

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current situation

The Board of Trustees of the Internal Improvement Trust Fund (Board) is comprised of four trustees: the Governor; the Attorney General; the Chief Financial Officer; and, the Commissioner of Agriculture. The Board is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may inure to the state or any of its agencies, departments, boards, or commissions, with certain exceptions (e.g., lands held for transportation facilities and transportation corridors and canal rights-of-way). The Department of Environmental Protection (DEP) performs staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board.

The primary controlling sections relating to the Board and land acquisition are found in Chapters 253 and 259, F.S. Section 253.025, F.S. governs acquisition of state lands for purposes other than preservation, conservation, and recreation, and s. 259.041, F.S. governs acquisition of state-owned lands for preservation, conservation, and recreation purposes.

There is a disparity between the two controlling sections of statute regarding when two appraisals are required. In accordance with s. 253.025, F.S., two appraisals are required when the estimated value of a parcel to be acquired exceeds \$1 million, while s. 259.041, F.S. specifies that two appraisals are required when the estimated value of the parcel exceeds \$500,000. Neither s. 253.025 nor s. 259.041, F.S. identifies which specific agencies are responsible for selecting appraisers and a review appraiser. Currently, DEP selects the two appraisers and the review appraiser. Those appraisal fees are paid by DEP.

Section 259.041, F.S., referring to appraisals exceeding \$500,000 which differ significantly, indicates a third appraisal is optional. Section 253.025, F.S. is silent regarding required actions when both appraisals exceed \$1 million and differ significantly. While "differ significantly" is not defined in statute, Board of Trustees Rule 18-1, Florida Administrative Code (F.A.C.), referring only to s. 253.025, F.S., mandates a third appraisal be obtained if two appraisals differ significantly. It clarifies that differing significantly means the higher of the two appraised values exceeds 120% of the lower value.

Subsection 259.041(1), F.S. provides the Board the discretion to waive statutory requirements regarding appraisals involving land purchases pursuant to chapter 259, chapter 260, or chapter 375, or substitute other reasonably prudent procedures, provided the public's interest is reasonably protected.

Subsection 259.041(2), F.S. provides the Board rule-making authority regarding acquisition of state-owned lands for preservation, conservation and recreation purposes, however Board of Trustees Rules found in Florida Administrative Code make no reference to s. 259.041, F.S.

Currently, sections 253.025 and 259.041, F.S. do not require the state account for the contributions of other entities when establishing the maximum contribution the state will make towards a joint acquisition. Thus, on September 7, 2005, based upon the recommendation of DEP, the Board

approved the Norfolk Southern acquisition.³ This was a joint acquisition with City of Jacksonville. The appraised value determined by DEP was \$8,400,000. City of Jacksonville's contribution was \$5,116,000. The Board approved a state contribution of \$8,400,000. This resulted in a combined contribution to the seller of \$13,516,000 for land valued by DEP at \$8,400,000.

Proposed Change

This bill modifies the \$1 million threshold requiring two appraisals specified in s. 253.025, F.S. to be consistent with the \$500,000 threshold specified in s. 259.041, F.S. It defines the circumstances under which two appraisals "differ significantly" by specifying it to mean instances where the higher of the two values exceeds 120% of the lower value. This is consistent with the definition found in F.A.C.⁴ Furthermore, it requires a third appraisal be obtained under such circumstances for acquisitions made under ss. 253.025 and 259.041, F.S.

This bill specifies which agencies are responsible for selecting appraisers when two or more appraisals are required. If two appraisals are required, one appraiser shall be selected by the Department of Agriculture and Consumer Services (DOACS). When both appraisals exceed \$500,000 and differ significantly, the Department of Financial Services (DFS) shall select a third appraiser. When the estimated value of a parcel exceeds \$500,000, the review appraiser shall be selected by the DFS. Appraisal fees for those appraisers selected by DOACS and DFS will be paid by those agencies with funds made available by DEP through interagency agreements. These are new assignments for DOACS and DFS. Selection of appraisers and appraisal fee payment by more than one agency with a direct link to the Board avoids any appearance of influence by a single entity. Direct involvement of DFS is consistent with its role as the steward of state funds expenditures.

This bill removes discretionary authority from the Board to waive statutory requirements regarding appraisals involving land purchases, and requires appraisals in accordance with the statutory thresholds.

This bill limits the state's share of a joint purchase offer to the difference between the appraised value, as determined by the state, and the sum of the contributions of the other parties. This will address the issue made evident by the Norfolk Southern acquisition whereby the Board approved a state contribution of an amount equal to the state's appraised value of \$8,400,000 even though other parties were also contributing. The difference between the state's appraised value and the other parties' contribution was \$3,284,000.

C. SECTION DIRECTORY:

- Section 1. Amends Subsection (6) and (7) of s. 253.025, F.S. by modifying the threshold for requiring two appraisals, specifying agencies responsible for selecting appraisers, and establishing a limit for the state's contribution in a joint acquisition.
- Section 2. Amends Subsection (1), (2), (3), and (7) of s. 259.041, F.S. by further limiting Board of Trustees of the Internal Improvement Trust Fund authority to waive or substitute statutory requirements, specifying agencies responsible for selecting appraisers and establishing a limit for the state's contribution in a joint acquisition.
- Section 3. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

³ September 7, 2005 Cabinet Meeting transcript, Item No. 7.

⁴ Subsection 18-1.006(5) F.A.C.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Based upon input from DEP regarding projected and tentative land acquisition activities by or coordinated through that agency which would require a second appraisal and accompanying review with a \$500,000 threshold, an impact of approximately \$117,600 for fiscal year 2008-09 would result. This includes the cost for eight (8) additional appraisals at \$9,800 per appraisal, and the need for increased appraisal review with an additional cost of \$4,900 per appraisal review. Additional appraisal review funding for seven (7) of the eight (8), equating to \$102,900, would come from the Florida Forever Trust Fund. Should the number of required appraisals in fiscal year 2008-09 exceed the projection, there could be additional fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 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:

The Auditor General's Department of Environmental Protection Acquisition, Disposition, and Exchange of State Land Operational Audit, Report No. 2005-203, noted redundancies between ss 253.025 and

259.041, F.S. and the need for consistency between the statutes.⁵ In addition, it was reported that the Board of Trustees of the Internal Improvement Trust Fund Rule 18-1, Florida Administrative Code "...has not been updated to include the acquisition procedures for preservation, conservation, and recreation lands as outlined in Section 259.041, Florida Statutes."⁶

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

⁵ Auditor General Report No. 2005-203, Finding No. 1.

⁶ Id. at Finding No. 3.