

STORAGE NAME: h1119.wrm
DATE: March 31, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1119

RELATING TO: Land sales and acquisitions

SPONSOR(S): Representative Minton and others

STATUTE(S) AFFECTED: Sections 253.022, 259.032, 373.59 and 704.06, Florida Statutes (F.S.)

COMPANION BILL(S): SB 1262 (i), HB 1577 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER & RESOURCE MANAGEMENT
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1119 addresses a number of public land-management issues. Primarily, it involves the local Soil and Water Conservation Districts in the management, and management planning, of lands acquired for conservation, preservation or recreation. It directs the state Department of Agriculture and Consumer Services (DACS) and a local Soil and Water Conservation District, if one exists in the county where the land is located, to enter into conservation agreements. Assisted by the lead managing agency, these agencies also are directed to develop conservation plans for state or water management district (WMD) lands which are to be managed for preservation, conservation or outdoor recreation purposes. A conservation plan must be in place within one year after acquisition of the implementation of this act, for all such lands, and be referenced in the formal land-management plans required by statute. These conservation plans must include a system of land management practices designed to control and reduce soil erosion and sediment loss; improve the quality and retention of water; and recommend multiple-use management activities.

HB 1119 also expands the requirements of the management prospectus and management plans currently required under Florida law, and reiterates current statutory deadlines on the initial adoption and subsequent updates of state land-management plans. It also directs that the land management plans incorporate multiple-use strategies, to the extent practicable and consistent with the purposes for which the lands were acquired.

In addition, the bill increases the amount of money in the Conservation and Recreation Lands (CARL) Trust Fund earmarked for land management. Currently, the appropriation from the CARL Trust Fund is equal to 1 percent of the total amount of funds ever deposited in the P2000 Trust Fund. HB 1119 raises it to 1.5 percent. If HB 1119 becomes law, land-management funding from the CARL Trust Fund for fiscal year 1997-1998 could be \$31.5 million.

Finally, HB 1119 would allow utility transmission lines, highways and other linear facilities cross conservation easements. This section would operate retroactively, and apply to any linear facility whose construction has not been completed as of the effective date of this act.

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HB 1119 would take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Land management issues

The Florida Preservation 2000 (P2000) program is the state's primary acquisition program for preservation, conservation and recreational lands. Annually, \$300 million of bonds are issued, and the proceeds shared among seven programs that acquire lands for the three purposes just mentioned.

Through the first six bond series, the seven programs which are appropriated P2000 funds have received a total of nearly \$1.75 billion (which includes interest earnings.) As of February 28, 1997, nearly 820,000 acres have been acquired and about \$1.35 billion of P2000 bond dollars have been spent. About \$407 million is unspent, and more than half of that is either encumbered or committed for projects. The seventh series of P2000 bonds will be sold in the spring of 1997.

The seven programs which receive Preservation 2000 funding are: the Conservation and Recreation Lands (CARL) acquisition program; the WMDs' Save Our Rivers land acquisition programs; the Florida Communities Trust; inholdings and additions programs with the Division of Recreation and Parks, the Division of Forestry, and the Game and Fresh Water Fish Commission; and the Florida Greenways and Trails program.

Funds to manage conservation, preservation and certain recreational lands come from the CARL Trust Fund, which receives \$10 million annually from the state severance tax on mined phosphate; between \$40 million and \$42 million annually in state documentary stamp tax revenues; and an estimated \$1.5 million in interest..

The annual appropriation for land management expenditures from the CARL Trust Fund is tied to 1 percent of the cumulative total of all bond proceeds deposited in the P2000 Trust Fund. Since \$300 million in P2000 bonds traditionally are sold each fiscal year, the amount of land management funds set aside in the CARL Trust Fund increases by \$3 million annually. For fiscal year 1997-1998, it is projected that \$2.1 billion in P2000 bonds will have been sold and the proceeds deposited, translating to a \$21 million appropriation from the CARL Trust Fund for land management. State land-management funding, theoretically, will reach a ceiling of \$30 million in fiscal year 2000-2001, when a total of \$3 billion in P2000 bonds will have been sold.

Besides land management, the CARL Trust Fund also is used for salaries and other administrative cost of DEP's Division of State Lands; payment-in-lieu-of taxes for eligible counties; and acquisition of lands which do not qualify under the P2000 program.

Part of the land management funds are spent on planning. Section 259.032, F.S., requires DEP to develop a management prospectus for each property on the CARL list for acquisition. It also requires each land-managing agency to submit a formal land management plan no later than one year after the acquisition of the core parcel or parcels within each project, and to update these plans every five years. The plans are to include a variety of information, such as a priority schedule for accomplishing management activities; a cost estimate for accomplishing these activities; expected

methods for restoring native habitat and for removing exotic species; and a determination of the public uses of the lands which are compatible with the purposes for which they were acquired.

