

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1355
SPONSOR(S): Mayfield and others
TIED BILLS:

Department of Environmental Protection

IDEN./SIM. BILLS: SB 2636

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Government Accountability Act Council, Agriculture & Natural Resources Policy Committee, General Government Policy Council, Natural Resources Appropriations Committee.

SUMMARY ANALYSIS

HB 1355 provides the Legislature's findings and declarations regarding its investment in and management of conservation lands. The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study of the state agencies and public entities currently involved in land management to determine the most efficient means to restructure the state's land acquisition and land management functions. OPPAGA is directed to report its results to the Legislature no later than December 1, 2009.

The bill also requires the Department of Environmental Protection (DEP) to issue a request for proposals (RFP) for two separate 5-year public-private land management demonstration pilot projects. One of the pilot projects will address lands currently managed by DEP as state parks and greenways and trails. The bill requires the RFP to be awarded no later than December 31, 2009, and the average management cost not to exceed \$75 per acre per year. Once awarded, the contractor must prepare a land management plan and submit the plan to the Acquisition and Restoration council (ARC) for approval. A copy of the land management plan must also be submitted to the Legislative Budget Commission (LBC). The funds appropriated for the land management pilot project will be held in reserve until such time as DEP submits and the LBC approves a plan which includes a recommended RFP. The bill provides for the effectiveness of the pilot project to be reviewed by OPPAGA and for OPPAGA to prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the ARC and the LBC.

The bill provides for a second pilot project to address specified conservation lands. The bill requires the DEP, in consultation with the Fish and Wildlife Conservation Commission (FWCC) and the Department of Agriculture and Consumer Services (DACS), to issue a RFP for a public-private conservation land management demonstration project for a period of 5 years. The bill sets out information to be included in the RFP. The bill requires the RFP to be awarded no later than December 31, 2009, and the average management cost not to exceed \$25 per acre per year. Once awarded, the contractor must prepare a land management plan and submit the plan to the ARC for approval. A copy of the land management plan must also be submitted to the LBC. The funds appropriated for the land management pilot project will be held in reserve until such time as DEP submits and the LBC approves a plan which includes a recommended RFP. The bill provides for the DEP to hire an auditor, certified by the Forest Stewardship Council, to review and assess the pilot project in comparison to other state land management results and provide recommendations. The auditor must submit a report of findings to the Governor, the President of the Senate, the Speaker of the House of Representatives, the ARC and the LBC.

The bill limits the fiscal impact of each pilot project to \$4.5 million annually for 5 years. The bill provides a July 1, 2009 effective date.

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 Legislature provided \$4.5 million in the 2008 Appropriations Act¹ to fund a public-private land management demonstration pilot project (demonstration project). The demonstration project sought to have a private contractor conduct all land management activities, except for law enforcement, on approximately 200,000 acres of 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 FWCC on a smaller scale, in an area known as Snipe Island. This project demonstrated that both the state land managers and private land managers implemented cost effective techniques on different activities. In renewing the Snipe Island contract, FWCC bundled services in a manner it believed maximized the benefit of outsourcing land management activities.

The DEP, in consultation with the FWCC and the 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.

According to the James Madison Institute² (JMI), "...failure to find an acceptable bidder was not due to a lack of interest, but rather the land management firms that had an 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 which were burdensome, and
- allowed the State to terminate the contract at anytime without cause.

Effects of Proposed Changes

CS/HB 1355 provides for extensive legislative findings with regard to land management. The bill declares that land acquisition programs have provided tremendous financial resources for purchasing environmentally significant lands to protect those lands from imminent development or alteration,

¹ HB 5001, Chapter 2008-152, L.O.F., Section 1824

² Randall G Holcombe, *Creating a Public/Private Partnership of Florida's Conservation Land Management*, The James Madison Institute Backgrounder, Number 59, March 2009.

thereby ensuring present and future generations' access to important waterways, open spaces, and recreation and conservation lands. It specifies that, over the past 30 years, the state has invested over \$6 billion to conserve 3.8 million acres of environmentally sensitive land, and that land management expenditures have increased to \$215 million or \$66 per acre.

The bill cites a report³ stating the current level of land management funding is insufficient to provide for the full funding of land management needs and concludes that if the state is to achieve the full benefits of its investment of public dollars in conservation lands, it must manage these lands as effectively and efficiently as possible. It finds that, given the limited financial resources to fund competing priorities and increasing funding needs to manage public lands, the state cannot afford to fund unnecessary duplicative management functions in multiple state agencies and, therefore, declares that a privatization pilot program for land management would allow the Legislature to better evaluate the effectiveness and efficiency of the state's land management activities by identifying and achieving cost efficiencies and reductions in administrative and operating costs, and reducing duplication.

