The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: CS/SB 1158

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Evers

SUBJECT: Development of Oil and Gas Resources

DATE: February 13, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.			EP	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill creates a method by which a state land management agency may determine that there is an opportunity to develop oil and gas resources under those onshore state lands "to yield greater, near-term revenue returns for the state," and may determine to enter into a public-private partnership contract with a business entity authorized to conduct business in the state to do so. To enter into such a contract:

- A business entity must submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes, provides an estimate of the revenues that the project is expected to generate for the state, and that may suggest state land to be explored and developed.
- The land management agency shall review the business proposal "in a timely manner" and "in a manner that is consistent with contemporary industry practices." As a practical matter, this likely will require hiring an expert consultant to do the review.
- The land management agency shall select a private partner based on the business proposal and its consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land

management agency must evaluate and select the single proposal that will provide the best value for the state.

- The contract must provide specified terms.
- For a proposed public-private partnership contract to be legally binding on the State of Florida, it must be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Chapter 253, F.S., governs the acquisition, administration, and disposition of state lands.

Pursuant to s. 253.03, F.S., the Board of Trustees of the Internal Improvement Trust Fund (Board), comprised of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, is responsible for all lands owned by the state or any of its agencies, departments, boards, or commissions. The Florida Department of Environmental Protection (DEP), through its Division of State Lands (DSL), serves as staff to the Board.[1]

The Board is directed and authorized to enter into leases for the use, benefit, and possession of public lands by agencies which may properly use and possess them for the benefit of the state.[2] The DSL manages the leases and other approvals for all activities on state-owned lands the title to which is or will be vested in the Board.[3]

Florida has more than 3.8 million acres of conservation lands. Nearly all of this land is open for public recreation and nearly all of the lands require some form of stewardship activity. The DSL leases these lands to state agencies and local governments to manage. The DSL has leased over 500 conservation areas that include parks, preserves, forests, wildlife management areas, and other conservation and recreation areas. The DSL also leases non-conservation lands to state agencies and local governments for uses such as universities, correctional institutions, and other government buildings.

For purposes of the development and production of oil and gas, the Board is authorized to negotiate, sell, and convey leasehold estates in lands whose title is vested in any state board, department, or agency or is vested in the state and controlled and managed by any such board, department or agency.[4] If the Board believes there is a demand for the purchase of oil and gas leases on a portion of the land owned, controlled, or managed by a state board, department, or agency, then the board must place such oil and gas leases on the market.[5] The Board may designate the blocks, tracts, or parcels available for lease. A lease may be made only after public notice, and the lease form must be made publicly available at the Board's office.[6] For lands not already developed for oil or gas, the Board must determine in advance the amount of royalty,

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[1] s. 253.002(1), F.S.
[2] s. 253.03(2), F.S.
[3] http://www.dep.state.fl.us/lands/use.htm
[4] s. 253.51, F.S.
[5] s. 253.52, F.S.
[6] *Id.*

never less than one-eighth in kind or in value, and a definite rental, increasing annually after the first 2 years.[7]

Applicants for a lease must submit sealed bids to the Board, which may not be opened until the time and place specified in the public notice.[8] At a public meeting, the Board will consider any and all bids timely submitted for leasing the advertised lands and, in its discretion, may award the lease to the highest and best bidder. If the Board finds that the bids do not represent the fair value of the lease, that the execution of the lease is contrary to the public welfare, that the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may reject all bids, give notice and call for new bids, or withdraw the land from the market.[9]

Each lease must be for a primary term no longer than 10 years and must require that, to remain in full force and effect, operations be carried on in good faith and in a skillful and diligent manner with no cessation of more than 30 consecutive days or that oil or gas is being produced from the leased land in paying quantities. Each lease must provide for its termination in the absence of drilling or reworking operations or production of oil or gas in paying quantities.[10]

The Board may require a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility from each lessee of public land or mineral interest prior to the time the lessee mines, drills, or extracts petroleum, petroleum products, or gas from the land. The surety bond, irrevocable letter of credit, or other proof of financial responsibility serves as security and is to be forfeited to the Board to pay for any damages caused by mining or drilling operations performed by the lessee.[11]

Florida law prohibits oil and gas leases in specified areas except under certain conditions. In particular, no board or agency or the state has the authority to sell, execute, or enter into any such lease relating to any of the following lands, submerged or unsubmerged:

- Lands within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
- Lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.