The management plans are reviewed by the Land Management Advisory Council (LMAC) and adopted by the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Trustees). According to LMAC records, many land-managing agencies have failed to meet the deadlines. The most common reason cited by the agencies for failing to comply is a lack of funding and staff.

As support and money have grown for Florida's land acquisition programs, the state's land-management programs have been overshadowed, critics say. A number of reports written over the last five years have concluded that funding land management activities has been deferred in favor of land acquisition, because of the perception that environmentally sensitive lands must be acquired now before they are irretrievably lost to development. The reports also concluded that ignoring land management increases the risk of losing unique and irreplaceable natural resources, not only to development but to displacement by invasive, non-native species. For example, melaleuca is invading South Florida's wetlands at the rate of 50 acres a day, according to DEP, and at least 500,000 acres are considered densely infested with the plant. Uplands are not immune to exotic plants: the spread of tropical soda apple and Cogon's grass have ranchers and other upland property owners concerned.

To address some of these issues, in 1994 the Legislature passed HB 161 (Chapter 94-240, Laws of Florida (L.O.F.)), which sought in part to emphasize accountability of land management. The bill freed up more money for land management, and emphasized more intensive planning, at an earlier stage in the process, for lands acquired by state agencies. It created the "management prospectus," which was in effect a mini-management plan for lands placed on the CARL list.

In 1995, the Legislature adopted HB 647 (Chapter 95-349, L.O.F.), to set aside a percentage of CARL Trust Fund dollars for exotic plant control, and directed DEP to develop an exotics control plan. DEP expects to receive about \$6 million in fiscal year 1996-1997 to disburse as grants to the land managing agencies to control the spread of exotic plants.

In addition, the legislatively created Water Management District Review Commission has spent the last two years researching such issues as land management issues. Its reports indicate that water management districts spend an average of \$9 an acre to manage lands which are not water conservation areas. Those conservation areas require minimal management dollars. Other public land-managing agencies have reported spending more than twice that amount on conservation and preservation lands.

Local Soil and Water Conservation Districts

Florida has 63 soil and water conservation districts, created pursuant to Chapter 582, F.S., with elected boards of supervisors who serve without pay. Monroe and Pinellas counties are the only counties in the state without soil and water conservation districts. Most of the districts have been in existence since the 1920s and 1930s. Their primary role is to assist farmers and other large landowners in developing conservation plans, which are designed to prevent soil erosion and degradation of water quality caused by agricultural or silvicultural operations on the properties. The districts also act as liaisons

between private landowners and the U.S. Department of Agriculture in obtaining grant money and technical assistance. The districts do not receive state funding, but rely on local and federal dollars to operate.

Conservation easement issues

Chapter 704, F.S., governs the creation, implementation and use of easements, which simply defined are grants of use for specific purposes, but usually for ingress and egress. However, a "conservation easement" has a special definition: it is a right or interest in real property set aside to retain lands or waterbodies for the predominant purpose of keeping them in their natural state.

Section 704.06, F.S., lists eight activities that are limited or prohibited on conservation easements, such as construction of buildings, billboards and roads; excavation of materials; and any other types of activities that would be detrimental to the natural resources on the conservation easements. These type of easements are perpetual, and can not be acquired through condemnation or any other type of eminent domain.

DEP, the WMDs and private land trusts purchase, or otherwise acquire through donation, conservation easements from landowners as a way to protect natural resources and habitat without having to buy the full-fee interest in property. The person who sells or donates part of his property as a conservation easement can receive federal and state tax benefits, as well as retain some interest in the property.

As interpreted by DEP, the presence of a state-owned conservation easement does not automatically preclude any crossing by utility lines or other linear facilities. Typically, a request by the owners of a linear facility is evaluated similarly to a request to cross state-owned conservation lands. Using guidelines in the state's "incompatible use policy" as adopted by the Governor and Cabinet, the project is evaluated by LMAC using a public interest test that focuses on the "net positive benefit" of the project. LMAC may recommend modification of the project, and often requires the facility owner to pay a fee and provide environmental mitigation for the project's anticipated impacts. The final decision is made by the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund.

