

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 General Government Appropriations Committee

BILL: CS/SB 1740

INTRODUCER: General Government Appropriations Committee and Senator Baker

SUBJECT: Department of Environmental Protection Water Protection and Sustainability Program Trust Fund

DATE: April 1, 2009 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Pigott | DeLoach | GA | Fav/CS |
| 2. | _____ | _____ | GO | _____ |
| 3. | _____ | _____ | WPSC | _____ |
| 4. | _____ | _____ | RC | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Section 19(f), Art. III of the State Constitution requires that all newly created agency trust funds terminate no later than four years after the initial creation unless re-created. This bill re-creates the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection (department) without modification. Re-creation is effective beginning July 1, 2009, which is the current termination date of the fund. The changes extend the life of the trust fund.

This bill amends the percentages of documentary stamp tax distributions for certain activities funded from the Water Protection and Sustainability Program Trust Fund.

This bill creates section 403.890(6), Florida Statutes.

This bill repeals section 403.891(3), Florida Statutes.

II. Present Situation:

Section 19(f), Art. III of the State Constitution requires that all newly created agency trust funds terminate no later than four years after the initial creation unless re-created. Section 403.891, F.S., creates the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection. The purpose of the trust fund is to receive documentary stamp tax revenues as authorized in s. 201.15(1)(d)2., F.S., funds from other sources provided for in law and the General Appropriations Act, and funds received by the department. The fund serves as a repository of revenues to support appropriations for alternative water supply, the total maximum daily load program, and the Disadvantaged Small Community Wastewater Grant Program to implement the provisions of the Water Sustainability and Protection Program created in s. 403.890, F.S. In March 2009, the Revenue Estimating Conference estimated the fund's receipts at \$2.33 million for Fiscal Year 2009-2010. Currently, the trust fund is set to terminate on July 1, 2009, pursuant to s. 19(f), Art. III of the State Constitution.

The documentary stamp tax levied under ch. 201, F.S., provides revenue to the General Revenue Fund and various trust funds. Section 201.15, F.S., provides for the distribution of the documentary stamp tax revenues.

The documentary stamp tax levied under ch. 201, F.S., consists of two taxes imposed on different bases at different tax rates. The tax on deeds and other documents related to real property is at the rate of 70 cents per \$100 of value. Certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements are taxed at 35 cents per \$100 of value. Revenue from the documentary stamp tax is divided between the General Revenue Fund and various trust funds. These funds are primarily used to acquire and manage public lands or support affordable housing.

History of Documentary Stamp Tax Rates and Distributions

Florida first enacted a documentary stamp tax in 1931, at the rate of ten cents per \$100 of consideration. In 1957, the tax on documents relating to realty (mainly deeds) was raised to 20 cents, and the tax has been assessed at two separate rates on deeds and notes ever since. Major rate increases occurred in 1957, 1963, 1979, 1981, 1985, 1987, 1990, 1991, and 1992. In 1983, the Legislature authorized Dade County to levy a discretionary surtax on deeds of up to 45 cents for each \$100, except for deeds on single family residences.

Until 1967, all proceeds from documentary stamps went to the General Revenue Fund. In that year, a surtax was imposed on documents relating to realty, with the proceeds going to the Land Acquisition Trust Fund. The surtax was repealed in 1979 and replaced with an increase in the documentary stamp tax on deeds, and the Land Acquisition Trust Fund was given a distribution from this tax. Since 1979, increases in the documentary stamp tax rate have been used to fund several programs, including acquisition of environmentally sensitive land, funding state infrastructure, and funding affordable housing. In 1990, the General Revenue Service Charge was extended to the Documentary Stamp Clearing Trust Fund, among other trust funds, which reduced all distributions from this fund by seven percent on a recurring basis.

