HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 State Lands
SPONSOR(S): Spratt
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Natural Resources		Camechis	Lotspeich
2) Public Safety & Crime Prevention			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

This bill requires state land managing agencies to evaluate and utilize inmates and certain juvenile offenders to assist in management or restoration activities on managed lands under certain circumstances; increases the opportunity for private purchase of certain state-owned lands in small counties; removes the 10 year limitation on payments in lieu of taxes to counties from the state and water management districts by providing for perpetual payment; and provides that conservation easements may not interfere with agricultural operations.

The fiscal impact of the bill is indeterminate with the exception of the payment in lieu of taxes revisions. Currently, state and water management district payments in lieu of taxes total approximately $2 million per year, which will continue and increase as additional lands are purchased.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

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

B. EFFECT OF PROPOSED CHANGES:

PAYMENT IN LIEU OF TAXES

Current Situation

Publicly owned lands include such areas as parks and other recreational facilities, conservation and wildlife preservations, property underlying government office buildings, flood plains, airports, and roads. Approximately 7 million of Florida's 34.5 million acres, or one in every five acres, are publicly owned: 2,125,331 acres or 30.4 percent are federally owned; 2,269,375 acres or 32.4 percent are state owned; 1,668,423 acres or 23.8 percent are owned by water management districts (WMDs); 553,279 or 7.9 percent are owned by counties; 213,744 acres or 3.1 percent are owned by municipalities; and various special districts and other non-private entities own the remaining 168,720 acres or 2.4 percent of public lands.

The Legislative Committee on Intergovernmental Relations (LCIR) adopted a 2002-03 interim project to identify impacts from publicly owned property on local governments and examine federal and state programs designed to compensate local governments for loss in ad valorem tax revenues. According to the LCIR report, some local governments contend that all beneficiaries do not share equally in the costs for publicly-owned lands. Rather, a disproportionate share of the costs is borne by those local governments with federal and state lands within their jurisdictions. Local governments incur two types of costs for having state-owned property within their boundaries: loss of tax base (tax base burden) and expense in the provision of services to state-owned properties (impact burden). Some local governments also cite costs associated with the loss of future development prospects of state owned lands. It is important to note many local governments may also accrue economic benefits to varying extents.

The LCIR concluded that, without an elaborate cost-benefit analysis within each local setting, it is difficult to accurately assess the net impact to each local government. In general, cash reimbursement programs do not fully compensate local governments for the amount of tax money that would have been generated from federal and state-owned properties were they not tax-exempt. Positive impacts of publicly owned lands on counties are most tangibly measured in terms of cash payments provided to local governments as reimbursement for loss of ad valorem taxes. Less tangible benefits could include jobs created, expansion of business and recreational activities, new tax revenues generated, and access to public facilities.

Section 259.032(12), F.S., requires the state to make payments-in-lieu of taxes to local governments for lands purchased by the state using Preservation 2000 or Florida Forever funds. The payment is

based upon the average amount of taxes paid on the property for the 3 years prior to its being removed from the tax rolls. However, counties or local governments may only receive 10 annual payments for each tax loss. Eligible local governments include counties with populations of 150,000 or less and local governments within such counties. As a result, PILT funds generally go to rural counties.

Section 373.5905, F.S., requires water management districts to reinstate PILT payments to local governments that received payment in the past but limits PILT payments to a total of 10 payments for each tax loss.

Since its inception, PILT payments have increased from $60,048 in FY 1993-94 to $1,187,644 in FY 2001-02, reflecting the increase in eligible acreage. In FY 2001-02, 22 local governments in Florida participated in the PILT program including 16 county governments, 3 school boards, one mosquito district, one hospital district, and one fire district.

In FY 2002, the total local government revenue loss of $89.9 million attributed to public ownership of lands was only slightly offset by the combined state payments of $2.1 million, resulting in a deficit of $87.8 million.

Local governments raise numerous issues regarding the adequacy of the current state PILT program. These concerns include: a cumbersome annual application process; an inadequate basis for determining PILT payments; an inadequate limit of 10 PILT payments; restriction of the PILT program to state and WMD lands acquired only under Preservation 2000 and its successor Florida Forever which primarily is limited to undeveloped properties, restriction of local government eligibility to counties with populations of 150,000 or less and local governments within those counties; and, a negative impact from government land acquisitions to future development potential for the county.

Additionally, the LCIR found that funding of the Conservation and Recreation Lands (CARL) Trust Fund, the major funding mechanism for state PILT programs, is insufficient. A 28 percent reduction in proceeds from the Documentary Stamp Tax in FY 2001-02, in conjunction with increased land management costs, has created a fiscal shortfall in the trust fund, which is projected to run a deficit by FY2004-05.

