

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes limited government – The bill expands the current responsibilities of the FWCC to require FWCC to maintain lands open for public hunting at current acreage levels by replacing any lands that are removed from public hunting.

B. EFFECT OF PROPOSED CHANGES:

Background Information

Current Law

Section 372.002, F.S., provides legislative intent that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by s. 9, Art. IV of the State Constitution, which creates and specifies the authority of the Florida Fish and Wildlife Conservation Commission (FWCC).

Section 372.21, F.S., authorizes the FWCC, with the approval of the Governor, to acquire, in the name of the state, lands and waters suitable for the protection of game, fish, non-game birds, fur-bearing animals, or for hunting purposes by purchasing, leasing, receiving the land as a gift, or otherwise obtaining such land. Such lands acquired by FWCC are referred to as “state game lands.” Section 372.21, F.S., also authorizes FWCC to erect fences and buildings necessary to properly maintain and protect the land for its intended purposes.

Hunting Lands

According to the FWCC, as of November 2005, there were approximately 5.6 million acres of land open for public hunting in the state’s public hunting areas system. This total includes lands owned and/or managed by a variety of governmental agencies and private landowners. Private landowners may partner with the FWCC to have their land used for hunting by the public. Private land owners may also designate their land as private hunting land not open to the public.

Public Owned Hunting Lands

Approximately 2.85 million acres in the public hunting area system are owned by the State of Florida. FWCC is the lead manager for about 1.1 million acres. The Department of Agriculture and Consumer Services’ Division of Forestry is the lead manager for about 900,000 acres. The five Water Management Districts are lead manager and/or the owner of about 730,000 acres. Approximately 56,000 acres are managed by the State Armory Board, 53,000 acres are managed by the Department of Environmental Protection, and 16,000 acres are managed by the Department of Corrections.

Approximately 2.32 million acres in the state’s public hunting area system are federally-owned property including 1.14 million acres managed by the U.S. Forest Service, 596,000 acres managed by the Department of Defense, 566,000 acres managed by the National Park Service, 8,000 acres managed by the Department of the U.S. Army Corps of Engineers, and 7,000 acres managed by the U.S. Fish and Wildlife Service.

Privately Owned Hunting Lands

The state’s public hunting area system includes approximately 390,000 acres which are privately-owned, including about 200,000 acres owned by private timber and land companies including Plum Creek, St. Joe, Foley Land and Timber, and Rayonier, and about 190,000 acres owned by the Miccosukee Tribe of Indians.

Concerns Regarding Loss of Public Access to Hunting Lands

According to the FWCC, there is concern among several FWCC stakeholder groups and hunters in general that lands currently open for public hunting are facing pressures (such as development, re-development, and urban encroachment), that may result in the loss of public access for hunting.¹

A survey of Florida hunters conducted by FWCC in the spring of 2005 reflected strong concern about the loss of hunting opportunities and places to hunt. The main concern expressed by people surveyed who hunt on public lands, as reported by FWCC, was that these hunting lands are too crowded.²

According to FWCC, a factor that contributes to these concerns and the perception that public hunting lands are declining is the trend in recent years of privately-owned lands being withdrawn from the state's public hunting area system. Since the year 2000, approximately 315,000 acres of privately-owned land have been withdrawn from the public hunting area system and closed to public access. Most of this land has remained open for hunting under a private hunting lease program where the landowner can generate much higher revenues than is possible under the public hunting area system. The private hunting lease system is driven by demand and the market for quality hunting opportunities and is entirely a private sector activity.³

While privately-owned lands in the state's public hunting area system have declined significantly in recent years, the amount of state-owned land in the state's public hunting area system has increased. Since the year 2000, 10 new public hunting areas comprising about 200,000 acres have been established and added to the system. During the same period, approximately 250,000 acres of land have been acquired and added to existing public hunting areas across the state.⁴

According to a 2003 national survey report by Responsive Management conducted for a national organization called the Conservation Fund, Florida ranked 2nd in the nation in the percentage of lands leased for public hunting by the state and 9th in the nation in the total acres of state-owned hunting lands. In that same report, Florida ranked 40th in the nation in the percent of state-controlled hunting land that is owned by the state and 4th in the nation in the amount of leased state hunting land. When asked by the surveyors what percent of state-controlled land that FWCC anticipates will be available for hunting in five years, Florida (along with 24 other states) was ranked #1. As part of the survey, all the states were asked to rate themselves on a scale of 1 (poor) to 10 (excellent) on the geographical distribution of their hunting acres through out the state, the accessibility of the hunting acres, and the quality of the hunting acres. Florida rated these issues 5.80, 7.00, and 6.80 respectively.

