

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1355 Department of Environmental Protection
SPONSOR(S): Mayfield and others
TIED BILLS: IDEN./SIM. BILLS: SB 2636

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Government Accountability Act Council, 15 Y, 0 N, As CS, Zeiler, Hansen. Rows 2-5 are empty.

SUMMARY ANALYSIS

House Bill 1355 (bill) provides the Legislature’s finding and declaration regarding its investment in and management of conservation lands.

The bill:

- Transfers the Office of Coastal and Aquatic Managed Areas (CAMA) within the Department of Environmental Protection (DEP) to the Florida Fish and Wildlife Commission (FWC) and requires the DEP and FWC to prepare a transition plan to facilitate the transfer.
Directs the Office of Program Analysis and Government Accountability (OPPAGA) to conduct a study to determine the most efficient means to restructure the state’s land acquisition and land management functions, and report its results to the Legislature.
Requires the DEP to issue a request for proposals (RFP) for two separate 5-year public-private land management demonstration pilot projects on lands currently managed by DEP and requires that selected contractors submit land management plans to the Acquisition and Restoration Council (ARC) for approval and the Legislative Budget Commission (LBC) prior to release of funds held in reserve for such pilot project.
Transfers rulemaking authority of CAMA from DEP to FWC.
Transfers CAMA’s seat on the Land Management Uniform Accounting Council (LMUAC) from under DEP to under FWC.

The bill provides a July 1, 2009 effective date.

The bill was substantially amended by the Government Accountability Act Council on March 17, 2009. See “Section IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES” of the bill analysis for an explanation of the adopted strike-all amendment.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The DEP's CAMA oversees three National Estuarine Research Reserves (NERR), one National Marine Sanctuary, the Coral Reef Conservation Program, and the management of Florida's 41 aquatic preserves. These protected areas comprise more than 4 million acres of the most valuable submerged lands and select coastal uplands in Florida.<sup>1</sup>

According to DEP, CAMA's Key Responsibilities include:<sup>2</sup>

- Responsible for research, planning, management and assessment of 41 Aquatic Preserves including the recent initiation of an ecosystem-based planning and management implementation program that includes developing an Aquatic Preserve Program Overview and the revision of management plans for each aquatic preserve.
- Responsible for the management and protection of 3 NERRs at Apalachicola, Guana Tolomato Matanzas in St Augustine, and Rookery Bay in Naples (3 of 26 NERRS nationwide). The DEP manages these reserves in partnership with National Oceanic and Atmospheric Administration (NOAA). Federal matching funds are provided to each site and reserve staff work together with NOAA staff on the national level to guide the NERRS program.
- Involved as a key partner in the management of Florida Keys National Marine Sanctuary (FKNMS) with NOAA and FWC. FKNMS is one of 13 National Marine Sanctuaries within the nation.
- CAMA spearheads the Southeast Florida Coral Reef Initiative to protect the coral reefs in Miami-Dade, Broward and Palm Beach counties through membership on the U.S. Coral Reef Task Force.
- CAMA is also host office in Florida's Oceans and Coastal Resources Council, an initiative to determine coastal research needs and priorities, and to coordinate the research. The office is the state lead in the Gulf of Mexico Alliance, a multi-state government initiative with federal support formed to increase regional collaboration and enhance the ecological and economic health of the Gulf of Mexico. Being named state lead is a clear reflection of diversity of operations and talent within the program.

#### The National Estuarine Research Reserve System

<sup>1</sup> <http://www.dep.state.fl.us/coastal/>

<sup>2</sup> [http://www.dep.state.fl.us/coastal/downloads/glance/cama\\_2-pager.pdf](http://www.dep.state.fl.us/coastal/downloads/glance/cama_2-pager.pdf)

NERRS is a network of protected areas established for long-term research, education and stewardship. This partnership program between NOAA and the coastal states protects more than one million acres of estuarine land and water, which provides essential habitat for wildlife; offers educational opportunities for students, teachers and the public; and serves as living laboratories for scientists.<sup>3</sup>

Section 315 of the Coastal Zone Management Act (CZMA) establishes the National Estuarine Research Reserve System (NERRS). The mission of the NERRS is the establishment and management, through Federal-state cooperation, of a national system of estuarine research reserves representative of the various regions and estuarine types in the United States. NERRs are established to provide opportunities for long-term research, education, and interpretation.

