

# 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.)

Prepared By: Environmental Preservation Committee

BILL: CS/SB 430

INTRODUCER: Environmental Preservation Committee and Senator Argenziano

SUBJECT: Hunting lands

DATE: February 16, 2006 REVISED: 04/18/06 \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Molloy</u>	<u>Kiger</u>	<u>EP</u>	<b>Fav/CS</b>
2.		<u>JU</u>	
3.		<u>GA</u>	
4.			
5.			
6.			

## I. Summary:

The committee substitute requires that the Fish and Wildlife Conservation Commission (FWC or commission), a constitutionally created agency, open all commission-managed lands to hunting except for reasons of public safety, fish or wildlife management, or homeland security or as otherwise limited by law. The FWC is required to exercise its constitutional and statutory authority in a manner that supports, promotes and enhances hunting opportunities.

The committee substitute requires that all commission land management decisions and actions, including decisions made by private land owners to close hunting lands managed by the FWC, must not result in any net loss of habitat land acreage available for hunting opportunities on the effective date of the act. The FWC is required to expeditiously find replacement hunting acreage to compensate for any existing hunting land closures, and to the greatest extent practicable, the replacement acreage must be located in the same administrative region and provide the same hunting opportunities as the land being replaced.

Any agency or water management district that owns or manages lands is required to assist, coordinate, and cooperate with the FWC to allow hunting on those lands if the FWC determines that the lands are suitable for hunting purposes. The agencies and water management districts are required to cooperate with the FWC to open new, additional hunting lands to replace lost hunting acreage. An exemption is provided for lands designated as units within the state park system.

The committee substitute establishes annual reporting requirements for the FWC and any agency or water management district owning or managing lands.

The committee substitute creates s. 372.0025, Florida Statutes.

## II. Present Situation:

### **Fish & Wildlife Conservation Commission (FWC)**

The FWC, a constitutional agency, was created by the Legislature in 1999 as a result of the passage of Revision 5 to the State Constitution during the 1998 General Election. Revision 5 provided for the FWC to be composed of seven members appointed by the Governor and confirmed by the Florida Senate. The Legislature created the FWC during the 1999 Regular Session by enacting ch. 99-245, Laws of Florida, to merge the former Game and Fish Commission with the former Marine Fisheries Commission, and with entities from the Department of Environmental Protection.

Under the provisions of Art. IV, s. 9 of the State Constitution, "the commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life..". Art. IV, s. 9 of the State Constitution further provides that "The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement." Finally, Art. IV, s. 9 provides that "The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing."

### **Hunting Lands in Florida<sup>1</sup>**

#### **State and Water Management District Lands**

The FWC maintains public hunting lands acreage tables that are updated as the state acquires and removes lands from the Wildlife Management Area (WMA) system. The FWC estimates the following:

- 2.85 million acres<sup>2</sup> are available in the public hunting system.
  - 2.12 million acres are owned by the state.
  - 730,000 acres are owned by the five water management districts.
- The FWC is the lead manager on 1.1 million acres.
- The State Armory Board is the lead manager on 56,000 acres.
- The Department of Corrections is the lead manager on 16,000 acres of hunting property adjacent to the Florida State Prison in Raiford.
- The Department of Environmental Protection is the lead manager on 56,000 acres of hunting lands.

Not all lands acquired by the state are designated for public hunting purposes. Each time the Board of Trustees of the Internal Improvement Trust Fund approves the Florida Forever acquisition list, they also adopt a management prospectus, developed in cooperation with state agencies, for each property on that list. The prospectus outlines, among other things, the

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<sup>1</sup> Hunting lands information provided by the Fish and Wildlife Conservation Commission

<sup>2</sup> According to the "Summary of Managed Areas Acreages May 2005" published by the Florida Natural Areas Inventory, Florida has 3.363 million acres of non-submerged conservation lands, and 2.343 million acres of submerged conservation lands. The federal government has 4.023 million acres in Florida through the Forest Service, the US Fish and Wildlife Service, the National Park Service, and the Department of Defense.

management goals for the property, conditions affecting the intensity of management, revenue potential of the property, and a description of potential multiple-use activities.

