animal waste, and fertilizer applications have led to harmful levels of nutrients and sediments



⁴ *Id.*

⁵ DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 1 (Mar. 2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>.

⁶ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update*, xi (Feb. 2023)[hereinafter *Save Our Lagoon*], available at <https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan>. The map on this page shows the IRL watershed. IRLNEP, *IRLWatershedMap_With PlBound*, https://onelagoon.org/irlwatershedmap_withplbound/# (last visited Feb. 17, 2023).

⁷ DEP, Basin Management Action Plan, *Indian River Lagoon Basin Central Indian River Lagoon*, 45 (2021), available at <https://floridadep.gov/sites/default/files/central-irl-bmap.pdf>; An estuary is a partially enclosed, coastal waterbody where freshwater from rivers and streams mixes with saltwater from the ocean. Estuaries are among the most productive ecosystems on earth, home to unique plant and animal communities that have adapted to brackish water: freshwater mixed with saltwater. U.S. EPA, *What Is An Estuary?*, <https://www.epa.gov/nep/basic-information-about-estuaries> (last visited Feb. 15, 2023); NOAA, *What Is An Estuary?*, <https://oceanservice.noaa.gov/facts/estuary.html> (last visited Feb. 15, 2023).

⁸ Indian River Lagoon Species Inventory, *Biodiversity*, https://www.irlspecies.org/misc/Total_Biodiv.php#:~:text=Home%20to%20over%204%2C200%20species%20of%20plants%2C%20birds%2C,species%20of%20fish%20and%20370%20species%20of%20birds (last visited Feb. 15, 2023).

⁹ East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council, *Indian River Lagoon Economic Valuation Update*, vi, ix (Aug. 26, 2016), available at https://files.tcrpc.org/portfolio%20of%20work/Economic%20Development/IRL%20Valuation/FinalReportIRL08_26_2016.pdf.

¹⁰ *Id.* at ix.

entering the lagoon.¹¹ These pollutants create cloudy conditions, feed algal blooms, and lead to muck accumulation, all of which negatively impact the seagrass that provides habitat for much of the IRL's marine life.¹² During the 2011 "Superbloom," intense algal blooms of phytoplankton occurred throughout most of the IRL, lasting for seven months and resulting in massive losses of seagrass that has yet to fully recover.¹³ There have also been recurring brown tides; unusual mortalities of dolphins, manatees, and shorebirds; and large fish kills due to low dissolved oxygen from decomposing algae.¹⁴ Brown tide is a type of algal bloom dominated by a brown, microscopic marine algae, which can be harmful to ecosystems in high concentrations, and was first documented in state waters in 2012.¹⁵ The St. Lucie Estuary is a major tributary to the southern IRL, so freshwater discharges from Lake Okeechobee, which can include toxic cyanobacteria ("blue-green algae"), also impact the IRL.¹⁶

The St. Johns River Water Management District, South Florida Water Management District, and local governments implement projects that address water quality issues in the IRL.¹⁷ Brevard County established the Save Our Indian River Lagoon Project Plan, which outlines local projects to meet water quality targets and improve the health, productivity, aesthetic appeal, and economic value of the IRL.¹⁸ In 2016, Brevard County passed a referendum, approved by 62.4 percent of voters, to authorize the issuance of a half-cent infrastructure sales tax to pay for a portion of the plan.¹⁹ The sales tax will generate an estimated \$542 million over ten years.²⁰

¹¹ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi; Marine Resources Council, *Indian River Lagoon Health Update*, 4-7 (2018), available at <https://savetheirl.org/wp-content/uploads/mrc-report-card-2018-min.pdf>.

¹² Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹³ IRL 2011 Consortium, *Indian River Lagoon 2011 Superbloom - Plan of Investigation*, 2-3 (2012), available at https://www.sjrwmd.com/static/waterways/irl-technical/2011superbloom_investigationplan_June_2012.pdf; Marine Resources Council, *Indian River Lagoon Coastal Community Report Card*, 2,4 (2022), available at <https://savetheirl.org/wp-content/uploads/IRLReportCard2022-opt.pdf>.

¹⁴ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹⁵ SJRWMD, *Renewing the Lagoon - Frequently Asked Questions*, <https://www.sjrwmd.com/waterways/renew-lagoon/#faq-01> (last visited Feb. 15, 2023); FWC, *Effects of Brown Tide in the Indian River Lagoon* (2012), <https://myfwc.com/research/redtide/monitoring/historical-events/brown-tide/> (last visited Feb. 15, 2023).