According to NERR regulations, 15 C.F.R. Part 921.1(b), the goals of the program are to:

- Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;
- Address coastal management issues identified as significant through coordinated estuarine research within the System;
- Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;
- Promote Federal, state, public and private use of one or more Reserves within the System when such entities conduct estuarine research; and
- Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

### National Marine Sanctuaries

In 1972, Congress passed the Marine Protection, Research and Sanctuaries Act (MPRSA). The MPRSA authorizes the Secretary of Commerce to designate discrete areas as national marine sanctuaries to promote comprehensive management of their special conservation, recreation, ecological, historical, research, educational, or aesthetic resources.<sup>4</sup> The mission of NOAA's National Marine Sanctuaries is to serve as the trustee for the nation's system of marine protected areas, to conserve, protect, and enhance their biodiversity, ecological integrity and cultural legacy.<sup>5</sup> National Marine Sanctuaries may be designated in coastal and ocean waters, in submerged lands and in the Great Lakes, and their connecting waters. The National Marine Sanctuary System consists of 14 marine protected areas that encompass more than 150,000 square miles of marine and Great Lakes waters from Washington State to the Florida Keys, and from Lake Huron to American Samoa. The system includes 13 national marine sanctuaries and the Northwestern Hawaiian Islands Marine National Monument.

### Florida Keys National Marine Sanctuary (FKNMS)

The Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) was enacted by Congress and signed into law on November 16, 1990, to protect the spectacular marine ecosystem of the Florida Keys. The FKNMSPA created the Florida Keys National Marine Sanctuary boundaries and called for NOAA to prepare a comprehensive management plan for the Sanctuary after consulting with the public and with federal, state, and local government authorities. The original FKNMS Comprehensive Management Plan was developed and went into effect on July 1, 1997. The plan was revised in December 2007.

### Coral Reef Protection Program

The NOAA's Coral Reef Conservation Program (CRCP) supports effective management and sound science to preserve, sustain and restore valuable coral reef ecosystems and helps fulfill NOAA's requirements under the Coral Reef Conservation Act of 2000 (CRCA).<sup>6</sup>

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<sup>3</sup> <http://nerrs.noaa.gov/>

<sup>4</sup> <http://www.dep.state.fl.us/coastal/sites/keys/>

<sup>5</sup> <http://sanctuaries.noaa.gov/about/welcome.html>

<sup>6</sup> <http://www.coralreef.noaa.gov/welcome.html>

## Aquatic Preserves

In 1975, Legislature passed the Aquatic Preserve Act, Part II of Chapter 258, F.S. Its goal is ensured that aquatic preserves' maintain their natural condition and "their aesthetic, biological, and scientific values may endure for the enjoyment of future generations." Either the Legislature or the Governor and Cabinet, sitting as the Board of Trustee, may designate aquatic preserves. 41 aquatic preserve have been designated and management plans have been prepared for each one. Once designated only the Legislature may remove the designation.

## Land Management

The Legislature provided \$4,500,000 in the 2008 Appropriations Act (HB 5001, Ch. 2008-152; section 1824) to fund a public-private land management demonstration pilot project (demonstration project). The demonstration project sought to have private contractor to conduct all land management activities, except for law enforcement, on approximately 200,000 acres state conservation lands for a period of 5 years.

The purpose of the demonstration project was to determine the cost effectiveness of land management activities conducted by a private entity compared to those conducted by the state. A similar project was conducted by the FWC on a smaller scale, known as Snipe Island. This project demonstrated that both the state land managers and private land managers were able to be cost effective on different activities. In renewing the Snipe Island contract, FWC bundled services in a manner that allows the state to maximize the benefit of contracting out land management activities.

The DEP, in consultation with the FWC and DACS, issued a Request for Proposals (RFP) on October 1, 2008. The one proposal received was deemed inadequate and rejected, and the RFP was withdrawn. The funding was subsequently reduced in the 2009 Special Appropriation Act.

According to the James Madison Institute<sup>7</sup> JMI, "failure to find an acceptable bidder was not due to lack of interest", but rather "land management firms that had interest in the job decided it would not be profitable". The JMI concluded the RFP:

- required a number of cumbersome activities for compliance,
- contained provisions that were open-ended,
- included reporting requirements were burdensome, and
- the State could terminate the contract at anytime without cause.

## Effects of Proposed Changes

The bill transfers the CAMA and any related law enforcement positions within the DEP's Bureau of Park Police to FWC as a type two transfer. A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.<sup>8</sup> The related responsibilities and programs described above would be administered by the FWC. The transfer is to be completed by July 1, 2010.

The bill requires DEP and FWC to develop a transition plan and fiscal analysis for the previously described CAMA transfer. The plan is to be submitted to the President of the Senate and the Speaker of the House of Representatives by December 1, 2009.

The bill directs the OPAGGA to conduct a study of DEP, excluding positions transferred pursuant to this act, to determine the most efficient means of centralizing the land acquisition and land management activities of the state. The study is to be submitted to the President of the Senate and the Speaker of the House of Representatives by December 1, 2009.

