

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 Environmental Preservation and Conservation

BILL: SB 466

INTRODUCER: Senator Altman

SUBJECT: State Lands

DATE: April 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Uchino	EP	Pre-meeting
2.			AGG	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 466 allows a private landowner to submit a request to the Board of Trustees of the Internal Improvement Trust Fund (Board) to transfer state-owned lands to a private landowner in exchange for a conservation easement over the privately held lands. It also specifies the circumstances and time frame for the Board’s consideration of a request.

SB 466 substantially amends section 253.42 of the Florida Statutes.

II. Present Situation:

Disposition of State-owned Conservation Lands

Section 253.42, F.S., allows the Board to exchange lands vested or titled in the Board. This section authorizes the Board to set the terms and conditions for land exchanges with various parties. When exchanging conservation lands for which no consideration was paid, the Board may request land of equal conservation value from local governments. If consideration was paid for the conservation lands, the exchange must result in an equal or greater conservation benefit to the state. In addition, the Acquisition and Restoration Council (ARC) must make a determination of a net-positive conservation benefit, irrespective of appraised value.

Pursuant to article X, section 18 of the Florida Constitution, and ss. 253.42 and 253.034(6)(e), F.S., the Board, with the ARC’s recommendation, must determine the conservation lands proposed for exchange are no longer needed for conservation purposes. Section 253.034(6), F.S., requires the Board to make the determination that the exchange will result in a net-positive conservation benefit. Additionally, s. 253.034(15), F.S., requires the Board to first offer surplus

lands proposed for lease, sublease or sale, to universities, community colleges and state agencies before they are offered to the general public.

Currently, requests for exchanges of state-owned lands are made to the Department of Environmental Protection (DEP), Division of State Lands, acting on behalf of the Board. All exchanges are handled pursuant to Rule 18-2, Florida Administrative Code (F.A.C.). With regard to exchanges of state-owned conservation lands with private entities, Rule 18-2.018(3)(b)6., F.A.C., states, “exchanges may be applied for by private landowners only if they own or can acquire land on an approved state acquisition list and the parcel sought by the private landowner has been selected for conveyance through the land disposal process.”

Conservation easements are defined by s. 704.06, F.S., as a right or interest in real property that retains the land in a natural state, including agriculture uses. These types of easements include maintaining the structural integrity or physical appearance of historical, architectural, archeological or culturally significant sites. Certain activities that are detrimental to the natural state, structural integrity or physical appearance are prohibited or limited.

Bond Restrictions for Land Buying Programs

Preservation 2000 bonds will be fully retired by July 1, 2013, and conservation lands purchased with proceeds from those bonds may be disposed of without regard to bond covenants. However, Florida Forever bonds will not be fully retired until December 2030. Disposition of conservation lands purchased with Florida Forever bond proceeds is limited by s. 253.618(7), F.S. Generally, this section prohibits the disposition of land if it would cause all or any portion of the interest of such bonds to lose the exclusion from gross income for federal income tax purposes.

Additionally, the disposition of state-owned conservation lands may trigger an Internal Revenue Service regulation regarding private use of state-owned lands. If this occurs, the state must act to remediate the action in order for the bonds to maintain their tax-exempt status. Three provisions, known as safe harbor provisions, govern how the state may remediate the private use of state-owned lands purchased with tax-exempt bond proceeds:¹

- The consideration for the transfer must be exclusively cash;
- The bond issuer reasonably expects to spend the cash received within two years of the transfer for other qualified uses; and
- Any cash left over must be used to redeem or void existing bonds.

If land is surplussed, the yield on investments purchased with disposition proceeds may exceed the yield on the bonds, provided, among other things, there is a reasonable expectation the proceeds will be used to purchase substitute property within two years. Any excess earnings are rebated to the Federal Government.²

¹ DEP, *White Paper: Private Use on Public Lands Acquired with Bond Funds* (2010) (on file with the Senate Committee on Environmental Preservation and Conservation).

² *Id.*

Conservation Land Management Plans

All conservation lands require a land management plan pursuant to the guidelines in ss. 253.034(5) and 259.032(1), F.S., which describes resources and recreational activities.³ Land managers must complete a checklist for conservation lands over 160 acres and include it when submitting land management plans to the ARC. The checklist includes:⁴

- acquisition information;
- use information;
- public involvement;
- a natural resources inventory;
- a water resources inventory;
- a historical, archeological and cultural resources inventory;
- facilities information concerning infrastructure, access and recreation; and
- any other information or managing agency tools.