¹⁶ DEP, Basin Management Action Plan, *St. Lucie River and Estuary Basin*, 15 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/St_Lucie_BMAP_01-31-20.pdf; DEP, Basin Management Action Plan, *Lake Okeechobee*, 14 (2020), available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/BMAP/NEEP_2020_Updates/Lake%20Okeechobee%20BMAP_01-31-20.pdf.

¹⁷ SJRWMD, *The Indian River Lagoon*, <https://www.sjrwmd.com/waterways/indian-river-lagoon/> (last visited Feb. 15, 2023); SFWMD, *Celebrating the Indian River Lagoon-South C-23/24 Stormwater Treatment Area Groundbreaking*, <https://www.sfwmd.gov/news-events/news/celebrating-indian-river-lagoon-south-c-2324-stormwater-treatment-area> (last visited Feb. 15, 2023).

¹⁸ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at xi.

¹⁹ Brevard County Supervisor of Elections, *2016 General Election Official Results*, <https://enr.electionsfl.org/BRE/1616/Summary/> (last visited Feb. 15, 2023); Brevard County, *Save our Indian River Lagoon Project Plan*, <https://www.brevardfl.gov/SaveOurLagoon/ProjectPlan> (last visited Feb. 15, 2023).

²⁰ *Id.*

On January 10, 2023, Governor DeSantis signed Executive Order 23-6, directing the Department of Environmental Protection (DEP) to identify and prioritize strategies and projects to expedite water quality restoration in the IRL.²¹ The executive order instructed DEP to:

- Work with the Legislature to establish the IRL Protection Program and secure at least \$100 million annually for priority projects;
- Coordinate with stakeholders to expand partnerships to identify and prioritize projects for water quality restoration;
- Undertake enhanced water quality monitoring in the IRL to better identify sources of nutrient loading to inform project prioritization and improve water quality in the IRL;
- Take actions to reduce nutrient contributions to the IRL from septic tanks and wastewater facilities, stormwater discharges, and agriculture non-point sources; and
- Support innovative nature-based solutions including living shorelines, freshwater and coastal wetland restoration, and seagrass recovery utilizing strategic propagation and planting efforts.²²

Pollution from Onsite Sewage and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.²³ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.²⁴ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.²⁵ For example, in rural areas and low-density developments, central sewer systems are not cost-effective.²⁶

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater. This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.

OSTDSs account for much of the nitrogen enrichment in groundwater in the IRL watersheds because the six counties adjacent to the IRL rely heavily on OSTDS for wastewater

²¹ Office of the Governor, *Executive Order 23-6*, 6 (Jan. 10, 2023), available at <https://www.flgov.com/wp-content/uploads/2023/01/EO-23-06.pdf>.

²² *Id.* at 7.

²³ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Feb. 2023); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Feb. 10, 2023) (showing the graphic provided in the analysis).

²⁴ *Id.*

²⁵ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/costs-implement-mandatory-statewide-inspection.pdf> (last visited Feb. 10, 2023).

²⁶ *Id.*

management.²⁷ As of 2021, there were approximately 300,000 permitted OSTDSs in the IRL watershed. Indian River and Martin Counties used OSTDSs for over 50 percent of their wastewater management and there were approximately 31,000 septic systems in each county.²⁸ As of 2019, Brevard County, which borders nearly half of the IRL, had an estimated 53,204 OSTDSs and contributed approximately 17,863 pounds per year of total nitrogen from failing OSTDSs.²⁹

The Indian River Lagoon National Estuary Program

The U.S. Environmental Protection Agency's (EPA) National Estuary Program is a community-based program to protect and restore the water quality and ecological integrity of estuaries of national significance.³⁰ Currently, 28 estuaries located along the Atlantic, Gulf, and Pacific coasts and in Puerto Rico are designated as estuaries of national significance. Each National Estuary Program focuses within a study area that includes the estuary and surrounding watershed. Through a process of involving community stakeholders, the 28 National Estuary Programs develop and implement Comprehensive Conservation and Management Plans, which are long-term plans that contain actions to address water quality and living resource challenges and priorities. The National Estuary Program challenges and priorities are defined by local, city, state, federal, private, and non-profit stakeholders.³¹