National Efforts on No-Net-Loss Hunting Land Laws

HB 265 is similar to legislation being introduced (and in a few states passed) as part of a proposal by the National Rifle Association's Institute for Legislative Action (NRA-ILA) and other hunting organizations. In a publication by the NRA-ILA, entitled "Will Darkness Fall on the Land?", bills similar to HB 265 have been filed in several states. No-net-loss hunting land legislation has passed in Arkansas, Illinois, Georgia, and Maryland, with Pennsylvania, Oregon, and Florida having such bills introduced.

In 2005, Arkansas enacted the "Arkansas Hunting Heritage Act" to provide that "to the greatest extent practicable...land management decisions and actions may not result in any net loss of land acreage available for hunting opportunities on (State Game and Fish) Commission-managed lands that exist on the effective date" of the Act.

In 2005, Georgia passed an amendment to the Code of Georgia relating to hunting, fishing and the taking of wildlife, that states, that "to the greatest extent practicable, department (of Natural Resources) land management decisions and actions shall not result in any net loss of land acreage available for

¹ Personal communication with FWCC staff.

² Id.

³ Id.

⁴ Id.

hunting opportunities on department managed state owned lands that exist on the effective date” of the bill.

In 2004, Illinois enacted the “Illinois Hunting Heritage Protection Act” to provide that land management decisions and actions by the Department of Natural Resources may not “to the greatest extent practicable, result in any net loss of land acreage available for hunting opportunities on Department-managed lands that exist on the effective date of this Act.”

In 2005, Maryland adopted the “Maryland Hunting Heritage Preservation Act” to requires the Department of Natural Resources to “keep lands managed by the department open for hunting unless the department determines that the land must be closed for reasons of public safety, fish or wildlife management, or homeland security, or as otherwise required by law” and that “to the greatest practicable extent” prevent “any net loss of acreage available for hunting opportunities on land managed by the department.”

In addition, legislation (Senate Bill 1522 – introduced July 28, 2005) has been filed at the federal level which requires that federal public land management decisions and action, should, to the maximum extent practicable, result in no net loss of land area available for hunting opportunities on federal public land. The bill would also require each federal agency with authority to manage federal public land on which recreational hunting occurs to submit to certain congressional committees a report describing any federal public land that was closed to hunting at any time during the preceding year, the reason for the closure, and which land was opened to hunting to compensate for the closure of other hunting land.

Effects of Proposed Changes

The bill specifies that land management decisions and actions, including decisions made by private owners to close hunting land managed by the FWCC, shall not result in any net loss of habitat land acreage available for hunting opportunities on FWCC-managed lands that exists on the effective date of the bill. The bill also requires FWCC to expeditiously find replacement acreage for hunting to compensate for the closures of any existing hunting land. Parcels of land under 50 acres and right-of-way lands are excluded from consideration and replacement land must, to the greatest extent possible, be located within the same FWCC region as land lost and must be used consistent with the hunting discipline permitted on the closed land.

The bill directs FWCC, other state agencies, and water management districts to maintain lands open for public hunting at current acreage levels and to replace any lands that are removed from public hunting.

The bill specifies that other state agencies and water management districts “shall assist, coordinate and cooperate with the Commission to allow hunting” if their lands are “determined by the Commission to be suitable for hunting.” The bill also requires these agencies and water management districts to “cooperate with the Commission to open new, additional hunting lands to replace lost hunting acreage.”

The bill requires FWCC to submit annual reports to the Legislature regarding lands closed to hunting and how the loss of such lands is compensated by opening replacement lands. The bill also requires other agencies and water management districts to submit annual reports by October 1st to the Commission and the Legislature regarding lands open for public hunting, lands not open for public hunting, and the location of these lands by county.

C. SECTION DIRECTORY

Section 1: Creates s. 372.0025, F.S., provides definitions; requires certain lands owned, managed, or leased by the Fish and Wildlife Conservation Commission to be used for hunting; requires the Commission to provide comparable acreage for hunting for any loss of existing hunting lands; requires agencies and water management districts to allow certain lands to be used

for hunting; and requires the Commission to submit annual reports to the Legislature and for agencies and water management districts to submit annual reports to the Commission.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be no fiscal impact or burden on private landowners who choose to remove their lands from the public hunting area system.

