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 Rules

BILL:	CS/CS/SB 882
INTRODUCER:	Rules Committee; Community Affairs Committee; and Senator Brodeur
SUBJECT:	Inventories of Critical Wetlands
DATE:	February 10, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Favorable**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Carroll	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 882 directs water management district governing boards to work with local governments to develop a list of critical wetlands to be acquired through the Land Acquisition Trust Fund.

II. Present Situation:

Wetlands

Wetlands are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils.[1] Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes,

[1] Section 373.019(27), F.S.

tidal marshes, mangrove swamps, and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.[2]

All state and local agencies use the same method to determine wetland boundaries.[3] The regulating agency should first attempt to identify the landward extent of wetlands based on the definition of wetlands, as stated in the paragraph above.[4] The landward extent (the boundary) of wetlands is determined by applying reasonable scientific judgement to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation. If the boundary cannot be located by definition, then the regulating agency should use site inspection or aerial photointerpretation, in combination with ground truthing. If the vegetation or soils of an upland or wetland area have been altered by natural or human-induced factors such that the boundary cannot be delineated reliably, and the area has hydric soils or riverwash, or would have hydric soils or riverwash but for a non-hydrologic mechanical mixing of the upper soil profile, then the agency shall use the most reliable available information and reasonable scientific judgement to determine the boundary. Reliable available information includes aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.[5]

Local Government Land Use

In Florida, local governments have the exclusive authority to make basic determinations about the appropriate land uses in their jurisdictions, including wetlands, based on a broad range of factors.[6] Florida statute requires all local governments to adopt a comprehensive plan to determine allowable uses, densities and intensities, and development standards for all land within their jurisdictions, and ensure that all development be consistent with the adopted plan.[7] Through comprehensive planning, local governments are able to encourage the most appropriate use of land, water, and resources, consistent with the public interest.[8] All local government land development regulations must be consistent with the local comprehensive plan.[9] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[10]

[2] *Id.*
[3] DEP, *DEP 101: Wetlands*, https://floridadep.gov/comm/press-office/content/dep-101-wetlands (last visited Dec. 6, 2021).
[4] Fla. Admin. Code R. 62-340.300.
[5] *Id.*
[6] Richard Grosso and Jason Totoiu, *Planning and Permitting to Protect Wetlands: The Different Roles and Powers of State and Local Government*, 84 FLA. B.J. 39, 40 (April 2010) *available at* https://www.floridabar.org/the-florida-bar-journal/planning-and-permitting-to-protect-wetlands-the-different-roles-and-powers-of-state-and-local-government/#:~:text=Florida%E2%80%99s%20Wetland%20Permitting%20Program%20Does%20Not%20Preempt%20Local,for%20the%20development%20of%20wetlands%20subject%20to%20mitigation (last visited Dec. 17, 2021).
[7] *Id.*
[8] Section 163.3161(4), F.S.
[9] Section 163.3194(1)(b), F.S.
[10] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.

Water Management Districts

Water Management Districts (WMDs) are responsible for the administration of water resources at the regional level.[11] There are five WMDs in Florida: Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida WMDs. DEP has general supervisory control over the WMDs through a cooperative working relationship and guidance memos. The four core mission areas of the WMDs are:

- Water supply;
- Water quality;
- Flood protection and floodplain management; and
- Natural systems.[12]

Each WMD is responsible for developing a district water management plan for water resources within its region that addresses water supply, water quality, flood protection and floodplain management, and natural systems.[13] The district water management plan must be based on at least a 20-year planning period, must be developed and revised in cooperation with other agencies, regional water supply authorities, units of government, and interested parties, and must be updated at least once every five years.[14] The district water management plans must include:

- The scientific methodologies for establishing minimum flows and levels and all established minimum flows and levels;
- Identification of one or more water supply planning regions that make up the entire district;
- Technical data and information;
- A districtwide water supply assessment; and
- Any completed regional water supply plans.[15]

In formulating the district water management plans, each WMD must consider:

- The attainment of maximum reasonable-beneficial use of water resources;
- The maximum economic development of water resources consistent with other uses;
- The management of water resources for purposes like environmental protection, drainage, flood control, and water storage;
- The quantity of water available for application to a reasonable-beneficial use;
- The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources;
- Presently exercised domestic use and permit rights;
- The preservation and enhancement of water quality; and
- The state water resources policy.[16]

At its option, a WMD may substitute an annual strategic plan for the requirement to develop a district water management plan and the district water management plan annual report, provided

[11] DEP, *Water Management Districts*, https://floridadep.gov/water-policy/water-policy/content/water-management-districts (last visited Dec. 7, 2021).
[12] *Id.*
[13] Section 373.036(2), F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*

that it does not affect any other provision or requirement of law concerning the completion of the regional water supply plan, and the strategic plan meets the following minimum requirements:

