

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 Environmental Preservation and Conservation Committee

BILL: SB 1554

INTRODUCER: Senator Altman

SUBJECT: State Lands

DATE: February 16, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill allows a private landowner to directly request the Board of Trustees of the Internal Improvement Trust Fund (Board) to transfer state-owned lands to a private landowner in exchange for a conservation easement over the privately held lands. It also specifies the circumstances and time frame for the Board’s consideration of a request.

This bill substantially amends s. 253.42 of the Florida Statutes.

II. Present Situation:

Disposition of State-owned Lands

Section 253.42, F.S., allows the Board to exchange lands vested or titled in the name of the Board. This section authorizes the Board to set the terms and conditions for land exchanges with various parties. In exchanging conservation lands for which consideration was paid, the Board is required to request of local governments land of equal conservation value. The statute defines “equal value” as the conservation benefit of the lands being offered for exchange being equal or greater in conservation benefit than the state-owned lands. In exchanging lands not acquired by the state through paid consideration, the Acquisition and Restoration Council (ARC) must make a determination of a net-positive conservation benefit, irrespective of appraised value. If the property sought in an exchange is designated as nonconservation lands and was received with no consideration paid, it must first be offered to a local government at no cost, absent a legal instrument prohibiting such a transfer. The local government must also use the land for a public purpose.

An exchange of land requires the land be declared as surplus and the acquisition of replacement lands. Pursuant to article X, section 18 of the Florida Constitution, and ss. 253.42 and 253.034(6), F.S., the Board and ARC must determine that the lands proposed for exchange are no longer needed for conservation purposes. For conservation lands, s. 253.034(6), F.S., also requires the Board to make the determination that the exchange will result in a net-positive conservation benefit. Additionally, s. 253.043(15), F.S., requires the Board to first offer surplus lands proposed for exchange to universities, community colleges and state agencies before they are offered to the general public.

Currently, requests for exchanges are made to the Department of Environmental Protection's (DEP), Division of State Lands, acting on behalf of the Board. All exchanges are handled pursuant to Rule 18-2, Florida Administrative Code (F.A.C.). With regard to exchanges of state-owned lands with private entities, Rule 18-2.018(3)(b)6., F.A.C., states, "exchanges may be applied for by private landowners only if they own or can acquire land on an approved state acquisition list and the parcel sought by the private landowner has been selected for conveyance through the land disposal process."

Conservation easements are defined by s. 704.06, F.S., as a right or interest in real property that retains the land in a natural state, including agriculture uses. Such easements include maintaining the structural integrity or physical appearance of historical, architectural, archeological or culturally significant sites. Certain activities that are detrimental to the natural state, structural integrity or physical appearance are prohibited or limited.

Preservation 2000 and Florida Forever Bond Restrictions

P2000 bonds will be fully retired in fiscal year 2012-13; however, Florida Forever bonds will not be fully retired until December 2030. There are certain restrictions contained in statute that prevent disposition of state-owned lands purchased with bond proceeds. Disposition of lands purchased with Preservation 2000 or Florida Forever bond proceeds is limited by ss. 259.101(6)(c) and 253.618(7), F.S., respectively. Generally, the two sections prohibit the disposition of land if it would cause all or any portion of the interest of such bonds to lose the exclusion from gross income for federal income tax purposes.

Additionally, the disposition of state-owned lands may trigger an IRS regulation regarding private use of state-owned lands. If this occurs, the state must act to remediate the action in order for the bonds to maintain their tax-exempt status. Three provisions, known as safe harbor provisions, govern how the state may remediate the private use of state-owned lands purchased with tax-exempt bond proceeds:

- The consideration for the transfer must be exclusively cash;
- The bond issuer reasonably expects to spend the cash received within two years of the transfer for other qualified uses; and
- Any cash left over must be used to redeem or defease bonds.

If land is surplussed, the yield on investments purchased with disposition proceeds may exceed the yield on the bonds, provided, among other things, there is reasonable expectation the

proceeds will be used to purchase substitute property within two years. Any excess earnings are rebated to the Federal Government.¹

III. Effect of Proposed Changes:

Section 1 amends s. 253.42, F.S., to provide an alternative mechanism for the exchange of state-owned lands to the current process provided by the Florida Constitution, statute and adopted rules. The bill allows a private party to make a request directly to the Board to take title over state-owned lands in exchange for a conservation easement over the private party's land. The private lands must be contiguous to state-owned lands. In addition, if the private lands are surrounded by state-owned lands on at least 30 percent of its perimeter and an exchange will not create an inholding, the Board is required to act on the request within 60 days. The bill requires special consideration be given if the state retains a conservation easement in perpetuity. Finally, the bill strongly encourages low-impact uses on such lands.

Section 2 provides an effective date of July 1, 2012.

Other Potential Implications:

The exchange of state-owned lands, if purchased with tax-exempt bond proceeds, may threaten the tax-exempt status of P2000 and Florida Forever bond proceeds if the safe harbor provisions are not met.

The bill does not require the Board to require a perpetual conservation easement over lands it transfers or over the conservation easements it acquires.

The bill potentially conflicts with existing law that requires certain surplus lands be offered to universities, community colleges and local governments before being offered to the public.

The alternative mechanism provided in the bill removes the ARC from its current role as the recommending body for conservation land use decisions for disposition of state-owned lands.

Public access may be limited if the private landowner does not allow the public on the formerly state-owned lands or privately held lands now subject to a conservation easement.

The bill *strongly encourages* low-impact uses for state-owned lands transferred to a private party but does not require it. More intense land uses may be incompatible with surrounding land uses or the purpose for which the land was originally purchased.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹ DEP, *White Paper: Private Use on Public Lands Acquired with Bond Funds* (2010) (on file with the Senate Committee on Environmental Preservation and Conservation).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not require the Board to make a finding that the state-owned land is not needed for conservation purposes before an exchange may be executed. This provision may conflict with article X, section 18 of the Florida Constitution. It is assumed the Board would make such a determination before exchanging state-owned lands, but the bill is silent on this point.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may allow certain land owners to receive title to state-owned lands that may not be available for disposition under current law.

If the Board exchanged state-owned lands accessible to the public for a conservation easement on privately held lands, individuals who currently use the state-owned lands would be prohibited from using either the now privately held lands or the new lands subject to a conservation easement. Conservation easements do not inherently contain a public right of access.

C. Government Sector Impact:

The bill may result in an increase in conservation easements held by the state but a decrease in lands held in fee simple, which may result in a devaluation of the state's real estate portfolio. However, since this mechanism is permissive, the impact cannot be determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is not clear in the bill whether the special consideration for perpetual conservation easements provided for in subsection (c) applies to the state-owned lands or the privately held lands in an exchange. The word "retain" could be interpreted to apply to the state retaining perpetual

conservation easement rights to the formerly state-owned lands or, if used more generally, to hold a perpetual conservation easement in the newly acquired easement.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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