Management plans for conservation lands over 160 acres must be submitted to the ARC for its review and recommendations at a regularly scheduled meeting. For those under 160 acres, the plans must be submitted to the ARC for review and recommendations but do not have to be presented at an official meeting unless requested by an ARC member. Changes to the plans may be necessary to improve resource protection or recreational opportunities.⁵ All activities conducted on conservation lands must be consistent with their management plans.

III. Effect of Proposed Changes:

Section 1 amends s. 253.42, F.S., to provide an alternative mechanism for the exchange of state-owned lands to the current process provided by the Florida Constitution, statute and adopted rules. The bill allows a private party to make a request directly to the Board to exchange fee simple title of state-owned lands for a non-perpetual conservation easement over the private lands.⁶ The private lands must be surrounded by state-owned lands on at least 30 percent of its perimeter and cannot create an inholding. If these two criteria are met, the Board must consider the request within 60 days. The bill requires special consideration be given to the request to exchange lands if the state retains a conservation easement in perpetuity. Finally, the bill strongly encourages low-impact uses, such as forest management, prescribed burning and wildlife management, on lands subject to the exchange.

Section 2 provides an effective date of July 1, 2013.

Other Potential Implications:

The exchange of state-owned lands, if purchased with tax-exempt bond proceeds, may threaten the tax-exempt status of Florida Forever bond proceeds if the safe harbor provisions are not met.

³ DEP, *Stewardship*, <http://www.dep.state.fl.us/lands/stewardship.htm> (last visited Apr. 5, 2013).

⁴ DEP, *Land Management Plan Compliance Checklist* (Rev. Feb. 2013), available at <http://www.dep.state.fl.us/lands/oes/Land%20Management%20Plan%20Compliance%20Checklist-%20revised%20February%202013.pdf> (last visited Apr. 5, 2013).

⁵ *Supra* note 2.

⁶ “Fee simple title” is a legal term meaning the title holder has an absolute interest in the land without restrictions.

The bill does not require the Board to retain a perpetual conservation easement over lands it transfers or over the conservation easements it acquires.

The bill potentially conflicts with existing law that requires certain surplus lands be offered to universities, community colleges and local governments before being offered to the public.

The alternative exchange mechanism provided in the bill removes the ARC from its current role as the recommending body for conservation land use decisions for disposition of state-owned conservation lands. The ARC maintains a list of potential conservation lands targeted for acquisition that is approved by the Board annually. The process contained in the bill may allow for acquisition of lands not targeted for acquisition.

Public access may be limited if the private landowner does not allow the public on the formerly state-owned lands or privately held lands now subject to a conservation easement.

The bill *strongly encourages* low-impact uses for state-owned lands transferred to a private party but does not require it. More intense land uses may be incompatible with surrounding land use management plans or the purpose for which the land was originally purchased.

The Board does not have the expert staff needed to evaluate the net conservation benefit of lands considered under an exchange request. The bill is silent as to whether the Board may consult with the ARC or the Division of State Lands to evaluate this criterion.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

SB 466 does not require the Board to make a finding that the state-owned land is not needed for conservation purposes before an exchange may be executed. This provision may conflict with article X, section 18 of the Florida Constitution. It is assumed the Board would make such a determination before exchanging state-owned lands, but the bill is silent on this point.

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

None.

B. Private Sector Impact:

SB 466 may allow certain land owners to receive fee simple title to state-owned conservation lands that may not be available for disposition under current law.

If the Board exchanged state-owned lands accessible to the public for a conservation easement on privately held lands, individuals who currently use the state-owned lands would be prohibited from using the now privately held lands and the new lands subject to a conservation easement unless public access was maintained by the new owner. Conservation easements do not inherently contain a right of public access.

C. Government Sector Impact:

SB 466 may result in an increase in conservation easements held by the state but a decrease in lands held in fee simple. However, since the alternative exchange mechanism in this bill is permissive, the impact cannot be determined.

Pursuant to s. 193.501, F.S., lands subject to a conservation easement may be assessed at a lower valuation for tax purposes depending on the length of the easement. The tax gain or loss to the state and local governments can only be determined based on the specific terms and acreage of each exchange; therefore, the tax impact to the state and local governments cannot be determined at this time.

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.)

None.

B. Amendments:

None.