The bill directs the OPAGGA to conduct a study of DACS, DEP, FWCC and any related law enforcement positions 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.

In addition, the bill requires the DEP to issue two separate RFP's for 5-year, public-private land management demonstration pilot projects. The first of these RFP's will address lands currently managed by DEP as state parks and greenways and trails, and the proposed fee is limited to an annual average of \$75 per acre. The bill provides for the RFP to be awarded by December 31, 2009. Once awarded, the contractor must prepare a land management plan (LMP) to be submitted to ARC for approval. The LMP must also be submitted to the LBC. Funds appropriated to the pilot project will be held in reserve until the LBC approves the RFP and the plan.

OPAGGA 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 the Governor, the President of the Senate, and the Speaker of the House of Representatives, the ARC and the LBC. The pilot project costs are capped at \$4.5 million per year.

A second pilot project requires DEP, in consultation with FWCC and DACS, to issue a RFP for a 5-year, public-private land management demonstration pilot project for conservation lands. This RFP is to clearly identify the management goals of conservation lands and allow private contractors to propose how these goals would be met within the prescribed budget. Legislative intent specifies a particular interest in how a contractor would account for and report costs, activities, and achievements and innovate the manner in which management plans are formulated, presented and implemented. A performance bond of not more than \$1,000,000 is required for the contract and the contract cannot be cancelled by the state, unless the contractor is in default.

The bill requires the project to consist of nonsubmerged lands within the following conservation properties: Andrews Wildlife Management Area, Big Bend Wildlife Management Area, Cedar Key Scrub State Reserve, Waccasassa Bay Preserve State Park, Ross Prairie State Forest, Indian Lake State Forest, and Goethe State forest. Proposals may not exceed an average management cost of \$25 per acre per year. The RFP must be awarded no later than December 31, 2009.

Once awarded, the contractor is required to prepare a LMP consistent with duties and responsibilities of the agencies and the certification standards of the Forest Stewardship Council. The LMP must be submitted to ARC for approval. The LMP must also be submitted to the LBC. Funds appropriated to the pilot project are to be held in reserve until the LBC approves the RFP. The bill also contains a requirement that the contractor must be responsible for all land management activities except for law enforcement, wildfire suppression, derelict vessel removal, manatee surveys, water sampling, or any other regulatory activities not specifically related to management of state conservation lands. DEP is required to hire an auditor, certified by the Forest Stewardship Council, to be responsible for reviewing, evaluating, and reporting on the results of the pilot project in comparison to similar conservation land management activities conducted by the state. The bill requires the report to be submitted to the

³ Land Management Uniform Accounting Council, October 2008 report

President of the Senate, the Speaker of the House of Representatives, the ARC and the LBC. The cost of the pilot project is capped at \$4.5 million per year.

The bill is effective July 1, 2009.

B. SECTION DIRECTORY:

Section 1: Provides findings and declarations by the Legislature.

Section 2: Directs the OPPAGA to conduct a study determining the most efficient means to restructure the DEP's land acquisition and land management functions.

Section 3: Requires the DEP to issue a RFP for a 5-year public-private land management demonstration pilot project on DEP managed lands (existing state parks, greenways and trails).

Section 4: Requires the DEP to issue a RFP for a 5-year public-private land management demonstration pilot project on state managed conservation lands.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See "Fiscal Comments" section below.

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 may be the result of allocation decisions made by the state land management agencies (DEP, DACS, and FWCC).

D. FISCAL COMMENTS:

Each of the two pilot projects RFP's will cost up to \$4.5 million annually. DEP is required to hire an auditor, certified by the Forest Stewardship Council, to conduct a study of the pilot project on conservation lands. The cost of an audit is unknown and will be based on the scope of the audit.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

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 removed the portions of the original bill relating to the transfer of the Office of Coastal and Aquatic Managed Areas (CAMA) from DEP to FWC, and amended the remaining portions of the original bill that related 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. In addition, the amendment provided a \$4.5 million funding cap on each public-private land management demonstration pilot project proposed and contracted by DEP, identified specific lands where the pilot project on conservation lands may be conducted, and eliminated certain land management activities required of the private contractor.