- The strategic plan establishes the WMD's strategic priorities for at least a five-year period;
- The strategic plan identifies the goals, strategies, success indicators, funding sources, deliverables, and milestones to accomplish the strategic priorities;
- The strategic plan development process includes at least one publicly noticed meeting to allow public participation in its development;
- The strategic plan includes separately, as an addendum, an annual work plan report on the implementation of the strategic plan for the previous fiscal year, addressing success indicators, deliverables, and milestones.[17]

Wetlands in Federal and State Programs

National Wetlands Inventory

The National Wetlands Inventory (NWI) was established by the U.S. Fish and Wildlife Service (FWS) to conduct a nationwide inventory of U.S. wetlands to document the distribution and type of wetlands to aid in conservation.[18] The NWI developed mapping techniques, a recording system for inventory findings, and a wetland classification system that is now the official FWS wetland classification system and the federal standard for wetland classification. The NWI relies on trained image analysts to identify and classify wetlands and deepwater habitats from aerial imagery. NWI data and wetlands maps can be found on the Wetlands Mapper.[19]

FWS has estimated wetlands coverage nationwide, including in Florida, using the NWI, and many historical estimates of wetlands are based on NWI data.[20] However, wetlands mapped in the inventory have not been verified on the ground, and maps produced using the inventory do not directly correspond to Florida agencies' methodology or the wetland mapping methodology used by the U.S. Army Corps of Engineers.[21]

Florida Forever

The Florida Forever program is the state's current blueprint for natural resource conservation.[22] It replaced the successful Preservation 2000 program, which acquired more than 1.78 million acres of land for protection. The Florida Forever Act, implemented in 2000, reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better

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[17] *Id.*
[18] U.S. Fish and Wildlife Service, *NWI Program Overview*, https://fws.gov/wetlands/nwi/Overview.html (last visited Dec. 17, 2021).
[19] *Id.*; U.S. Fish and Wildlife Service, *Wetlands Mapper*, https://fws.gov/wetlands/data/Mapper.html (last visited Dec. 17, 2021).
[20] DEAR and DEP, *Final Integrated Water Quality Assessment for Florida*, 88 (2016), *available at* https://floridadep.gov/sites/default/files/2016-Integrated-Report.pdf (last visited Dec. 17, 2021).
[21] *Id.* at 88-89. The U.S. Army Corps of Engineers uses three characteristics to determine if an area is wetland: vegetation, soil, and hydrology. Unless an area has been altered or is a rare natural situation, indicators of all three characteristics must be present for an area to be a wetland. U.S. Army Corps of Engineers, *Wetlands Identification*, https://www.nan.usace.army.mil/Missions/Regulatory/Wetlands-Identification/ (last visited Dec. 17, 2021).
[22] DEP, *2021 Florida Forever Five-Year Plan*, 9 (2021), *available at* https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_2021Abstract_2.pdf (last visited Dec. 17, 2021).

manage the land acquired by the state.[23] Florida Forever encompasses a wide range of goals, including:

- Land acquisition;
- Environmental restoration;
- Water resource development and supply;
- Increased public access;
- Public lands management and maintenance; and
- Increased protection of land through the purchase of conservation easements.[24]

The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and Florida Forever programs.[25] Florida Forever provides for the issuance of up to $5.3 billion in Florida Forever bonds to finance or refinance the cost of acquisition and improvement of land and water areas for restoration, conservation, recreation, water resource development, or historical preservation.[26] Bonds may also be issued for capital improvements[27] to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.[28] Florida Forever projects and acquisitions must contribute to the achievement of specific goals, which must be evaluated in accordance with specific criteria and numeric performance measures.[29] The following are specific goals that involve wetland preservation and management:

- To increase the protection of Florida's biodiversity at the species, natural community, and landscape levels, as measured by:
  - The number of acres acquired of significant strategic habitat conservation areas;
  - The number of acres acquired of highest priority conservation areas for Florida's rarest species;
  - The number of acres acquired of significant landscapes, landscape linkages, and conservation corridors, giving priority to completing linkages;
  - The number of acres acquired of underrepresented native ecosystems;
  - The number of landscape-sized protection areas of at least 50,000 acres that exhibit a mosaic of predominantly intact or restorable natural communities established through new acquisition projects of augmentations to previous projects; or

[23] *Id.*
[24] Section 259.105, F.S.
[25] DEP, *Frequently Asked Questions about Florida Forever*, https://floridadep.gov/lands/environmental-services/content/faq-florida-forever (last visited Dec. 17, 2021); *see* Florida Natural Areas Inventory, *Summary of Florida Conservation Lands* (Feb. 2021), *available at* https://www.fnai.org/conslands/conservation-lands (last visited Jan. 31, 2022). This inventory provides a complete summary of the total amount of conservation lands in Florida.
[26] Section 215.618, F.S.
[27] Section 259.03(3), F.S. The terms "capital improvement" or "capital project expenditure," when used in ch. 259, F.S., mean "those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities' signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter." *Id.*
[28] Section 215.618, F.S.
[29] Section 259.105(4), F.S.

