

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 695 Development of Oil and Gas Resources

**SPONSOR(S):** Energy & Utilities Subcommittee and Ford

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 1 N, As CS	Keating	Collins
2) Appropriations Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

For purposes of the oil and gas development and production, the Board of Trustees of the Internal Improvement Trust Fund (comprised of the Governor and Cabinet) 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. 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. Applicants for a lease must submit sealed bids to the Board, which, at a public meeting, will consider the bids. In its discretion, the Board 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.

The bill creates an undesignated section of law that, notwithstanding the provisions of chapter 253, F.S., authorizes a land management agency to establish, by contract, a public-private partnership with a business entity if the agency determines that there is an opportunity to develop oil and gas resources from onshore lands owned by a board, department, or agency of the state and that such development would "yield greater, near-term revenue returns for the state." The bill requires a business entity that wishes to enter into a public-private partnership contract to submit to the land management agency a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership contract. The bill specifies the matters that the land management agency must consider and requires that the land management agency select a private partner based on the business proposal.

A public-private partnership contract created under the bill requires approval by the Board and must provide:

- A minimum 3-year period 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 exploration and production.
- The leasing of state lands identified as a result of the geophysical seismic operations for a term of at least 5 years.
- Negotiated royalty rates and a lease bonus.

The bill's impact on state revenues and expenditures is indeterminate. The impact on state revenues will depend on the response of oil and gas exploration and production companies, the terms of any public-private partnership contracts negotiated with such companies by land management agencies, and actual oil and gas production. Some state land management agencies may be required to expend funds to obtain the necessary resources to review proposals and negotiate public-private partnership contracts. The bill may encourage oil and gas exploration and production companies to pursue opportunities to conduct operations on state lands which could provide potential new investment and job growth.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0695a.ENUS

DATE: 1/27/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **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<sup>1</sup> (Board) is empowered to acquire, administer, manage, control, supervise, conserve, protect, and dispose of all lands owned by, or which may inure to, 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.<sup>2</sup>

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.<sup>3</sup> The DSL manages the leases, subleases, easements, use agreements, deed restrictions, reverter revisions, and other approvals for all activities on state-owned lands the title to which is or will be vested in the Board.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> For lands not already developed for oil or gas, the Board must determine in advance the amount of royalty, never less than one-eighth in kind or in value, and a definite rental, increasing annually after the first 2 years.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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<sup>1</sup> The Board is comprised of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 253.02(1), F.S.

<sup>2</sup> Section 253.002(1), F.S.

<sup>3</sup> Section 253.03(2), F.S.

<sup>4</sup> <http://www.dep.state.fl.us/lands/use.htm> (viewed on January 23, 2012)

<sup>5</sup> Section 253.51, F.S.

<sup>6</sup> Section 253.52, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 253.53, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 253.54, F.S.

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.<sup>11</sup>

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.<sup>12</sup>

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.
- Defined submerged lands in territorial waters.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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<sup>11</sup> Section 253.55, F.S.

<sup>12</sup> Section 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.

<sup>13</sup> Section 253.61, F.S.

<sup>14</sup> Section 377.2408 and 377.2424, F.S.

<sup>15</sup> Section 377.2408, F.S.

<sup>16</sup> Section 377.2409, F.S.

## **Effect of Proposed Changes**

The bill creates an undesignated section of law that, notwithstanding the provisions of chapter 253, F.S., authorizes a land management agency to establish a public-private partnership with a business entity if the agency determines that there is an opportunity to develop oil and gas resources from onshore lands owned by a board, department, or agency of the state and that such development would “yield greater, near-term revenue returns for the state.”

The bill requires a business entity that wishes to enter into a public-private partnership to submit to the land management agency a business proposal that describes the exploration for oil or gas resources and the development of state lands for those purposes. The business entity may nominate state land that is to be explored and developed under the public-private partnership. The proposal must provide an estimate of the revenues that the project is expected to generate for the state.

