

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1274

SPONSOR: Senator Laurent

SUBJECT: The Green Swamp Area of Critical State Concern

DATE: March 10, 2000                      REVISED: 03/14/00      03/28/00      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 Amendment</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill deletes provisions relating to the Green Swamp Land Authority and the Authority's power to enter into and terminate land protection agreements within the Green Swamp Area of Critical State Concern and reversion of certain appropriated funds. It creates the Green Swamp Land Protection Initiative under the Department of Environmental Protection (DEP). The bill provides authority of the Division of State Lands of the DEP to negotiate conservation easements for land protection. It requires development of an acquisition work plan and an annual list of proposed acquisitions. The Division of State Lands is directed to develop a conservation easement program and the bill provides for coordination and assistance of the Florida Communities Trust(FCT) program within the Department of Community Affairs, the Boards of County Commissioners for Polk and Lake Counties, the Southwest Florida Water Management District, and the St. Johns River Water Management District. The bill also provides rulemaking authority and provides for ownership rights and interests and use of property conveyed through a conservation easement.

This bill amends ss. 259.041, 259.101, 259.105, 380.0677, and 380.507 of the Florida Statutes.

**II. Present Situation:**

The Green Swamp, comprised of approximately 500,000 acres of mixed swamplands and uplands lying in Polk and Lake Counties, has important water recharge characteristics and contains the headwaters of several rivers, including the Hillsborough River, which provides drinking water for a great number of people in Hillsborough County. In 1979, the Administration Commission (the Governor and Cabinet) designated 322,690 acres of the Green Swamp as the Green Swamp Area of Critical State Concern (GSACSC), primarily to protect the area from future development which might compromise the area's ground and surface water resources. In areas designated as being of critical state concern, local land development regulations and the local comprehensive plan must be approved by the Department of Community Affairs ( DCA). Such regulation often severely limits land development.

In recommending the creation of an area of critical state concern to the Administration Commission, the DCA must include recommendations with respect to the purchase of lands within the area's boundaries as environmentally endangered and outdoor recreation lands.

In counties encompassing areas of critical state concern, the governing body of the county may create by ordinance a land authority. The governing body of the county serves as the land authority's governing board. Among the purposes of a land authority, pursuant to s. 380.0666(3), F.S., is the acquisition of real and personal property or any interest therein when such acquisition is necessary or appropriate to protect, among other things, the natural environment and preserve wildlife habitat areas. To this end, a land authority is authorized to enter into all alternatives to the acquisition of fee simple interests in land, including, but not limited to, the acquisitions of easements and development rights.

In 1994, the prospective purchase of 126,000 acres in the Green Swamp was ranked number 20 on the Conservation and Recreation Lands (CARL) acquisition list; approximately one-half of the Green Swamp was owned by the Southwest Florida Water Management District (SWFWMD) and St. Johns River Water Management District (SJRWMD). Because the purchase of the remaining Green Swamp lands was expected to be quite expensive, it was suggested that purchase of development rights, rather than the full fee, could result in protection at a substantially reduced cost. The sale of development rights was also expected to allow property owners to recoup some of the value of lands that could have been developed had the GSACSC not been designated.

In response to these concerns, the 1994 Legislature enacted s. 5 of ch. 94-212, L.O.F., which created the Green Swamp Land Authority (Authority). Unlike a land authority created by a county commission, the governing body of the Authority was chosen by the Governor from a list recommended by the Polk and Lake County Commissions, together with the two counties' managers.

The mission of the Authority was to balance the protection of the ecological values of the GSACSC with the protection of private property rights and the interest of taxpayers through the acquisition of lands, or rights or interest in lands, from willing sellers within the GSACSC. To accomplish this, the Authority was encouraged to coordinate with the Division of State Lands (DSL) of the DEP, the FCT, the SWFWMD, and the SJRWMD to identify, select, and acquire less-than-fee-simple interests or rights in parcels within the GSACSC, as part of overall land acquisition efforts by the state and the districts.