The IRL National Estuary Program was established in 1990 under the sponsorship of the St. Johns River and South Florida Water Management Districts.³² The program developed the IRL Comprehensive Conservation and Management Plan Update, first published in 1997 and updated in 2008 and 2018.³³ The plan provides goals and action plan outputs regarding water quality, habitats, and living resources within the IRL.³⁴

In 2015, the IRL Council was established to carry out the IRL National Estuary Program.³⁵ The Council includes DEP, the St. Johns River Water Management District, the South Florida Water Management District, Volusia County, Brevard County, St. Lucie County, Martin County, and a collection of local governments known as the Indian River County Lagoon Coalition.³⁶ The goals of the parties to the IRL Council's interlocal agreement are the goals set forth in the amended

²⁷ L.W. Herren, et al., Septic systems drive nutrient enrichment of groundwaters and eutrophication in the urbanized Indian River Lagoon, Florida, *Marine Pollution Bulletin* 172, 2 (2021), available at <https://reader.elsevier.com/reader/sd/pii/S0025326X21009620?token=1384E4307B3A786FC65C7DD3270D91440566F5E2793CAE8F859A2139CF19FE68102D54027EEFF164F8492399C7F65B49&originRegion=us-east-1&originCreation=20230217141616>.

²⁸ *Id.*

²⁹ Tetra Tech, Inc. & Closewaters, LLC, *Save Our Indian River Lagoon Project Plan 2019 Update* at 22-23.

³⁰ 33 U.S.C. s. 1330; U.S. EPA, National Estuary Program (NEP), *Overview of the National Estuary Program*, <https://www.epa.gov/nep/overview-national-estuary-program> (last visited Feb. 15, 2023).

³¹ EPA, *Overview of the National Estuary Program*.

³² IRLNEP, *The Indian River Lagoon NEP*, <https://onelagoon.org/irlnep/> (last visited Feb. 15, 2023).

³³ IRLNEP, *Indian River Lagoon Comprehensive Conservation and Management Plan Update*, 15 (2019), available at https://onelagoon.org/wp-content/uploads/IRLNEP_Final-Draft-CCMP-REVISION_2018-12-07_LowRes_20200204.pdf.

³⁴ *Id.* at 18.

³⁵ IRLNEP, *the Indian River Lagoon NEP*.

³⁶ *First Amended and Restated Indian River Lagoon National Estuary Program Interlocal Agreement*, 1-3 (Sept. 2015), available at https://onelagoon.net/wp-content/uploads/irlnep_amended_interlocal_agreement_2015.pdf.

Comprehensive Conservation and Management Plan.³⁷ The interlocal agreement established minimum annual funding contributions from each party to the IRL Council.³⁸ These contributions supplement annual funding from the EPA.³⁹

DEP has designated the IRL as an impaired waterbody. In 2009, DEP adopted total maximum daily load (TMDL) water quality restoration targets for the North and Central IRL and the Banana River Lagoon.⁴⁰ In 2013, DEP adopted three basin management action plans to achieve these TMDLs.⁴¹ In 2019, 2020, 2021, and 2022, the Legislature appropriated recurring funds from the General Revenue Fund to the IRL National Estuary Program for activities necessary to achieve the TMDLs for the North and Central IRL and the Banana River Lagoon.⁴²

Indian River Lagoon Comprehensive Conservation and Management Plan

The 2008 IRL Comprehensive Conservation and Management Plan was revised in 2019 to respond to a combination of events that dramatically reinforced scientific concerns about the health of the IRL, including ongoing algal blooms, widespread loss of seagrass, and episodic wildlife mortality events.⁴³ Goals of the Plan include, but are not limited to:

- Achieving water quality standards to remove waterbodies from the Impaired Waters list;⁴⁴
- Improving wastewater infrastructure to increase capacity and treatment and achieving advanced wastewater treatment;⁴⁵
- Reducing stormwater runoff entering the IRL and improving the quality of runoff that does enter the IRL;⁴⁶
- Improving scientific understanding of IRL hydrology and hydrodynamics to improve management;⁴⁷ and
- Removing muck in the IRL to reduce nutrient loads and improve water clarity.⁴⁸

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,

³⁷ *Id.* at 4.

³⁸ *Id.* at 10.