Effect of Proposed Changes

Sections 259.032(12), F.S. and 373.5905, F.S., are amended to eliminate the 10-year limit on PILT payments to allow local governments will receive payments into perpetuity for lands purchased with funds from the Conservation and Recreation Lands Trust Fund and Florida Forever.

UTILIZATION OF INMATE SERVICES FOR STATE LAND MANAGEMENT

Current Situation

Section 946.40, F.S, permits the Department of Corrections (DOC) to enter into agreements with state agencies that might use the services of inmates of correctional institutions and camps when it is determined by the DOC that such services will not be detrimental to the welfare of the inmates and or the interests of the state in a program of rehabilitation. The budget of the DOC may be reimbursed from the budget of any state agency or state institution for the services of inmates and personnel of the DOC in such amounts as may be determined by agreement between the DOC and the head of such agency or institution.

Section 253.034, requires managers of conservation and nonconservation lands to submit a land management plan to the DEP at least every 10 years and update the plan under certain circumstances. Section 259.032, F.S., directs managing agencies of lands purchased with funds from the Conservation

and Recreation Lands Trust Fund to enter into contracts or interagency agreements with other governmental entities for the purpose of conducting land management activities.

Effect of Proposed Changes

Section 946.40, F.S., is amended to require the DOC to enter into agreements with agencies responsible for managing state lands for the purpose of utilizing inmates to perform state land management activities, including services related to restoration, grounds maintenance, removal of invasive plant species, and forestry management if: the state agency submits a request for such assistance; the DOC determines that such services will not be detrimental to the welfare of the inmates and the interests of the state in a program of rehabilitation; and, the DOC determines that inmates are available.

The DOC's budget must be reimbursed from the budget of the requesting agency for the services of inmates and personnel of the DOC in an amount determined by agreement between the DOC and the requesting agency. If the requesting agency determines that use of inmate services for land management purposes is not cost-effective, the state agency is not required to enter into an agreement with the DOC.

Section 253.034(13), F.S., is created to require lead land managing agencies to utilize inmates of the DOC and juvenile offenders who are at least 16 years of age to assist in management or restoration activities on managed lands if, after consulting with the DOC and the Department of Juvenile Justice (DJJ) the managing agency determines that such use is cost-effective and logistically practicable. This subsection also allows inmates and juvenile offenders to perform management and restoration activities on lands subject to a conservation easement granted to the state if the landowner submits a written request for assistance and the managing agency determines, after consultation with the DOC and DJJ, that the requested assistance relates solely to the performance of management activities and that inmate assistance is cost-effective and logistically feasible.

Sections 253.34(5), F.S., and 259.032(7)and (10), F.S., are amended to require managing agencies to evaluate the potential use of inmates and juvenile offenders to assist in the initial management or restoration of newly acquired state conservation and nonconservation lands to determine if such use is cost-effective and logistically practicable.

CONSERVATION EASEMENTS

Current Situation

For purposes of the provisions affected by this bill, a conservation easement can be described as a voluntary, legally binding agreement between a landowner and the state that maintains land in agricultural and/or open space uses to preserve open spaces, groundwater recharge areas, environmentally sensitive lands, wildlife habitat, and historical features on a specific parcel of land. The easement is a perpetual agreement that is, in theory, customized to meet the state's and the landowner's objectives. In essence, a landowner sells to the state his or her right to develop or increase the intensity of use on all or part of his or her land, but does not grant ownership of the land to the state. Current uses, including residential and recreational uses, agriculture, forestry, and ranching generally continue subject to restrictions in the agreement. However, agreements on agricultural lands often prohibit the construction of buildings or other structures, excavating soil, constructing roads, removing or destroying trees or native vegetation, and activities that increase the intensity of use.

Section 259.041(11), F.S., allows state agencies and the water management districts to use alternatives to fee simple acquisition to bring lands in acquisition plans under public protection. Conservation easements are listed as one such alternative to fee simple. This section also specifically includes an assumption that a private landowner retains the full range of uses for all the rights or interests in the landowner's land that are not specifically acquired by the public agency.

Section 704.06, F.S., permits conservation easements to be acquired by any governmental body or agency 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 sites or properties of historical, architectural, archaeological, or cultural significance.

The state's use of conservation easements facilitates the conservation of lands without removing land from county tax rolls in that the landowner retains ownership of the land subject to a conservation easement.

Effect of Proposed Changes

The bill amends s. 259.041(11)(b), F.S., to provide that a conservation easement obtained in whole or in part with state funds after July 1, 2004, on lands used for agricultural purposes, must not interfere with the landowner's ability to conduct agricultural operations as the landowner deems appropriate, and provides that any provision of a conservation easement that constitutes such interference is unenforceable against the landowner. The term "agricultural operations" is defined as any activity that the landowner deems necessary to the production of plants and animals useful to humans, including the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

Comments provided by state agencies affected by this provision are included in the Comments section of this analysis.