The distribution of documentary stamp taxes can be grouped into two major groups, the general revenue group and the trust funds group. The general revenue group is first used to fund debt service for environmentally sensitive land purchases and Everglades' restoration. The debt service commitment is fulfilled before any other distributions are made for activities such as growth management, beach restoration, manatee protection, and water protection and sustainability programs. The remaining amount of this group is distributed to the General Revenue Fund. For the trust funds, revenue is distributed to various trust funds with most trust fund distributions capped at specific dollar amounts. Amounts calculated above the cap are distributed to the General Revenue Fund. All of the costs for administering the documentary stamps tax statutes are borne by the trust fund group.

Water Protection and Sustainability Program Trust Fund

In 2005, ch. 2005-289, L.O.F., created the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection. The largest source of revenue is documentary stamp tax revenues as authorized in ch. 201, F.S. Primarily, the trust fund supports appropriations for alternative water supply, the total maximum daily load program (TMDL), and the Disadvantaged Small Community Wastewater Grant Program in order to implement the provisions of the Water Sustainability and Protection Program created in s. 403.890, F.S.

Prior to 2007, the annual distribution of documentary stamp tax revenues to the Water Protection and Sustainability Program Trust Fund was \$100 million. During 2007 Special Session C, the distribution was reduced to \$80 million and the associated distributions tied to these funds were amended to allow for the redirection of documentary stamp tax revenue to the General Revenue Fund (ch. 2007-335 L.O.F.).

In 2008, ch. 2008-114, L.O.F., amended the distribution calculation for the general revenue group of trust funds by replacing the statutorily set dollar amounts with a percentage calculation which is capped at the current statutory amount. The law revised the order in which the distributions for the various trust funds are calculated. The law also assessed the cost of administering the documentary stamp tax statutes to all the funds that receive distributions rather than just the capped trust fund group.

The table below summarizes changes to the Water Protection and Sustainability Program Trust Fund revenue distributions. The decline in revenue necessitates budget reductions for programs funded from the trust fund and the realignment of the associated distributions tied to these programs.

| | Current Revenue Distribution Percentage | Appropriations | | | Revenue | | Revenue | |
|--|---|----------------------------|-------------------|-------------------|-------------------|--------------------|------------|--------------------|
| | | General Appropriations Act | Special Session A | | Special Session A | | FY 2009-10 | |
| | | | Reduction | Net Appropriation | Percentage | Amount Distributed | Percentage | Amount Distributed |
| Alternative Water Supply* | 65.00% | \$7,700,000 | (2,160,000) | 5,540,000 | 31.21% | \$5,540,000 | 31.21% | \$727,193 |
| Total Maximum Daily Loads | 22.50% | \$17,426,490 | (10,281,262) | 7,145,228 | 26.87% | \$4,768,738 | 26.87% | \$626,071 |
| Disadvantaged Small Community Wastewater Grant Program | 12.50% | \$10,000,000 | (2,558,738) | 7,441,262 | 41.92% | \$7,441,262 | 41.92% | \$973,376 |
| Totals: | 100% | \$35,126,490 | (15,000,000) | 20,126,490 | 100% | \$17,750,000 | 100% | \$2,326,640 |

III. Effect of Proposed Changes:

Section 1 re-creates the Water Protection and Sustainability Program Trust Fund within the department without modification.

Section 2 repeals s. 403.891(3), F.S., which provides for the termination of the Water Protection and Sustainability Program Trust Fund on July 1, 2009.

Section 3 creates s. 403.890(6), F.S., to revise the percentage distribution of documentary stamp tax revenues for certain activities within the Water Protection and Sustainability Program Trust Fund.

Section 4 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill revises the percentages of documentary stamp tax distributions for certain activities funded from the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection to reflect the current distribution provided in ch. 2009-2, L.O.F.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by General Government Appropriations Committee on April 1, 2009:**

This committee substitute:

- Re-creates the Water Protection and Sustainability Program Trust Fund within the Department of Environmental Protection without modification.
- Repeals s. 403.891(3), F.S., which provides for the termination of the Water Protection and Sustainability Trust Fund on July 1, 2009.
- Revise the percentage distribution of documentary stamp tax revenues for certain activities within the trust fund.

B. Amendments:

None.