³⁹ IRLNEP, *5-Year Program Evaluation Report FY 2017-2021*, 13, available at https://onelagoon.org/wp-content/uploads/IRLNEP_EPA-PE-Report-2021_Draft_2022_03_28.pdf.

⁴⁰ DEP, TMDL Report, *Nutrient and Dissolved Oxygen TMDLs for the Indian River Lagoon and Banana River Lagoon*, 49-64 (Mar. 2009), available at <https://floridadep.gov/sites/default/files/indian-banana-nutrient-do-tmdl.pdf>; see also DEP, TMDL Report, *Dissolved Oxygen and Nutrient TMDLs for Eight Tributary Segments of the Indian River Lagoon* (2013), available at http://publicfiles.dep.state.fl.us/DEAR/DEARweb/TMDL/Final_TMDL/gp5/irltrib_donut_tmdl_mainreport.pdf.

⁴¹ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Feb. 15, 2023). Links to the three plans are located under “adopted BMAPS.”

⁴² Chapter 2019-115, Laws of Fla., Specific Appropriation 1678; Chapter 2020-157, Laws of Fla., Specific Appropriation 1658; Chapter 2021-36, Laws of Fla., Specific Appropriation 1630; Chapter 2022-156, Laws of Fla., Specific Appropriation 1690.

⁴³ IRLNEP, *A 10-Year Comprehensive Conservation and Management Plan for the Indian River Lagoon, Florida*, 13 (2019), available at https://onelagoon.org/wp-content/uploads/IRLNEP_CCMP-Looking-Ahead-to-2030_eBook.pdf.

⁴⁴ *Id.* at 29.

⁴⁵ *Id.* at 33.

⁴⁶ *Id.* at 40.

⁴⁷ *Id.* at 46.

⁴⁸ *Id.* at 50.

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 \$100.⁴⁹

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for land and water conservation and restoration.⁵⁰ 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).⁵¹ 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.⁵²

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
- 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.⁵³

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, unless superseded by the General Appropriations Act, before funds are authorized to be appropriated for other uses:

⁴⁹ See ss. 201.02(1)(a) and 201.08(1)(a), F.S.

⁵⁰ The Florida Senate, *Water and Land Conservation*, <https://www.flsenate.gov/media/topics/WLC> (last visited Feb 15, 2023).

⁵¹ *Id.*

⁵² FLA. CONST. art. X, s. 28(b)(1).

⁵³ Ch. 2015-229, ss. 9 and 50, Laws of Fla.

- 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;
 - 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; and
 - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
- 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;
- \$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 the CERP, the Long Term Plan, or the NEEPP; and
- \$50 million annually to the South Florida Water Management District for the Lake Okeechobee Watershed Restoration Project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.⁵⁴

During the 2022 session, the Legislature added language that specifies that the purposes set forth in s. 375.041(3)(a)3., F.S., relating to Lake Apopka would instead be appropriated as provided in the General Appropriations Act.⁵⁵ In August 2022, the General Revenue Estimating Conference estimated that for fiscal year 2023-2024 a total of \$4.04 billion will be collected in documentary stamp taxes.⁵⁶ Thirty-three percent of the net revenues collected, or approximately \$1.33 billion, must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution. Of that amount, approximately \$105 million is committed to debt service, leaving approximately \$1.22 billion to be distributed for the uses specified by s. 375.041, F.S., and other purposes in accordance with the General Appropriations Act.⁵⁷

⁵⁴ Section 375.041(3)-(4), F.S.

⁵⁵ Chapter 2022-157, Laws of Fla.

⁵⁶ Office of Economic & Demographic Research, Revenue Estimating Conference, *Documentary Stamp Tax, Conference Results* (Aug. 2022) available at <http://edr.state.fl.us/Content/conferences/docstamp/docstampexecsummary.pdf> (last visited Feb. 15, 2023).