SURPLUSING STATE LANDS IN SMALL COUNTIES

Current Situation

Pursuant to s. 253.034(8)(c), F.S., in any county having a population of 75,000 or less, or a county having a population of 100,000 or less that is contiguous to a county having a population of 75,000 or less, in which more than 50 percent of the lands within the county boundary are owned by a governmental entity, those lands titled in the name of the state or a state agency which are not essential or necessary to meet conservation purposes may, upon request of a public or private entity, must be made available for purchase through the state's surplusing process. Rights-of-way for existing, proposed, or anticipated transportation facilities are exempt from the requirements. Priority consideration must be given to buyers, public or private, willing to return the property to productive use so long as the property can be reentered onto the county ad valorem tax roll. Property acquired with matching funds from a local government may not be made available for purchase without the consent of the local government.

Effect of Proposed Changes

This bill amends s. 253.034(8)(c), F.S., to reduce the percentage of lands that must be owned by a governmental entity from 50 to 30 percent thereby increasing the opportunities for private or public entities to request the surplusing of state owned lands that are not essential or necessary to meet conservation purposes.

C. SECTION DIRECTORY:

Section 1. Amends s. 253.034, F.S., requiring state land managing agencies to evaluate and utilize inmates and certain juvenile offenders to assist in management or restoration activities on managed lands in certain circumstances; revising a limitation on the availability of certain lands for purchase through the state lands surplusing process.

Section 2. Amends s. 259.032, F.S., directing land managing agencies to make certain evaluations concerning the potential use of inmates and juvenile offenders to assist in the initial management or restoration of specified property; extending the state's payment in lieu of taxes program.
Section 3. Amends s. 259.041, F.S., providing that conservation easements may not interfere with agricultural operations.
Section 4. Amends s. 373.5905, F.S., extending the water management districts payment in lieu of taxes program.
Section 5. Amends s. 946.40, F.S., requiring interagency agreements for use of inmate services in certain state land management activities.
Section 6. Reenacts s. 159.075, F.S.
Section 7. Reenacts s. 253.036, F.S.
Section 8. Reenacts s. 259.036, F.S.
Section 9. Reenacts s. 259.04, F.S.
Section 10. Reenacts s. 259.105, F.S.
Section 11. Reenacts s. 253.034, F.S.
Section 12. Reenacts s. 944.053, F.S.
Section 13. Reenacts s. 946.002, F.S.
Section 14. Reenacts s. 946.503, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

Conservation Easements: According to comments submitted by some interested parties, the revisions to the conservation easement provision found in s. 259.041, F.S., may have the unintended consequence of limiting the use of conservation easements leaving only fee simple purchases by the state or increased regulation of lands to accomplish state conservation goals. If this occurs, the cost of full fee simple land purchases by the state and water management districts would be greater than the cost of acquiring conservation easements, and a greater amount of land would be removed from the county tax rolls resulting in a reduction of county tax revenues.

Payments in Lieu of Taxes: Sections 259.032(12), F.S. and 373.5905, F.S., are amended to eliminate the 10-year limit on PILT payments to allow local governments will receive payments into perpetuity for lands purchased with funds from the Conservation and Recreation Lands Trust Fund and Florida Forever. The state agencies required to make PILT provided the following information as a basis for estimating the fiscal impact of this revision:

Agency[1]	Annual Payment
DEP	$1,308,877 (FY02-03) paid from CARL trust fund
SFWMD	$ 8,000 current, $40,000-$50,000 projected
St. Johns River WMD	$40,000 current
Suwannee River WMD	$254,387 (FY03-04 payments)
SWFWMD	$331,960 (FY04-05 payments)

[1] The NWFWMD did not provide fiscal information.

Utilization of Inmate Labor: The use of inmate labor services should only occur if the state land managing agency determines that the services are cost-effective. If inmate service is found to be a more cost-effective method of managing state lands, management costs should decrease. However, the amount of the reduction is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Payment in Lieu of Taxes: The revisions of ss. 259.032(12) and 373.5905, F.S., provides that counties in which state or water management district lands are located will receive perpetual payments in lieu of taxes rather than receiving only 10 annual payments.

Conservation Easement: If the revision of s. 259.041(11), F.S., has the unintended consequence of limiting the use of conservation easements by governmental entities, resulting in more state purchases of land in fee simple, more lands will be removed from county tax rolls, resulting in an indeterminate decrease in ad valorem revenues.

Surplusing Provision: The revision of s. 253.034(8), F.S., may increase sales of certain state owned lands to private entities and the reintroduction of those lands on the tax rolls of counties with small populations, thereby resulting in an indeterminate positive fiscal impact on county ad valorem tax revenues.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Conservation easement: The revision of s. 259.041(11), F.S., may have the unintended consequence of reducing the value of conservation easements to the state and water management districts thereby reducing the amount these governmental entities will pay a private landowner to purchase a conservation easement.