In 1994, DEP, other state agencies, environmental advocates and representatives of linear facility industries met over a period of four months in a working group to review the "incompatible use policy" and particularly how it was applied to conservation easements. Representatives of electric, telecommunication and other industries which use linear facilities expressed concerns that DEP was interpreting the eight activities listed in s. 704.06, F.S., to prohibit all non-natural resource uses of conservation easements, because its standard conservation easement deed form, signed by property owners, specifically excludes those activities. The working group did not publish any consensus recommendations. Attempts to amend s. 704.06, F.S., over the past three years have been unsuccessful.

B. EFFECT OF PROPOSED CHANGES:

HB 1119 would:

- o Add a second representative from the state Department of Agriculture and Consumer Services to LMAC, to bring the total membership to nine. DEP already has two members on the council.
- o Direct the Board of Trustees to consider having a local soil and water conservation district, where applicable, manage or monitor a state acquisition of a property in less than fee if the land is, or will be, in agriculture.
- o Directs the state Department of Agriculture and Consumer Services and a local Soil and Water Conservation District, if one exists in the county where the land is located, to enter into conservation agreements. Those agencies will work with the appropriate lead managing agency to develop a conservation plan for all state or WMD land, purchased after July 1, 1997, which are to be managed for preservation, conservation or outdoor recreation purposes. A conservation plan must be in place within one year after acquisition of the implementation of this act, for all such lands, and be referenced in the formal land-management plans required by statute. These conservation plans must include a system of land management practices designed to control and reduce soil erosion and sediment loss; improve the quality and retention of water; and recommend multiple-use management activities.
- o Directs the Board of Trustees and the WMDs, by January 1, 1998, to complete and submit a full report on long-term management costs on currently owned conservation, preservation and recreational lands.
- o Specifies that prior to acquisition, the lead land-managing agency must submit a management and restoration prospectus, which shall include a conceptual management plan, exotics plan, conceptual restoration plan, long-term management costs, and funding sources.
- o Specifies that no later than one year after acquisition of an adequate portion of a project, the final management plan must be completed.
- o Directs the managing agencies to annually assess management costs, and to promote multiple-use management strategies, where practicable and consistent with the purposes for which the land was acquired.
- o Specifies that all funds received by an agency through revenue-generating activities, except those required in s.589.08(2), F.S., shall be used to defray management costs of other lands managed by that same agency. The agencies must file an annual report to the Board of Trustees about their revenue-generating activities.
- o Increases by 50 percent the amount of money made available in the CARL Trust Fund for land management.
- o Specify that the existence of a conservation easement shall not prohibit the construction of linear facilities, such as utility lines and roads. The effect of this change would be retroactive, and apply to the construction of an linear facility which has not been completed as of the effective date of this act.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. HB 1119 would involve the local Soil and Water Conservation Districts in the land-management planning process for state-owned and WMD-owned conservation, preservation and recreational lands.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

2. Lower Taxes:

Not applicable.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 253.022, F.S., to add a second representative of the state Department of Agriculture and Consumer Services to LMAC.

Section 2: Amends s. 259.032, F.S., to direct the Board of Trustees to consider having a soil and water conservation district manage and monitor certain lands where the state owns less-than-fee interests. Directs conservation agreements between the state Department of Agriculture and Consumer Services and a local water and soil conservation district. Directs their involvement in a conservation plan for state and WMD lands. Specifies content of plans. Requires a management and restoration prospectus. Requires report on management costs. Increases availability of management funding from the CARL Trust Fund.

Section 3: Amends s. 373.59, F.S., to direct the WMD governing boards to consider having a local soil and water conservation district manage or monitor certain lands where less-than-fee interests have been acquired.

Section 4: Amends s. 704.06, F.S., to specify that, notwithstanding any other provision of law, the existence of a conservation easement shall not prohibit the crossing of a linear facility. Provides retroactivity.

Section 5: Provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. At least an additional \$10 million would be available annually for state land-managing agencies from the CARL Trust Fund. While beneficial for land managers, that means fewer dollars will be available for acquiring lands that don't meet some of the strict environmental criteria of the P2000 program.

Another element of HB 1119 likely will result in a net gain of dollars. If state agencies responsible for managing public lands are able to derive more economic returns from revenue-generating activities, where appropriate, as part of multiple-use management strategies, that means more funds will be available for improved management.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. The WMDs may earn additional revenues from multiple-use activities, and thus defray management costs.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

HB 1119 does not specifically address whether the local soil and water conservation districts would be compensated by the state and WMDs for their involvement in conservation planning, and managing or monitoring agricultural activities on lands where the governmental entities hold certain less-than-fee interests. Presumably the soil and water conservation districts would not perform those tasks for free, and so an indeterminate amount from the CARL and Water Management Lands trust funds likely would be needed to pay them.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a review of HB 1119 because the bill does not require counties or municipalities to spend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

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