⁵⁷ *Id.*

Litigation

In 2015, two lawsuits were filed challenging the constitutionality of appropriations from the LATF and expenditures by state agencies.⁵⁸ The cases were consolidated and a hearing was held in June of 2018.⁵⁹ The plaintiffs argued that funds from the LATF were appropriated and expended for general state expenses in ways that were inconsistent with the State Constitution. The circuit 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.⁶⁰ The decision described how the LATF funds may be used, and ruled that numerous appropriations from 2015 and 2016 were unconstitutional.⁶¹

On appeal, the First District Court of Appeal overturned the circuit court ruling, holding that the LATF funds are not restricted to use on land purchased by the state after the constitutional amendment took effect in 2015.⁶² The court held that the plain language in the Constitution authorizing the use of funds for management, restoration, and enhancement activities would specifically authorize use of the funds on activities beyond land acquisition.⁶³ The case was then remanded to the circuit court to rule on the legality of appropriations made since the enactment of the constitutional amendment.⁶⁴

The circuit court dismissed the lawsuit on January 3, 2022, finding that it was moot because the money approved by the Legislature in 2015 had already been spent.⁶⁵ On July 20, 2022, the Florida Wildlife Federation filed a motion to reopen the case.⁶⁶ The case is now on appeal in the First District Court of Appeal.⁶⁷

III. Effect of Proposed Changes:

Section 1 amends s. 371.041, F.S., to appropriate from the Land Acquisition Trust Fund (LATF) a minimum of the lesser of 7.6 percent⁶⁸ of the LATF funds remaining after the payments of the debt service or \$50 million annually for projects dedicated to the conservation and management of the Indian River Lagoon (IRL). The distribution must be reduced by an amount equal to the debt service paid out of the LATF on bonds issued for conservation and management of the IRL after July 1, 2023.

⁵⁸ *Fla. Wildlife Fed'n v. Negron*, No. 2015-CA-001423 (Fla. 2d Cir. Ct. 2015); *Fla. Defenders of the Env't, Inc., v. Detzner*, No. 2015-CA-002682 (Fla. 2d Cir. Ct. 2015).

⁵⁹ *Fla. Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. 2018).

⁶⁰ *Id.* at 3.

⁶¹ *Id.* at 7–8.

⁶² *Oliva v. Fla. Wildlife Fed'n*, 281 So. 3d 531, 539 (Fla. 1st DCA, 2019).

⁶³ *Id.* at 537.

⁶⁴ *Id.* at 539.

⁶⁵ *Fla Wildlife Fed'n v. Negron*, Nos. 2015-CA-001423, 2015-CA-002682 (Fla. 2d Cir. Ct. 2022), available at <https://www.politico.com/states/fl/?id=0000017e-21d8-d3d7-a37f-afdee5cb0000&source=email> (last visited Feb. 14, 2023).

⁶⁶ Dep't of Environmental Protection, *Fla. Enviro. Cases August*, 1 (Aug. 2022) (on file with the Senate Committee on Environment and Natural Resources).

⁶⁷ *Fla. Wildlife Fed'n v. Fla. Legislature*, No. 1D22-3142 (Fla. 1st DCA 2022).

⁶⁸ 7.6 percent would amount to approximately \$93 million based on estimates for Fiscal Year 2023-2024. This amount can be calculated by taking the total amount of documentary stamp tax collections to LATF (1,329.2 million), subtracting the debt service (104.8 million), and then calculating 7.6 percent of the remainder (multiply 1,224.3 million by .076).

The Department of Environmental Protection (DEP) must use the funds to make grants for projects that implement the 2008 updated Indian River Lagoon Comprehensive Conservation and Management Plan, including multiyear grants for the planning and construction of the projects. DEP must coordinate all grants with the St. Johns River and South Florida Water Management Districts. DEP and the St. Johns and South Florida Water Management Districts must coordinate with other water management districts, as necessary.

Priority must be given to projects for:

- Ecosystem monitoring and habitat restoration;
- Connection of onsite sewage treatment and disposal systems to central sewer systems; and
- Management of stormwater, freshwater, and agricultural discharges.

Grants for sewer system connection projects and discharge management projects must require a minimum 50 percent local match. Beginning January 1, 2024, DEP must submit an annual report regarding the projects funded pursuant to this bill to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill deletes obsolete language that directed LATF funds to be appropriated for the 2022-2023 fiscal year as provided in the General Appropriations Act.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

See Present Situation.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Environmental Protection may incur costs in administering grants and producing an annual report.

The bill would provide grant funding opportunities to local governments for certain water quality and wastewater infrastructure projects. This funding may pay up to 50 percent of the project costs, where local governments may otherwise be paying the entire cost of such projects. Therefore, this bill may have an indeterminate, positive fiscal impact on local governments.

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 Changes:**

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

None.

B. Amendments:

None.