

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Issue – Florida Forever Act (Sharing of Title With Local Governments)

Present Situation

Background

Section 259.105, F.S., is known as the Florida Forever Act. The Florida Forever Program was enacted by the 1999 Legislature and is a successor program to Preservation 2000 (P2000), a \$3 billion, 10-year land acquisition program designed to protect, conserve, and preserve environmentally sensitive lands. The Florida Forever Program is funded through the sale of bonds. The bonds are paid back through the appropriation of documentary stamp tax revenue. The Florida Forever Program is the largest program of its kind in the United States and the world.

Nearly a third of Florida's counties have a local conservation land acquisition program. Most of these counties have participated with the state, as well as water management districts, in acquiring environmentally sensitive land. In 1994, section 259.041(16), F.S., was created to authorize the sharing of title with water management districts and allow the water management districts to become acquisition agents for the Trustees. Historically, joint acquisitions were performed under the "Bargain/Shared" category of Conservation and Recreation Lands (CARL) projects. The definition for "Bargain" projects is that the state would spend no more than 50 percent of the cost of the acquisition, while receiving 100 percent title to the land. The definition for "Shared" projects is that the cost and title is split 50-50 between the state, the federal government, or a water management district. Local governments were able to contribute funds to projects to improve their CARL priority ranking, but the Board of Trustees of the Internal Improvement Trust Fund (Trustees) would continue to hold 100 percent title to the land acquired.¹

Currently under the Florida Forever Act, title to lands acquired under section 259.105(7)(c), F.S., vest in the Trustees, except that title to lands acquired by a water management district will vest in the name of that district and lands acquired by a local government will vest in the name of the local government.

Land Acquisition and Management Advisory Council (LAMAC) White Paper

In 1999, the LAMAC issued a white paper entitled "Joint Title to Land Purchased by the Trustees and Counties" to address the idea of shared title between the Board and a county who participated in a joint

¹ Certificate for approval of Substitute Item 17 entitled "BOT/Counties Joint Title Report/Delegation of Authority," Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, agenda for December 14, 1999.

acquisition. Although local governments could contribute funds to projects to improve their ranking on the CARL list, title always vested in the Trustees. The white paper found that "The Trustees and the water management districts routinely divide title (undivided fee simple interest), although there is no actual division of property. There is no legal impediment to prevent the counties, as political subdivisions of the state, from doing the same." The white paper also contained several recommendations for joint titles including funding requirements, management planning, perpetual conservation easements that clearly defined the use of the property, and restrictive covenants on the property to ensure future conservation use.

The recommendations were presented to the Trustees, and on December 14, 1999, the Trustees directed the Department of Environmental Protection's (DEP) staff to develop procedures to enter into joint title contracts with local governments on a case-by-case basis. The Trustees provided that the joint title was conditioned upon prior approval by both parties of a management agreement, and of the covenants and restrictions to be recorded in a deed.² However, this direction appears to conflict with statutory requirements that P2000 and Florida Forever acquisitions purchased by the state must be titled in the name of the Board.³

Effect of Proposed Change

Issue – Florida Forever Act (Sharing of Title With Local Governments)

The bill provides that title to lands acquired in partnership with local governments under the Florida Forever Act vest jointly or concurrently with the local government pursuant to the following:

- Local government must request to participate in the title interest;
- Local government contribution of funds must be equal to or greater than 25 percent of the purchase price of the property being jointly acquired;
- Title interest must be commensurate with the financial contribution of the local government;
- Purchase agreements for lands to be jointly or concurrently vested in the state and a local government must identify long-term uses and management goals of the property and contain covenants, reverter clauses, or other restrictions necessary to protect the interest of the citizens of the state; and
- Covenants, reverter clauses, or restrictions contained in the purchase agreement must be contained in the property deed.

The bill provides that by October 1, 2005, the DEP must determine the feasibility and cost of retroactively applying the title-sharing provisions of the bill to lands jointly acquired with local governments under the Preservation 2000 (P-2000) and Florida Forever programs, and include the effects of title-sharing on the bond covenants associated with these acquisition programs. The bill requires DEP to submit a written report by December 1, 2005, on the feasibility determinations to the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive and appropriations committees of the Senate and the House of Representatives.

C. SECTION DIRECTORY:

Section 1. Amends s. 259.105(7)(c), F.S., to provide a local government the criteria necessary to obtain a title interest in state-owned lands when a local government provides matching funds with the state.

² Certificate for approval of Substitute Item 17 entitled "BOT/Counties Joint Title Report/Delegation of Authority, Board of Trustees of the Internal Improvement Trust Fund of the State of Florida agenda for December 14, 1999

³s. 259.101(3) and s. 259.105 (7)(c), F.S.

Section 2. Provides the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Indeterminate, due to the unknown title interests acquired by local governments.
2. Expenditures: Indeterminate, due to the unknown title interests acquired by local governments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Indeterminate, due to the unknown title interests acquired by local governments.
2. Expenditures: Indeterminate, due to the unknown title interests acquired by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DEP Comments: Under the Florida Forever Program, the Trustees identified managing agencies that best fit the purpose for which the parcel was acquired. If the title is transferred, there is no assurance that the purpose for which the property was acquired will be maintained.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 25, 2004, the Committee on Natural Resources favorably adopted one amendment to HB 1077.

The amendment provides the criteria necessary for a local government to share title with the state on state-owned lands under the Florida Forever Act. The amendment requires DEP to determine and report on the feasibility and cost of retroactively applying the title-sharing provisions of the bill to lands acquired with local governments under the P-2000 and the Florida Forever programs, and include the effects of title-sharing on the bond covenants associated with these acquisition programs.