There are significant fiscal benefits for the private sector associated with maintaining lands open for public hunting. Public hunting lands have significant positive economic impacts on communities around public hunting areas, particularly in rural areas. Economic impacts are associated with the purchase of hunting supplies, camping supplies, lodging, vehicles, and fuel. Fiscal impacts, however, vary highly depending on the location of the area, size of the area, number of hunters using the area, and type of hunting among other factors.

D. FISCAL COMMENTS:

According to FWCC, estimates of the fiscal impacts HB 265 are unknown since any fiscal impact would vary greatly depending on how much acreage is lost to public hunting and what approach is necessary to replace the lost acreage. FWCC notes that the recent 5-year trend in the loss and gain of lands for public hunting indicates that more lands have been gained than lost due to state land acquisition programs adding lands to the public hunting area system. This trend is expected to continue in the near term, and would minimize any fiscal impact associated with HB 265.⁵

However, if significant hunting acreage is lost during a given year, FWCC would have to identify and open new lands for public hunting "expeditiously". Any fiscal impact would depend on comparing the cost of FWCC managing the lands that are lost from public hunting with the cost of managing new "replacement" lands that would be opened for public hunting.

For example, if it cost \$5 per acre per year to manage a property that is removed from the public hunting area system, and it cost \$10 per acre per year to manage the replacement property, the realized recurring fiscal impact would be an increased management cost of \$5 per acre per year.

⁵ Id.

To make this assessment, FWCC has identified a number of factors which affect the costs of providing public hunting opportunities. According to FWCC, these costs may vary greatly depending on several factors. For example, the cost of providing public hunting is lower on properties that have suitable infrastructure (e.g., roads, fences, camp grounds, and check stations) compared to properties where this infrastructure must be developed. Another factor is the required level of habitat management (e.g., prescribed burning, mowing, and food plantings) and game population management (e.g., animal population surveys, harvest monitoring, and development of regulations).

Costs are higher if extensive habitat management or game population management is required for FWCC to maintain public hunting. Also, the intensity of public use is an important factor in the cost of providing public hunting. Management costs are lower on properties that are open for public hunting to a limited number of people on a limited basis such as a few weeks, compared to properties open to a large number of people for several months. Due to these varying factors, FWCC estimates that the cost of managing public hunting land can range from less than \$1 per acre per year to over \$30 per acre per year.

According to FWCC, there are three basic options for replacing lost hunting lands. These options are:

- FWCC coordinating with other governmental (state and federal) agencies to identify any publicly-owned lands that are not currently open for public hunting and are suitable for opening. The feasibility of this option may rely heavily on the availability of additional funding to cover the costs of providing public hunting opportunities on new cooperative public hunting areas. The cost of providing public hunting on lands where other agencies are cooperating with FWCC generally ranges between about \$1 per acre per year to about \$10 per acre per year.
- FWCC pursuing state acquisition of new lands through the Florida Forever program or a successor program. In the past 5 years, about 450,000 acres or about 90,000 acres per year have been purchased by the state and added to the public hunting area system. Given the current real estate market and the cost of land, this rate of acquisition is likely to slow down. The fiscal impacts of this option on FWCC would include any acquisition costs where FWCC uses In-holdings and Additions funds (currently \$4.5 million annually from Florida Forever) to acquire additions to the public hunting area system. Under this option, FWCC would be the lead agency manager. Currently, the non-recurring startup costs for opening such lands for public hunting are approximately \$30 per acre depending on the need for infrastructure such as roads and check stations to facilitate public hunting. The current recurring costs, including the cost of all land management activities, are approximately \$30 per acre. Land management funding is allocated to FWCC for new lands acquired through the Florida Forever Program, but funding levels vary from year-to-year and according to FWCC, costs are increasing for the management for such lands.
- FWCC leasing privately-owned lands for public hunting through its recreational user permit (user pay) program pursuant to s. 372.57(8)(i)1, F.S. Under the user pay program, the FWCC leases privately-owned lands for public hunting by establishing direct user permit fees, selling the permits, and then transferring the resulting revenues to the landowner. The FWCC works with the landowner to set hunter quotas and user fees at levels that will generate a desired level of lease revenue for the landowner and provide suitable hunting opportunities for the public. Under this program, the landowner is responsible for managing the land and providing adequate infrastructure for public hunting. There are currently about 200,000 acres of land in the user pay program. The landowners currently in this program have worked with the FWCC to keep these hunting opportunities affordable for the public. According to FWCC, this program has slowed the loss of private lands from the public hunting areas system, but has not stopped the loss. Also, this option is not attractive to many private landowners primarily because they can get higher revenues from