Owners of agricultural and other property within the GSACSC had 3 years from the effective date of the Authority's rules to apply to the Authority concerning their interest in signing a land protection agreement restricting some or all of their rights to their land. A land protection agreement is a voluntarily negotiated instrument which may provide compensation to a landowner in return for the willingness of the landowner to accept restrictions or conditions on the use of the parcel of land, including the right to develop the land as defined in s. 380.04, F.S. The agreement must include provisions for compliance and be recorded and indexed in the same manner as any other instrument affecting the title to real property.

A land protection agreement program was developed which included procedures for selecting and valuing parcels and many development rights have been acquired, with the SJRWMD and the

SWFWMD as acquisition agents. Selection must be based primarily on the water resource and ecological and environmental resource values of the parcels. Other factors may include the threat of impending development and the historical significance of the property, or other factors determined to be relevant by the Authority. Acquired interests are titled in the acquiring water management district.

The program was annually funded for its first three years by \$4 million from the Conservation and Recreation Lands Trust Fund (CARL TF), \$3 million each from the SJRWMD and the SWFWMD, and \$3 million from the FCT. The FCT has continued its \$3 million funding since then, through FY 1999-2000. No further funds are to be provided for acquisition. Through FY 1999-2000, the Authority has received \$48 million for acquisition of interests in land. As of January 31, 1999, the Authority had \$5,949,488 available for the program. The Authority has received a \$100,000 appropriation annually from the CARL TF for its administrative expenses.

An owner who enters into a land protection agreement may use the property in any manner consistent with the terms of the agreement. A land protection agreement which limits the use of property to agriculture must allow the owner to change from one agricultural activity to another unless otherwise prohibited by the provisions of the agreement. Unless otherwise stated, agreements do not prohibit the construction or operation of: barns or other buildings necessary to agricultural activities, such as employment housing; hunting and fishing camps; or a specified number of single-family residences solely for the use of the property owner or the owner's family.

A fee simple owner of lands subject to a land protection agreement may petition the governing board of the water management district which holds title to the interests or rights in those lands to terminate the agreement. If the district finds that ownership of a parcel of land or interest or rights in a parcel of land acquired is no longer needed to protect the GSACSC, the district may dispose of the land, or interests or rights in the land.

Pursuant to s. 51 of ch. 99-247, L.O.F., the 1999 Legislature repealed s. 380.0677(2), F.S., which provided for the Authority's governing board and transferred the Authority's power, duties, functions and all other activities to the DEP.

Section 704.06, F.S., governs the creation, acquisition, and enforcement of conservation easements. This section defines a conservation easement as a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- Removal or destruction of trees, shrubs, or other vegetation.

- Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- Acts or uses detrimental to such retention of land or water areas.
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will or other instrument executed by or on behalf of the owner of the property, or in any order of taking. Such easements may be acquired in the same manner as other interests in property are acquired, except by condemnation or by other exercise of the power of eminent domain.

Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving properties of historical, architectural, archaeological, or cultural significance. Conservation easements run with the land and are binding on all subsequent owners of the servient estate.

### III. Effect of Proposed Changes:

**Section 1.** Section 380.0677, F.S., is amended to retitle the Authority as the Green Swamp Land Protection Initiative (Initiative), replace references to the Authority with references to the DSL, and replace references to land protection agreements with references to conservation easements. The DSL is encouraged to coordinate with the County Commissions of Polk and Lake Counties to identify, select, and acquire less-than-fee simple interests or rights in parcels within the GSACSC.

This section also deletes provisions relating to the powers of the Authority and requiring that it submit its annual budget to the Governor and Legislature. Also deleted are provisions requiring that acquisitions be approved by the Governor and providing for legislative comments on the Authority's proposed budget. A provision allowing a three-year period from the effective date of the Authority's rules for an owner to apply to the program is deleted, thereby permitting an owner to apply to the DSL concerning an interest in a conservation interest at any time. A conservation easement is described as a voluntarily negotiated instrument which may provide compensation to a landowner in return for an undivided perpetual interest in real property, including the right to develop the land as defined in s. 380.04, F.S., and which may be created or stated in the form of

an easement in any deed, will, or other instrument executed by or on the behalf of the owner of the property and subject to the provisions in s. 704.06, F.S.