To determine if land is suitable for public hunting purposes, the FWC field staff reviews maps and historical documents, conducts field visits, and collects information from local contacts. Staff also considers the history of hunting on the property, the presence of game species, habitats and populations, proximity of the property to urban areas, whether or not access is adequate, and public interest. If the FWC determines that the area is suitable for hunting purposes, that decision is incorporated into the management prospectus which is adopted by the Board.

When a contract for acquisition is approved by the Board, a lead managing agency is designated, and a land management plan is developed from the prospectus. The land management plan is required to be adopted and in place no later than 1 year after the acquisition is completed. The management plan designates whether the property was bought for a single use, such as a state park, or for multiple use purposes which can include hunting.

### **Federal Lands**

For federal lands included in the WMA system, the FWC establishes bag limits, seasons, and quotas, and provides law enforcement services under cooperative agreements and contracts with each federal agency managing the acreage on which public hunting is allowed. Public hunting acreage on federal lands includes:

- 596,000 acres managed by Department of Defense at Eglin Air Force Base, Tyndall Naval Air Station, and Avon Park Air Force Range.
- 566,000 acres managed by the National Park Service in the Big Cypress National Preserve.
- 8,000 acres managed by the US Army Corps of Engineers in the Apalachee Wildlife Management Area.

### **Tribal Lands**

The FWC has a cooperative agreement with the Miccosukee Tribe (Tribe) for public hunting on about 190,000 acres of tribal lands, which authorizes the FWC to regulate hunting and provide law enforcement support services. The Tribe is consulted on hunting regulations established and enforced by the FWC, and wildlife management area hunting permits issued by the FWC are required to hunt on tribal lands.

### **Private Lands**

The FWC estimates that 390,000 acres in the public hunting system are privately owned lands including about 200,000 acres owned by Plum Creek, St. Joe, and Foley Land and Timber, which are private timber/land companies.

### **No-net loss of hunting lands - Other States**

#### **Arkansas**

The Arkansas State Game and Fish Commission is a constitutionally created entity consisting of eight commissioners, seven of whom have voting power, and one, with no voting power, who is the head of the Department of Zoology at the University of Arkansas. The commissioners are appointed by the Governor, and each Arkansas congressional district must have representation

on the commission. The commissioners are authorized to appoint an executive secretary, and the sole responsibility of the commission is to oversee the agency's function as a wildlife management entity.

In 2005, the Arkansas General Assembly enacted the "Arkansas Hunting Heritage Act" as Act 1377 of the Regular Session, to provide the following:

- "Commission-managed lands" means those lands the commission owns, and those lands over which the commission holds management authority,"
- "Subject to valid existing rights, commission-managed lands shall be open to access and use for recreational hunting except as limited by the Arkansas State Game and Fish Commission for reasons of public safety or homeland security or as otherwise limited by law,"
- "The commission is not required to give preference to hunting over other uses of commission-managed lands or over land or water management priorities established by state law,"
- "To the greatest extent practicable, commission land management decisions and actions may not result in any net loss of land acreage available for hunting opportunities on commission-managed lands that exists on the effective date of this subchapter," and
- "This subchapter does not apply to commission-owned lands under contract to private persons or entities."

### **Georgia**

The Georgia Department of Natural Resources is an executive agency of the state, created in the Official Code, and headed by a commissioner who is appointed and removed by the Board of Natural Resources, subject to the approval of the Governor. The commissioner has the power to administer the department pursuant to the general policies established by the Board of Natural Resources. The Board of Natural Resources, as created in Section 12-2-21 of the Official Code of Georgia, consists of one member from each congressional district in the state, one member selected from among four counties, and four members of the state at large. Commissioners are appointed by the Governor and confirmed by the Georgia Senate, and are representative of all areas and functions encompassed by the Department of Natural Resources. The Board has the power to establish the general policies to be followed by the department.

In 2005, the Georgia General Assembly passed SB 206 to amend Title 27 of the Official Code of Georgia Annotated, to add a paragraph to Section 27-1-3 of the Code, relating to legislative declarations relative to hunting, fishing, and the taking of wildlife. The new paragraph established that:

- "To the greatest extent practicable, department land management decisions and actions shall not result in any net loss of land acreage available for hunting opportunities on department managed state owned lands that exists on the effective date of this paragraph."

