

STORAGE NAME: h0951s2.gg

DATE: April 13, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: CS/CS/HB 951

RELATING TO: Green Swamp Area of Critical State Concern

SPONSOR(S): Committee on General Government Appropriations (FRC); Committee on Environmental Protection (LRC) and Representatives Paula Dockery; and Others

TIED BILL(S):

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

- (1) ENVIRONMENTAL PROTECTION YEAS 14 NAYS 0
- (2) FINANCE & TAXATION (W/D)
- (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
- (4)
- (5)

I. SUMMARY:

CS/CS/HB 951 removes the Green Swamp Land Authority from statute, and creates, in its place, the Green Swamp Land Protection Initiative (initiative). This bill further specifies that as a part of the initiative's mission, the Division of State Lands of the Department of Environmental Protection is to coordinate with the following entities: the Florida Communities Trust Program, the Boards of County Commissioners for Polk and Lake Counties, the Southwest Florida Water Management District, and the St. Johns River Water Management District, to identify and acquire interests or rights in land within the Green Swamp Area of Critical State Concern as a part of their overall land acquisition efforts.

This bill substitutes 'conservation easement' for 'land protection agreement'; creates an application procedure for conservation easements; and defines a conservation easement 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. The conservation easement 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 bill requires the Division of State Lands, along with its cooperators, to develop an acquisition work plan to identify properties deemed to be appropriate for conservation easements. This list of properties is to be updated at least annually. The Division of State Lands, along with its cooperators, is to also develop a conservation easement program which is to include procedures for selecting, valuing and monitoring compliance of this section. The Division is to act as the acquisition agent, and the title to lands are to vest in the board of trustees. The Division may adopt rules necessary to carry out this provision.

This bill deletes the requirement that funds reserved under this section are to remain available for 24 months, but after such time, funds are to revert toward other purposes.

In addition, this bill provides for specific land uses available to private property owners who enter into conservation easements. This bill also provides for reporting requirements and staffing requirements of the division. Lastly, this bill corrects references to the Green Swamp Land Protection Initiative and to conservation easements throughout additional statutory provisions.

On April 5, 2000, the Committee on General Government Appropriations adopted three amendments to the bill and then passed the bill as CS/CS/HB 951. See the "Amendments and Committee Substitute Changes" section herein.

This act takes effect upon becoming law. The fiscal impact on the Department of Environmental Protection is indeterminant, but insignificant.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Green Swamp Project is the hydrologic center of the "Four River Basins, Florida." The Four River Basins project was a plan to alleviate wide spread flooding over central and south Florida in the 1960's. This plan provided detention storage areas for storm water surface areas. Nine detention storage areas were contained in the original plan, including Green Swamp, Little Withlacoochee and Upper Hillsborough. Flood waters were detained in these storage areas for days or weeks until the downstream water courses could receive the flow without damaging results. This detention also provides the opportunity for ground water recharge to the Floridan aquifer, which is a primary water supply source for most of the state.

In 1974, the state recognized the natural resource values of the Green Swamp as a natural basin and high water recharge area as well as the impending threat of its development. Therefore, the state designated approximately 322,000 acres of Green Swamp as an "Area of Critical State Concern." The Southwest Florida Water Management District's governing board oversees the Green Swamp area.

In 1994, the Legislature created the Green Swamp Land Authority to balance both ecological values and private property interests within the Green Swamp Area of Critical State Concern by acquiring lands, or rights and interests in land, in fee simple or less than fee simple, from willing sellers within this area. The land owners enter into a land protection agreement restricting some or all of their rights in their land in exchange for compensation. Pursuant to s. 380.0677, F.S., a "land protection agreement" is defined as "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...."

The land authority developed a procedure for selecting properties appropriate for land protection agreements. Factors considered by the authority included: ecological and environmental resource values of the parcels; threat of impending development; and the historical significance of the property. The authority also developed a land protection agreement program. This program included procedures for selecting, valuing and monitoring land acquisition under this statute.

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The Save our Rivers and Preservation 2000 Program appropriated funds from the Conservation and Recreation Lands Trust Fund, Water Management Lands Trust Fund, and the Florida Communities Trust Program to acquire state lands, including those lands in the Green Swamp area. Such funds were to remain available for a 24 month period after the funds became available for disbursement. After that date, any funds not legally obligated were released for other lawful purposes.

The ownership of the land protection agreement vested within the water management district in which the land was located, and the districts monitored their jurisdiction to ensure compliance. Lastly, the Green Swamp statute allows termination of a land protection agreement under certain conditions.

C. EFFECT OF PROPOSED CHANGES:

This bill eliminates the Green Swamp Land Authority in statute, along with all its powers, and creates, in its place, the Green Swamp Land Protection Initiative. As a part of the initiative's mission, the Department of Environmental Protection is to work in cooperation with the Florida Communities Trust Program, the Boards of County Commissioners for Polk and Lake Counties and the Southwest Florida and St. Johns River Water Management Districts to identify and acquire less than fee simple interests in land within the Green Swamp Area of Critical State Concern.

Private land owners within the Green Swamp area may enter into conservation easements, instead of land protection agreements, and receive compensation in return for the conveyance of an undivided perpetual interest in property. This bill substitutes 'conservation easement' for 'land protection agreement'; defines a conservation easement; creates an application procedure for conservation easements; and clarifies the rights contained in such easement. The conservation easement 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.

In addition, the department, along with its cooperators, is to develop an acquisition work plan used to identify properties appropriate for conservation easements based on certain factors. Furthermore, the same entities are to develop a conservation easement program which is to set forth procedures for selecting, valuing, and monitoring land acquisitions and compliance with this bill. The legal title to the lands that are conveyed through the conservation easements, and previous land protection agreements, vest in the board of trustees. The districts are to monitor the terms of the easements until the state assumes this role.