- The percentage increased in the number of occurrences of imperiled species on publicly managed conservation areas.[30]

- To protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state, as measured by:
  - The number of acres of publicly owned land identified as needing, undergoing, or having restoration, enhancement, and management; the number of acres which represent actual or potential imperiled species habitat; the number of acres which are available to restore, enhance, repopulate, and manage imperiled species habitat;
  - The percentage of water segments that fully meet, partially meet, or do not meet their designated uses;
  - The percentage completion of targeted capital improvements in surface water improvement and management plans, regional or master stormwater management system plans, or other adopted restoration plans;
  - The number of acres acquired that protect natural floodplain functions;
  - The number of acres acquired that protect surface waters of the state;
  - The number of acres identified for acquisition to minimize damage from flooding and the percentage of those areas acquired;
  - The number of acres acquired that protect fragile coastal resources;
  - The number of acres of functional wetland systems protected;
  - The percentage of miles of critically eroding beaches contiguous with public lands that are restored or protected from further erosion;
  - The percentage of public lakes and rivers in which invasive, nonnative aquatic plants are under maintenance control; or
  - The number of acres of public conservation lands in which upland invasive, exotic plants are under maintenance control.[31]
- To ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state, as measured by:
  - The number of acres acquired that provide retention and storage of surface water in naturally occurring storage areas, such as lakes and wetlands, consistent with the maintenance of water resources or water supplies and consistent with district water supply plans;
  - The quantity of water made available through the water resource development component of a district water supply plan for which a water management district is responsible; or
  - The number of acres acquired of groundwater recharge areas critical to springs, sinks, aquifers, other natural systems, or water supply.[32]
- To mitigate the effects of natural disasters and floods in developed areas, as measured by:
  - The number of acres acquired within a 100-year floodplain or a coastal high hazard area;
  - The number of acres acquired or developed to serve dual functions as flow ways or temporary water storage areas during flooding or high water events, not including permanent reservoirs, and greenways or open spaces available to the public for recreation;

[30] Section 259.105(4)(b), F.S.
[31] Section 259.105(4)(c), F.S.
[32] Section 259.105(4)(d), F.S.

- The number of acres that protect existing open spaces and natural buffer areas within a floodplain that also serve as natural flow ways or natural temporary water storage areas; and
- The percentage of the land acquired within the project boundary that creates additional open spaces, natural buffer areas, and greenways within a floodplain, while precluding rebuilding in areas that repeatedly flood.[33]

Land Acquisition Trust Fund

The Land Acquisition Trust Fund (LATF) is established by s. 28 Art. X of the Florida Constitution. LATF funds may be expended for the following purposes:

- 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;
- Beaches and shores;
- Outdoor recreation lands, including recreational trails, parks, and urban open spaces;
- 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.[34]

III. Effect of Proposed Changes:

This bill amends s. 373.036, F.S., to require water management districts, in cooperation with local governments, to develop a list of critical wetlands to be acquired through the Land Acquisition Trust Fund. The bill provides the following criteria to determine if a wetland is critical:

- The ecological value of the wetland, as determined by the physical and biological components of the environmental system;
- The effect of the wetland on water quality and flood mitigation;
- The ecosystem restoration value of the wetland; and
- The inherent susceptibility of the wetland to development due to its geographical location or natural aesthetics.

The bill directs each water management district's governing board to notify the owner of any property that the district contemplates including on the critical wetlands list before it adopts or amends the list. If at any time a property owner wishes to have their property removed from the

[33] Section 259.105(4)(i), F.S.
[34] FLA. CONST. art. X, s. 28.

list, they must submit by certified mail a letter stating they wish their property to be removed and sufficiently identifying such property to the governing board. The governing board shall approve removal if the requirements are met.

The bill additionally requires water management districts opting to utilize an annual strategic plan to include a list of critical wetlands on such plan.

The bill amends a reference to reflect the changes made in this bill. The bill will take effect July 1, 2022.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Water management districts and local governments may incur costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.036 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.)

CS/CS by Rules on February 10, 2022:
The CS directs each water management district's governing board to notify the owner of any property that the district contemplates including on the critical wetlands list before it adopts or amends the list. If at any time a property owner wishes to have their property removed from the list, they must submit by certified mail a letter stating they wish their property to be removed and sufficiently identifying such property to the governing board. The governing board shall approve removal if the requirements are met.

CS by Community Affairs on February 2, 2022:
The CS requires water management districts opting to utilize an annual strategic plan to include a list of critical wetlands on such plan.

B. Amendments:

None.