### **Illinois**

The Illinois Department of Natural Resources is a statutorily created executive agency of the state, and is headed by a director who is appointed by the Governor with the advice and consent of the Illinois Senate. The department is responsible for managing, protecting and sustaining natural and cultural resources, and providing outdoor resource-based recreational uses. The

Natural Resources Advisory Board, also a statutorily created entity, advises the agency on long range policies and recommends changes in hunting and trapping seasons, and bag or possession limits.

The Illinois General Assembly enacted the "Illinois Hunting Heritage Protection Act", Public Act 93-837, effective January 1, 2005, to provide that:

- "Department land management decisions and actions may not, to the greatest extent practicable, result in any net loss of land acreage available for hunting opportunities on Department-managed lands that exists on the effective date of this Act",
- "The Department is not required to give preference to hunting over other uses of Department-managed lands or over land or water management priorities established by Department regulations or state law",
- "Subject to valid existing rights, Department-managed lands shall be open to access and use for recreational hunting except as limited by the Department for reasons of public safety, fish or wildlife management, or homeland security or as otherwise limited by law," and
- ""Department-managed lands" means those lands that the Department owns or those lands of which the Department holds management authority."

### **Maryland**

The Maryland Department of Natural Resources, an executive agency statutorily created in 1969, is headed by a Secretary who is appointed by the Governor, with the advice and consent of the Maryland Senate. The department's mission is the preservation, protection, enhancement, and restoration of Maryland's natural resources.

In 2005, the Maryland General Assembly adopted the "Maryland Hunting Heritage Protection Act", to require that the Department of Natural Resources:

- "Keep land 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,"
- "Manage land under its authority to prevent, to the greatest practicable extent, any net loss of acreage available for hunting opportunities on land managed by the department," and
- "Manage land under its authority to support, promote, and enhance hunting opportunities to the extent authorized under state law."

### **III. Effect of Proposed Changes:**

**Section 1.** Creates s. 372.0025, F.S.; to provide for no net loss of hunting lands.

- Defines "commission-managed lands" as lands owned by the commission, or lands owned by the state over which the commission holds management authority, or privately owned lands that are leased or managed by the commission.
- Defines "hunting" as the lawful pursuit, trapping, shooting, capture, collection, or killing of wildlife or the lawful attempt to pursue, trap, shoot, capture, collect, or kill wildlife.
- Requires that commission-managed lands be open to access and use for hunting except as limited by the FWC for reasons of public safety, fish or wildlife management, or homeland security or as otherwise limited by law.

- Requires the FWC to exercise its constitutional and statutory authority in a manner that supports, promotes, and enhances hunting opportunities to the extent authorized by the act.
- Requires that FWC land management decisions shall not result in any net loss of habitat land acreage available for hunting on commission-managed lands.
- Requires that decisions by private landowners to close hunting land managed by the commission to the public shall not result in any net loss of habitat land acreage available for hunting.
- Requires the FWC to expeditiously find replacement acreage for hunting to compensate for closures of any existing land. To the greatest extent practicable, replacement acreage must be located within the same administrative region as the lands being closed for hunting and must provide the same hunting opportunities.
- Requires that any agency or water management district that owns or manages lands shall assist and coordinate and cooperate with the FWC to allow hunting on such lands if the FWC determines that such lands are suitable for hunting.
- Provides that lands designated as units within the state park system may not be considered as replacement acreage, and may only be opened for hunting for wildlife management purposes.
- Requires that any agency or water management district shall cooperate with the FWC to open new, additional hunting lands to replace lost hunting acreage to ensure no net loss of land acreage available for hunting.
- Provides that by October 1 of each year, the executive director of the FWC shall submit a written report to the Legislature describing:
  - The acreage managed by the FWC which was closed to hunting during the previous fiscal year and the reason for the closures.
  - The acreage managed by the FWC which was opened to hunting to compensate for closures of existing land.
- Provides that by October 1 of each year, any agency or water management district that owns or manages lands shall submit a written report to the Legislature that:
  - Includes a list of properties that were open for hunting during the previous fiscal year.
  - Includes a list of properties that were not open for hunting during the previous fiscal year.
  - Includes the acreage for each of those properties and the county where each property is located.
  - Exempts right-of-way lands and parcels of less than 50 acres from being included in the report.