This section deletes provisions requiring selected properties to be ranked on a list of proposed projects, requiring acquisition work to continue to completion, and prohibiting an owner from changing the use of the owner's property while it is on the acquisition list and for two years thereafter.

The DSL, with the FCT, the Boards of County Commissioners of Polk and Lake Counties, the SWFWMD and the SJRWMD are directed to develop a work plan to identify properties appropriate for conservation easements. In determining any additional factors to those currently used in the selection process, the DSL must consult with the FCT, the Polk and Lake County Commissions, the SWFWMD, and the SJRWMD. In its development of a conservation easement program, the DSL must obtain the assistance of the FCT, the Lake and Polk County Commissions, the SWFWMD, and the SJRWMD.

The changes include the designation of the DSL, rather than the SWFWMD and the SJRWMD as the acquisition agent for the Initiative, although title to any acquired interests will continue to vest in the districts. Also, the Initiative will only acquire undivided perpetual interests in real property or a restriction on interest in real property. Provisions directing the Authority to adopt rules for the program have been deleted. Also deleted is a requirement that the Authority's rules reflect changes in land values as a result of the designation of the GSACSC. Instead, the DSL is authorized, but not required, to adopt rules. Provisions that required the release of Authority funding for other purposes if not legally obligated after being reserved for acquisition for more than two years are also deleted.

Finally, this section deletes provisions that allow a fee simple owner of lands subject to a land protection agreement to petition the governing board of the water management district which holds title to the interests or rights in those lands to terminate the agreement, and authorize the owning district to dispose of the land or interest in land pursuant to s. 373.089, F.S.

**Section 2.** Section 259.041, F.S., is amended to specify that entering into a conservation easement is an "alternative to fee simple acquisition".

**Section 3.** Section 259.101, F.S., is amended to require that the FCT provide \$3 million of its annual Preservation 2000 funding to the Initiative, which may use the funds to acquire conservation easements. The section also corrects a reference to the Fish and Wildlife Conservation Commission and conforms references to the Initiative to section 1 of the bill.

**Section 4.** Section 259.105, F.S., is amended to provide that the acquisition of land protection agreements or conservation easements are alternatives to fee simple acquisition for purposes of the Florida Forever program.

**Section 5.** Section 380.507, F.S., is amended to provide the FCT rulemaking authority for land protection initiatives.

**Section 6.** The act takes effect upon becoming law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill deletes provisions permitting a program participant to petition the water management district to sell back development rights. Foreclosing the possibility of regaining development rights could have potential fiscal consequences to some participants.

**C. Government Sector Impact:**

The DEP reports that it can accomplish its responsibilities within its current operating budget, assuming the continuation of the annual \$100,000 appropriation from the CARL TF for administrative costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Natural Resources:

The amendment includes the following additional substantive provisions:

- The Green Swamp Land Protection Initiative is to proceed as the successor in interest to the Green Swamp Land Authority and shall not unlawfully affect the terms of pending land

protection agreements, easements, or other contracts previously entered into under this section. (s. 380.0677, F.S.)

- Any rules adopted by the Division of State Lands must govern the conservation easement application process, implement the conservation easements, implement a work plan, and implement the conservation easement program, along with other rules related to this section that are necessary to carry out this section. (s. 380.0677, F.S.)
- The Department of Environmental Protection must submit a report on the status of the Green Swamp land acquisition program to the Governor, the President of the Senate, and the Speaker of the House of Representatives prior to the 2001 and 2002 Regular Legislative Sessions. The department must include in these reports any recommendations relating to the Green Swamp land acquisition program.
- The Division of State Lands must provide staff, resources, and support sufficient to fulfill the mission of the Green Swamp Land Protection Initiative in an expeditious manner. The division will designate a coordinator for the initiative who will physically travel to the Green Swamp Area of Critical State Concern, on at least a quarterly basis, to provide assistance and services to the area landowners. The division must provide reasonable notice to the landowners of the coordinator's visits, which shall include the time, date, and location of each visit.
- Section 259.101, F.S., is amended to provide the Board of Trustees the option of taking title, or vesting title in either the Southwest Florida or St. Johns River Water Management Districts, to lands acquired through the Green Swamp Land Protection Initiative.(WITH TITLE AMENDMENT)