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<sup>7</sup> Randall G Holcombe, *Creating a Public/Private Partnership of Florida's Conservation Land Management*, The James Madison Institute Backgrounder, Number 59, March 2009.

<sup>8</sup> Section 20.06(2), Florida Statutes

The bill requires the DEP to issue an RFP for a 5-year public-private land management demonstration pilot project. The proposal is to address lands currently managed by DEP (State Parks and Greenway and Trails) and the proposal fee is limited to annual average of \$75 per acre. The RFP is to be awarded by December 31, 2009. Once awarded, the contractor is required to prepare a land management plan (LMP) that is to be submitted to ARC for approval. The LMP is to be submitted to the LBC for approval along with DEP's request to release any appropriated funds held in reserve for the pilot project. OPPAGA is required to evaluate the pilot project and compare the results of private land management activities with that of similar state land management activities and determine the pilot project's effectiveness. The results of OPAGGA's evaluation are to be submitted to President of the Senate and the Speaker of the House of Representatives, ARC and the LBC.

The bill requires DEP, in consultation with FWC and Department of Agriculture and Consumer Services, to issue an RFP for a 5-year public-private land management demonstration pilot project. The awarded contract provisions are restricted. The performance bond cannot exceed \$1,000,000 and contract cannot be cancelled by the state, unless the contractor is in default. The proposal is to address conservation lands currently managed by DEP and the proposal fee limited to an annual average of \$25 per acre. The RFP is to be awarded by December 31, 2009. Once awarded, the contractor is required to prepare a land management plan (LMP) that is to be submitted to ARC for approval. The LMP is to be submitted to the LBC for approval along with DEP's request to release any appropriated funds held in reserve for the pilot project. OPPAGA is required to evaluate the pilot project and compare the results of private land management activities with that of similar state land management activities and determine the pilot project's effectiveness. The results of OPAGGA's evaluation are to be submitted to President of the Senate and the Speaker of the House of Representatives, ARC and the LBC.

The bill amends s. 20.331, F.S., and places CAMA within the organization structure of the FWC.

The bill transfers the rule-making authority currently held by DEP to FWC. This rule-making authority is unique to CAMA and gives FWC the authority to promulgate rules that govern the management and use of state-owned lands or other uplands assigned to CAMA.

The bill moves CAMA's seat on the Land Management Uniform Accounting Council currently under DEP and places it under FWC.

The bill is effective July 1, 2009.

## B. SECTION DIRECTORY:

Section 1. Provides the Legislature's finding and declarations.

Section 2. Transfer the CAMA and any related state law enforcement officer positions within the DEP's Bureau of Park Police to the FWC, as a type two transfer

Section 3. Requires the DEP and FWC to develop a transition plan and a fiscal analysis for the CAMA transfer and submit the plan to the President of the Senate and the Speaker of the House of Representatives by December 1, 2009.

Section 4. Directs the OPPAGA to conduct a study to determine the most efficient means to restructure the DEP's land acquisition and land management functions

Section 5. Requires the DEP to issue an RFP for a 5-year public-private land management demonstration pilot project on DEP managed lands.

Section 6. Requires the DEP to issue an RFP for a 5-year public-private land management demonstration pilot project on DEP managed conservation lands.

Section 7. Amends s 20.331, F.S., related to the FWC and places CAMA within the organization structure of the FWC.

Section 8 Amends s 253.86, F.S., relating to management and use of state-owned lands and transfer rule-making authority of CAMA to the FWC.

Section 9 Amends 259.37, F.S., relating to the Land Management Uniform Accounting Council and moves CAMA's seat from DEP to FWC.

Section 10. Provides an effective date

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown, the bill may increase funding allocated to private land management activities. The impact would be the result of allocation decisions made by the state land management agencies (DEP, DACS, and FWC)

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

### B. RULE-MAKING AUTHORITY:

The bill transfer rule-making authority currently held by and unique to CAMA, and places it with the FWC. The rule-making would allow the FWC to promulgate rules that govern the management and use of state-owned land and other lands assigned to it.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2009, in the Government Accountability Act Council, Representative Mayfield introduced and the council adopted a strike-all amendment to HB 1355. The amendment remove sections 2, 3, 7, 8, and 9 of the bill relating to the transfer of CAMA from DEP to FWC, and amended sections 4, 5, and 6 relating to land management. The amendment directs OPPAGA to conduct a study of DACS, DEP, FWC and any related law enforcement positions to determine and report on the most efficient means of centralizing land management activities of the state. The amendment provided a \$4,500,000 funding cap on each public-private land management demonstration pilot project proposed and contracted by DEP, indentified specific lands where the pilot project on conservation lands can be conducted, and eliminated certain land management activities that would be required of the private sector.