**Section 2.** Provides that the committee substitute will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The committee substitute does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by Art. VII, s. 18, State Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Art. IV, s. 9, State Constitution, provides that the FWC "shall exercise the regulatory and executive powers of the state with respect to wild animal life..." and that the "Legislature may enact laws in aid of the commission..". Several provisions of this bill may conflict with the FWC's constitutional authority.

- Subsection (2) of the bill implies that the Legislature may have the authority to open and close commission-managed lands for hunting by requiring that "commission-managed lands shall be open to access and use for hunting except.... as otherwise limited by law."
- Subsection (3) of the bill requires that the FWC exercise its constitutional authority in a manner that supports, promotes, and enhances hunting opportunities to the extent authorized by state law. A legislative directive requiring that the FWC exercise its constitutional authority in a specific manner may infringe on that authority.
- Subsection (4) of the bill requires that commission land management decisions and actions shall not result in any net loss of habitat land acreage available for hunting opportunities on commission-managed lands that exists on the effective date of the bill. A legislative directive dictating the outcome of the FWC's management decisions may infringe on the constitutional requirement that the FWC is the regulatory and executive authority of the state over wildlife.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The committee substitute may have some fiscal impact on the private sector. Although to the greatest extent practicable, the replacement acreage for closed hunting lands should be located in the same area as lands that are closed, that may still not be possible. Hunters in those areas may still have limited access and may have to travel to hunt.

**C. Government Sector Impact:**

The fiscal impact of the committee substitute can not be determined. However, the committee substitute requires that the FWC determine if all state lands owned or managed by an entity other than the FWC are suitable for hunting. No funding is

provided for the FWC to review all state lands to determine which may be eligible for hunting. In cases where the FWC may determine that state lands are eligible to be used for hunting, revisions and amendments to existing land management plans may be required. Finally, the management costs for replacement acreage may not equal existing management costs for acreage which may be closed.

## **VI. Technical Deficiencies:**

The committee substitute provides a definition for "commission" which is the same as the definition already in s. 372.001 and which is applicable to all of chapter 372.

The committee substitute defines "commission-managed lands" in part as "those lands owned by the state over which the commission holds management authority." In some instances, the FWC is not the lead managing agency and while it may hold management authority, that authority is limited by the requirements in the land management agreement approved by the Board of Trustees of the Internal Improvement Trust Fund and implemented by the lead managing agency.

The committee substitute refers to "new, additional hunting lands" to replace lost hunting acreage. The lands may be new or additional but may not be both.

## **VII. Related Issues:**

The committee substitute provides that commission land management decisions and actions shall not result in any net loss of habitat land acreage available for hunting opportunities on commission-managed lands that exists on the effective date of the act. This may be problematic for two reasons:

1. Not all land management decisions for commission-managed lands are made by the FWC. Some are made by the lead managing agency, which may not be the FWC, through amendments to a land management plan approved by the Board of Trustees of the Internal Improvement Trust Fund. Also, the FWC does provide some management services on federal lands and in cases where federal lands may be closed to hunting, the FWC will still have to provide replacement acreage.
2. Requirements providing for no net loss of acreage in existence on the effective date of the act imply that no additional hunting acreage need be added to the current inventory.

The committee substitute does not address what happens if the FWC fails to "expeditiously find replacement acreage for hunting."

The committee substitute provides that agencies that own or manage lands shall assist and coordinate and cooperate with the FWC to allow hunting on such lands. State agencies that will be affected by this requirement include the following:

- Department of Corrections.
- Department of Juvenile Justice.

- Department of Education.
- Department of Management Services.
- Department of Transportation.
- Department of Community Affairs through the Florida Communities Trust program.
- Department of Environmental Protection through:
  1. The Florida Forever program.
  2. The Greenways and Trails program.
  3. The Florida Recreation and Development Assistance program.
  4. The Coastal and Aquatic Managed Areas program.
- Department of Agriculture and Consumer Services.

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

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## **VIII. Summary of Amendments:**

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