[7] s. 253.53, F.S.
[8] *Id.*
[9] s. 253.54, F.S.
[10] s. 253.55, F.S.
[11] s. 253.571, F.S. Damages include, but are not limited to, air, water, and ground pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.

- Defined submerged lands in territorial waters.[12]

A person wishing to conduct geophysical operations in search of oil, gas, or minerals must first obtain a permit from the Department of Environmental Protection.[13] The application must contain a statement, in general terms, of the location in which the operation is intended to be conducted. Any information relating to the location of the operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors must be kept confidential by the department for 10 years and exempt from the provisions of s. 119.07(1), F.S., and may not be released to the public without the consent of the person submitting the application.[14]

Whenever geophysical operations are conducted on state-owned mineral lands, the person conducting the operations must provide the Division of Resource Management (the Division) within DEP, acting as agent of the owner of the minerals, a copy of the noninterpreted information derived from the geophysical operations. Any information received by the Division must, upon request of the person conducting the geophysical operations, be held confidential for 10 years from the date of receipt by the division and is exempt from disclosure under any state statute.[15]

III. Effect of Proposed Changes:

The bill creates an unnumbered section of the statutes to provide a method by which a state land management agency may determine, notwithstanding the provisions in chapter 253, F.S., that there is an opportunity to develop oil and gas resources under those onshore state lands "to yield greater, near-term revenue returns for the state," and may determine to enter into a public-private partnership contract with a business entity authorized to conduct business in the state to do so.

A business entity wishing to enter into such a public-private contract must submit a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. In the proposal, the business entity must provide an estimate of the revenues that the project is expected to generate for the state and may suggest state land to be explored and developed under the public-private partnership contract. The proposal must be consistent with approved land management plans approved pursuant to s. 253.034, F.S.

The land management agency shall review the business proposal "in a timely manner" and "in a manner that is consistent with contemporary industry practices." As a practical matter, this likely will require hiring an expert consultant to do the review. The geophysical seismic exploration, drilling, and production activities proposed must be of a duration consistent with industry practices.

The land management agency shall select a private partner based on the business proposal. The land management agency's consideration must include, but need not be limited to, the technical quality of the exploration program proposed and the proposed timetable of geophysical and

[12] s. 253.61, F.S.
[13] ss. 377.2408 and 377.2424, F.S.
[14] s. 377.2408, F.S.
[15] s. 377.2409, F.S.

drilling activities which expedites the potential for generating revenues. If more than one entity submits a proposal for a public-private partnership for substantially the same area, the land management agency must evaluate and select the single proposal that will provide the best value for the state.

The public-private partnership contract must provide for:

- A period of 3 years or longer during which the private partner may explore specified state lands by geophysical seismic methods for the feasibility of oil and gas resource development and production;
- A selection process after geophysical operations are concluded in which the private partner may select and lease prospective parcels of state land for the purpose of exploration and production;
- The leasing of state lands identified as a result of the geophysical seismic operations, which shall be for a term of at least 5 years; and
- Negotiated royalty rates and a lease bonus.

The financial, technical, and operational risk for the exploration, development, and production of oil and gas resources is the responsibility of the private business entity.

The geophysical data acquired and the subsequent interpretation must be made available to the land management agency or its representatives for review, but shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

For a proposed public-private partnership contract to be legally binding on the State of Florida, it must be approved by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate; the bill may encourage additional geophysical exploration which may create additional jobs.

C. Government Sector Impact:

Indeterminate; it is uncertain:

- how many land management agencies may be interested in entering into public-private partnership contracts;
- how many private business entities may be interested;
- how much the expenses of agency review may be, including the apparently necessary costs of hiring an expert consultant;
- how many contracts may be entered into; and
- how much revenue may result.

VI. Technical Deficiencies:

The bill states that a land management agency may determine to offer to lease state land, making this determination discretionary. It further provides that the agency "shall review the business proposal" based on stated criteria and "shall select a private partner based on the business proposal." These later provisions could be interpreted to remove agency discretion in entering into a contract, as the "shall" makes these actions mandatory. Alternatively, these provisions could be interpreted as establishing the criteria by which the decisions must be made, but still leaving the ultimate decision to the discretion of the agency.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on February 13, 2012,

- requires that the proposal be consistent with approved land management plans approved pursuant to s. 253.034, F.S.; and
- deletes the requirement that the contract provide for confidentiality for a period of at least 10 years for the geophysical information or geological information developed as a result of the geophysical seismic exploration by the business entity before the selection of lease areas.

B. Amendments:

None.

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