This bill also sets forth that a private property owner is to use the properties governed by such conservation easement in any manner consistent with the terms of the easement. If the easement limits the use of property to agriculture, then the owner shall be allowed to change from one agricultural activity to another, unless otherwise specified in the agreement. Also, unless otherwise stated, the easement shall not prohibit the construction or operation of barns, employment housing, hunting and fishing camps, single family residences for the property owner, or other buildings necessary to agricultural activities.

This bill deletes the provision in current statute that allows an owner of land to petition the governing board to terminate the land protection agreements, since land protection agreements are being substituted by conservation easements, this provision is no longer

applicable. A party may or may not be able to terminate a conservation easement according to the provisions of the agreement itself.

This bill also removes the reversionary clause so that appropriated funds will not revert after a 24 month period.

The department is directed to submit a report on the status of the Green Swamp land acquisition program, prior to 2001 and 2002 Regular Sessions, to the Governor, the President of the Senate, and the Speaker of the House. In addition, the department is directed to provide staffing and support to the initiative. A coordinator of the initiative is to travel to the Green Swamp area on at least a quarterly basis to extend these services to the land owners.

Lastly, this bill corrects cross references; provides for the new initiative's name in other statutory sections; and substitutes conservation easements in place of the land protection agreements in ss. 253.041; 259.101; 259.105 and 380.507 where the old land authority and the old land protection agreements were mentioned.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 380.0677, F.S., to: delete the Green Swamp Land Authority and in its place, create the Green Swamp Land Protection Initiative; define the initiative's mission and encourage the department to work in cooperation with: the Department of Community Affairs, the Boards of County Commissioners for Polk and Lake counties, and the Southwest and St. Johns River Water Management Districts, to identify and acquire lands; define conservation easements and set forth a process for the application procedures; require an acquisition work plan to be completed by the cooperators; require the cooperators to create a conservation easement program; delete the reversionary clause relating to appropriations; set forth that the title to the lands via the conservation easements and previously entered into land protection agreements are to vest in the board of trustees and the districts are to monitor the terms of these contracts until the state assumes their role; require the department to submit status reports; direct the department to provide staff and sufficient support to the initiative.

Sections 2: Amends s. 259.041, F.S., to include 'conservation easement' as an alternative to fee simple acquisition of state lands.

Section 3: Amends s. 259.101, F.S., relating to Preservation 2000 to reflect the new name of the initiative and to include conservation easement as a vehicle for the Department of Community Affairs to purchase state lands. In addition, the title to the lands, via the conservation easements and previously entered into land protection agreements, are to vest in the board of trustees. The districts are to monitor the terms of these contracts until the state assumes their role.

Section 4: Amends s. 259.105, F.S., to include 'conservation easements' as a criteria to be considered on behalf of the Acquisition and Restoration Council in ranking projects eligible for Florida Forever funds.

Section 5: Amends s. 380.507, F.S., to state that the Florida Communities Trust may approve the initiative's land acquisition procedures and use those procedures for land acquisition programs described in ss. 259.101(3)(c) and 259.105.

Section 6: Provides that this act is to take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Under current law, revenues are to remain available for 24 months from the date the funds become available for disbursement. If the funds are not legally obligated during that time, the funds become available for other lawful purposes. Currently, there is approximately \$6 million in the department's trust fund. Approximately \$4,837,600 are legally obligated for contracts previously negotiated. The remaining balance of \$1,162,400 is to be used for the next round of negotiations. Under this bill, even if this remaining balance is not legally obligated within 24 months from the date of its availability, it would be available for the initiative's use.

2. Expenditures:

Indeterminate. The Department of Environmental Protection has indicated that the cost of implementing the Green Swamp Protection Initiative will be included in the department's cost of doing ordinary business and is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Environmental Protection:

On March 14, 2000, the Committee on Environmental Protection adopted a strike everything amendment and then passed the bill as a committee substitute. The committee substitute is different from the original bill, in that:

- The Green Swamp Land Protection Initiative is deemed as the successor in interest to the Green Swamp Land Authority;
- The initiative cannot unlawfully affect the terms of pending contracts under s. 380.0677, F.S.;
- The division's rulemaking authority is clarified in that it may adopt rules necessary to govern the conservation easement process; implement the conservation easements; implement a workplan; implement the conservation easement program; in addition to other rules related to this section;
- The department is to submit a status report of the Green Swamp land acquisition program to the Governor, the President of the Senate, and the Speaker of the House prior to 2001 and 2002 Regular Sessions;
- The division shall provide staff and support to the initiative; and a coordinator of the Green Swamp initiative is to travel to the Green Swamp area on at least a quarterly

basis to extend this service to the land owners and the division is to provide the land owners with reasonable notice prior to their presence; and

- Substitutes the term 'conservation easement' in place of 'land protection agreements' and makes other technical changes.

Committee on General Government Appropriations:

On April 5, 2000, the Committee on General Government Appropriations adopted three amendments to this bill. The committee then passed the bill as CS/CS/HB951.

All three amendments provide that the title to the lands purchased through conservation easements and prior land protection agreements is to vest in the board of trustees. The districts are to monitor the terms of the easements and agreements until the state assumes this role.

This language was inserted into three different areas of the bill, therefore three amendments were needed. The areas of the bill that were amended include: ss. 259.101(3)(g); 380.0677(5) and (7).

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Christine Hoke, J.D.

Staff Director:

Wayne S. Kiger

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

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