Surplusing Provision: The revision of s. 253.034(8), F.S., increases the opportunity for private entities to purchase state lands that are not essential or necessary for conservation purposes in counties will small populations.

D. FISCAL COMMENTS: See agency comments below.

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: This bill does not appear to impact the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Agencies impacted by the provisions of this bill provided the following comments regarding the revisions to the conservation easement provision:

Department of Environmental Protection: The proposed revision basically would end the state's conservation easement acquisition program. It reduces the state's ability to protect significant natural resources by allowing landowners to convert land uses to any form of agriculture-related uses. Thus, a cattle ranch could be converted to row crops, pine plantation, citrus or even a citrus processing plant, land uses that have much less natural resource value than range land – the primary focus of many of our conservation easements. Similarly, a pine plantation could be converted to a processing mill and still comply with the legislation, thus nullifying our ability to protect open space, water recharge and other significant natural resources. This allowance may also nullify landowners' ability to receive federal tax credits for selling an easement below appraised value, because the legislation could be interpreted to not protect the resources and, therefore, not qualify for the tax break. Under this legislation, the value of an easement would be exclusively the development rights, which are often very low for rural areas where a preponderance of the state's conservation easements are acquired.

South Florida Water Management District: The proposed language would reduce the rights actually sold thus reducing the compensation paid for a conservation easement. Although difficult to determine, it is not unreasonable to assume that the amount of compensation may be cut in half or more.

The District's standard conservation easements routinely prohibit activities that might be construed as agricultural operations under this bill's definition of conservation easement. Because the language is broadly written, it may have the unintended result of discouraging our use of conservation easements.

For example, the SFWMD and the U.S. Army Corps of Engineers (ACOE) are obligated to take the smallest interest necessary for a project such as the Kissimmee River Restoration Project in order to meet the project's objectives. The conservation easement form approved by the ACOE for use in the Kissimmee River Restoration project area specifically prohibits the following activities which might be found permissible under HB 1425:

1. Construction or placing of structures (including but not limited to structures for human habitation), improvements (including but not limited to septic systems), buildings, roads, signs, billboards, fences, docks, dikes, pilings, boathouses, piers, or water control equipment, or other structures on or above the ground, except as otherwise provided herein.
2. Dairy operation of any type.
3. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a District approved maintenance plan.
4. Surface use except for purposes that permit the land or water area to remain in its natural condition.
5. Activities detrimental to flood control, water management, conservation, environmental restoration, water storage, erosion control, soil conservation, reclamation, fish and wildlife habitat preservation, and allied purposes, including, but not limited to, ditching, diking and fencing.
6. Fertilization, alteration, improvement or modification of and to the rangelands or pastures on the Premises except as is in compliance with Best Management Practices Guidelines of the District established for the area or as recommended by the United States Department of Agriculture Natural Resources Conservation Services.

Southwest Florida Water Management District: The conservation easement language as written may not provide for adequate water resource protection. A potential unintended consequence of this could be that the District would be unable to purchase conservation easements or that the value of the easements would be decreased. Additionally, this could further result in all lands being acquired in fee simple, thereby increasing land acquisition costs.

St. Johns River Water Management District: If enacted, the legislation would interfere with negotiations and limit the rights that could be purchased by an agency, including a water management district. Many conservation easements have provisions for limiting the harvest of wetland trees or limiting clear cutting of adjacent sections within a tract of land. These rights concern commodities that should continue to be

negotiable. The decision should be based on the landowners' willingness to see the rights. All conservation easements occur between a willing seller and buyer. If either party is unwilling to sell or buy certain land use rights, they have the option of not including time in the easement or refusing to sell. These decisions should not be controlled by legislation. Such legislation could have far reaching implications to the overall success of future conservation easement transactions. These and other agricultural practices such as row crops or dairies contribute to water quality, water resource, and habitat degradation. By prohibiting restrictions on these activities, the bill could take away the easement purchase option for some landowners and agencies and leave only full, fee purchase or regulation. The effect could be that the land is purchased in full fee, which is more costly to the public and would not protect the agriculture uses that the bill attempts to address.

Suwannee River Water Management District: Section 3 of the proposed bill refers to a landowner's rights to farm under a conservation easement (CE). There is no mention of Best Management Practices for agricultural purposes. Typically, a CE will take the "development rights" and other property rights are negotiated. An ag practice that would continue to violate ground or surface water, should not be allowed. This bill takes away the agencies right to limit silviculture of wetlands. A CE should protect wetlands and the bill would allow a practice not usually granted in a CE. A fix would create ag practices on a CE as long as BMPs are followed, unless otherwise agreed upon by the landowner and agency. We discourage harvesting wetlands on a CE.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A