

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2308

SPONSOR: Natural Resources Committee and Senator Atwater

SUBJECT: Florida Forever Act

DATE: March 9, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>JU</u>	_____
5.	_____	_____	<u>AGG</u>	_____
6.	_____	_____	<u>AP</u>	_____

I. Summary:

This bill amends the Florida Forever Act to provide that the Board of Trustees of the Internal Improvement Trust Fund may, at the request of a local government, agree to jointly or concurrently share title for lands jointly purchased under the Florida Forever program by the state and that local government. The bill provides that the local government must contribute a minimum of 25 percent of the cost of the lands being purchased, and that vested title will be commensurate with the financial contribution of the local government. Purchase agreements for lands to be jointly or concurrently vested must identify the long-term uses and management goals of the property, and must contain covenants, reverter clauses, and restrictions which are deemed necessary to protect the interest of Florida's citizens.

This bill provides that by October 1, 2005, the Department of Environmental Protection (DEP) must determine the feasibility and cost of retroactively applying the joint title provisions of the bill to lands jointly acquired with local governments under the Preservation 2000 (P2000) and Florida Forever programs. The DEP must include in the feasibility study the effects of title sharing on the P2000 and Florida Forever bond covenants, and must provide a written report to the President of the Senate, the Speaker of the House of Representatives, and the appropriate legislative committees by December 1, 2005.

This bill substantially amends s. 259.105 of the Florida Statutes.

II. Present Situation:

Conservation and Recreation Lands Program

The Conservation and Recreation Lands Program (CARL) was created by the Legislature in 1979 to acquire and manage public lands, and to conserve and protect environmentally unique

and irreplaceable lands, and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL list, which is a priority listing of acquisition projects selected for purchase, is still in use today.

The CARL Program was replaced by P2000 and Florida Forever, however, the CARL Trust Fund is a nonlapsing, revolving trust fund which receives documentary stamp tax and phosphate severance tax revenue annually. This revenue is used to manage conservation and recreation lands, but is not to be used for land acquisition without explicit permission from the Board.

P2000 program

The P2000 program was created in 1990 as a \$3 billion land acquisition program funded through the annual sale of bonds. Each year for 10 years, the majority of \$300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the Conservation and Recreation Lands list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs (DCA) for land acquisition loans and grants to local governments under the Florida Communities Trust program (FCT). The remainder of the bond proceeds were distributed to smaller acquisition programs at DEP, the Department of Agriculture & Consumer Services (DACS), and the Fish & Wildlife Conservation Commission (FWCC). Under the P2000 program, lands purchased by DEP, DACS, and the FWCC were required to be titled in the name of the Board. Under the FCT program, lands acquired by the Trust for permanent state ownership were required to be titled in the name of the Board. However, lands acquired in partnership with a county or city vested in the name of the local government.

Florida Forever program

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than \$3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. As part of Florida Forever, the Legislature provided public land acquisition agencies with the authority to purchase eligible properties using alternatives to fee simple acquisitions.

As with P2000, bond proceeds were distributed to DEP, the five water management districts, DACS, the FWCC, and the FCT program within the DCA. Lands purchased under the Florida Forever program are titled in the name of the Board, except that lands purchased by a water management district vest in the name of that district.

Under Florida Forever, the FCT program receives increased funding and is authorized to provide grants to nonprofit environmental organizations, as well as local governments. As with P2000, lands acquired in partnership with a county or city vest in the name of the local government. However, lands purchased by a nonprofit organization using grant funds provided by the FCT must remain permanently in public use through a reversion of title to local or state government, conservation easement, or other appropriate mechanism.

Acquisition & Restoration Council (ARC)

The ARC was created as part of the Florida Forever program to serve as the successor agency to the Land Acquisition and Management Advisory Council (LAMAC). The LAMAC was

responsible for establishing or updating the CARL list for annual submission to the Board. Acquisition projects were to be ranked in order of priority and the Board approved all purchases. Today, the ARC is responsible for evaluating, selecting and ranking state land acquisition projects on the CARL list for purchase approval by the Board.¹

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 acquisition. Although local governments could contribute funds to projects to improve their ranking on the CARL list, title always vested in the Board. The white paper found that "The Trustees and the 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 Board, and on December 14, 1999, the Board directed DEP staff to develop procedures to enter into joint title contracts with local governments on a case-by-case basis. The Board 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

Palm Beach County

Palm Beach County has appeared before the ARC and LAMAC at least three times and has been unable to get approval for joint title to lands purchased by the county and the state under the P2000 and Florida Forever programs. Under the CARL program, the county jointly purchased three properties and is managing those three properties under a lease agreement without funding assistance from the state. The title to those three properties is vested solely with the Board. Recently, the county completed negotiations with the state over a joint purchase for the Pal Mar acquisition. The property will be split into two distinct ownerships according to the percentage of funds paid by each party.⁴

Joint Title a/k/a Undivided Title or Joint Title

According to the Office of the General Counsel at DEP, concurrent title is a legal term that refers to a type of ownership in real property in which two or more parties own the same title on the same piece of property at the same time. Under concurrent title, each owner can sell its interest

¹ <http://www.dep.state.fl.us/lands/oes/2ndlevelpgs/lamac.htm>

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

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

⁴ "Shared Title on Conservation Lands", Legislative Priorities - 2004, Palm Beach County

to another party.⁵ However, under current law, the Board must first offer property titled in the name of the Board to the county in which the property is located.⁶

III. Effect of Proposed Changes:

Section 1. Amends s. 259.105, F.S., to provide that the Board of Trustees of the Internal Improvement Trust Fund may, at the request of a local government, agree to jointly or concurrently share title for lands jointly purchased under the Florida Forever program by the state and that local government. Provides that the local government must contribute a minimum of 25 percent of the cost of the lands being purchased, and that vested title will be commensurate with the financial contribution of the local government. Provides that purchase agreements for lands to be jointly or concurrently vested must identify the long-term uses and management goals of the property, and must contain covenants, reverter clauses, and restrictions which are deemed necessary to protect the public interest.

Provides that by October 1, 2005, the DEP must determine the feasibility and cost of retroactively applying the joint title provisions of the bill to lands jointly acquired with local governments under the Preservation 2000 (P2000) and Florida Forever programs. Provides that the DEP must include in the feasibility study the effects of title sharing on the P2000 and Florida Forever bond covenants, and must provide a written report to the President of the Senate, the Speaker of the House of Representatives, and the appropriate legislative committees by December 1, 2005

Section 2. Provides that the act shall take 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.

D. Other Constitutional Issues:

⁵ Memorandum to the Acquisition and Restoration Council, dated October 21, 2001 from the Office of the General Counsel at DEP regarding Pal-Mar, Palm Beach County Acquisition Proposals

⁶ see s. 253.034 (6) (f), F.S.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Impact on DEP

The DEP will experience some fiscal impact from the costs of determining the feasibility and cost of retroactively applying the title sharing provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