private hunting leases without involving the FWCC and without allowing public access to their lands. The current average lease rate for private lands in the user pay program is about \$3 per acre per year. The current market value for private hunting leases can range from about \$4 to \$15 per acre per year depending on the location in the state, proximity to urban areas, and management history of the property among other things.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill 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:

When a legislative act requires FWCC action on the subject of fish or wildlife, there are potential legal implications as to whether such action conflicts with Article IV, Section 9, Florida Constitution that gives the Commission "...regulatory and executive powers of the state with respect to wild animal life...". However, that section of the Constitution also allows legislative acts which are "...in aid of the Commission, not inconsistent with..."

The bill states that "Commission-managed lands shall be open to access and use for hunting..." It does not appear that the objectives of the bill are inconsistent with the Commission's authority to regulate and manage hunting because the bill also has conditional language that allows the Commission to limit hunting when necessary for public safety, fish and wildlife management, homeland security or as otherwise limited by law. According to FWCC, this conditional language is worded broadly enough to allow the Commission adequate flexibility to decide where to allow hunting.

The provision in the bill that requires a no net loss of land for hunting may pose a potential conflict with Article IV, Section 9. It requires FWCC to maintain a minimum amount of state acreage for hunting, without consideration for game resources or factors beyond the control of FWCC, such as development and urban encroachment and the extent to which other agencies or water management districts are capable of or willing to open up land for hunting. According to FWCC, the primary legal concerns could be removed if the "shall" standard was changed to a permissive standard.

B. RULE-MAKING AUTHORITY:

Although not specified for in the bill, FWCC believes that the bill would potentially require rule-making by FWCC to establish and adopt regulations to allow public hunting on lands that are not currently open for hunting, but would be added to replace lands removed from public hunting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The requirement of the bill providing for no net loss acreage for hunting in existence at the time of the effective date of the bill could be construed by the FWCC that no additional acreage for hunting need be added to the current inventory of available hunting lands. Also, the bill does not address what happens if the FWCC fails to "expeditiously find replacement acreage for hunting."

The following comments were provided by the FWCC:⁶

⁶ Id.

There could be limited opportunities for replacing acreage that may be removed from FWCC's public hunting area system. Approximately 80% of the acreage in the state's public hunting area system is not directly owned or managed by the FWCC. Such lands are referred to as "cooperator" lands where the FWCC administers public hunting on the property in cooperation with another state agency or landowner. The bill would place most of the responsibility for maintaining and replacing hunting lands on the FWCC, yet FWCC does not hold management or final decision-making authority for a majority of these lands.

At the present time, all lands suitable for public hunting under FWCC ownership or management are open for public hunting. To replace lost acreage, FWCC would need to either: locate lands managed by other agencies that are not currently open for public hunting and seek willingness from the agency to open such lands for hunting of those lands; identify potential hunting lands that are privately-owned and which could be leased through the FWCC's recreational user permit program pursuant to s. 372.57(8)(i)1, F.S., or pursue state acquisition of acreage to replace lost public hunting lands.

FWCC has worked with and will continue to work with other governmental agencies and private landowners to identify potential hunting lands for the public. This type of cooperation is currently occurring in many cases, but the bill would provide a statutory basis and direction for FWCC to make the determination regarding the suitability for public hunting on all state-owned lands.

There is currently no dedicated funding source for leasing additional private lands for public hunting, particularly at current market rates for leasing hunting lands.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the State Resources Council adopted three amendments and passed out the bill. The amendments do the following:

- clarifies that "state" agencies must assist, coordinate, and cooperate with the FWCC on identifying and securing replacement hunting lands;
- requires that replacement lands, to the greatest extent possible, be located within the FWCC region where land was lost and that the hunting discipline for the replacement land be consistent with the hunting land that was lost; and
- Exempts from replacement land, right-of-way lands and land parcels under 50 acres.

This analysis has been updated to reflect the amendments.