The land management agency must review the proposal in a timely manner and “in a manner that is consistent with contemporary industry practices.” The bill requires that the proposed geophysical seismic exploration, drilling, and production activities must be of a duration consistent with industry practices. The geophysical data acquired and the subsequent interpretation must be made available to the land management agency or its representatives for review during the period of geophysical seismic exploration, but the bill provides that this information shall remain in the sole possession of the business entity until the business entity has selected the lease areas.

The bill requires that the land management agency select a private partner based on the business proposal. In selecting a private partner, the land management agency must consider, at a minimum, “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 business entity submits a proposal for substantially the same area, the land management agency must evaluate each proposal and select the proposal that it finds will provide the best value for the state.

The bill provides that the public-private partnership must be established through a contract that provides for the following:

- A minimum 3-year period 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 exploration and production.
- The leasing of state lands identified as a result of the geophysical seismic operations for a term of at least 5 years.
- Negotiated royalty rates and a lease bonus.

The bill provides that this contract must be approved by the Board of Trustees of the Internal Improvement Trust Fund in order to be legally binding on the State of Florida. The bill further provides that 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 bill provides an alternative mechanism for obtaining leasing rights to develop oil and gas resources on certain state lands that departs from current law in a number of ways:

- The business entity nominates state lands to explore and develop, rather than the Board placing leases on the market for development and production of oil and gas if it believes there is a demand.
- The business entity obtains a contractual right to lease the state lands it identifies through geophysical seismic operations for development and production of oil and gas resources, rather than the Board publicly soliciting and receiving sealed bids and having the discretion to award the lease to the highest and best bidder or reject all bids and withdraw the land from the market.

- The business entity negotiates royalty rates and a lease bonus with the land management agency, rather than the Board determining the amount of royalty in advance based on the statutory minimum of one-eighth in kind or in value, and a definite, escalating rental.
- The business entity retains sole possession of geophysical data it produces (but would make it available for review by land management agency or its representatives), rather than the state holding the information as confidential and exempt from disclosure under the public records law.
- The bill does not appear to require the business entity to provide a surety or property bond, an irrevocable letter of credit, or other proof of financial responsibility as security to pay for any damages caused by mining or drilling operations performed by the entity.

The bill states in one instance that a land management agency *may participate* in a public-private partnership but states elsewhere that the land management agency, after receiving and reviewing a business proposal or proposals, *shall select* a private partner. Thus, it is not clear whether the bill permits or requires a land management agency to enter into such a partnership. If the land management agency has discretion, the only specific criteria that a land management agency must use in order to exercise its discretion is to consider the technical quality of the exploration program proposed and the proposed timetable of geophysical and drilling activities which expedites the potential for generating revenues.

#### B. SECTION DIRECTORY:

**Section 1.** Creates an undesignated section of law establishing a process that allows land management agencies to create public-private partnerships with business entities to explore for oil and gas resources and to develop such resources on state lands.

**Section 2.** Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill's impact on state revenues is indeterminate. The impact will depend on the response of oil and gas exploration and production companies, the terms of any public-private partnership contracts negotiated with such companies by land management agencies, and actual oil and gas production.

##### 2. Expenditures:

The bill's impact on state expenditures is indeterminate. The bill is not clear as to whether the land management agencies have the discretion to decline to select a private partner after receiving and reviewing a public-private partnership proposal. If the land management agencies do not retain this discretion, these agencies may be required to expend funds to obtain the necessary resources to review proposals and negotiate public-private partnership contracts.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage oil and gas exploration and production companies to pursue opportunities to conduct operations on state lands which could provide potential new investment and job growth.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states in one instance that a land management agency *may* participate in a public-private partnership but states elsewhere that the land management agency, after receiving and reviewing a business proposal or proposals, *shall* select a private partner. Thus, it is not clear whether the bill permits or requires a land management agency to enter into such a partnership.

The bill provides that a land management agency must review a business proposal in a timely manner. The bill does not define what may be considered timely or untimely.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Energy & Utilities Subcommittee adopted a strike-all amendment to HB 695 which is reflected in the committee substitute for the bill. The strike-all amendment resulted in the following changes to the bill:

- Reorganizes the provisions of the bill.
- Removes a requirement that the public-private partnership contract contain a confidentiality provision for the data obtained through geophysical seismic exploration.