

**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 Committee on Appropriations

BILL: SB 326

INTRODUCER: Senator Hays

SUBJECT: Powers and Duties of the Department of Environmental Protection

DATE: March 15, 2013

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Gudeman | Uchino         | EP        | <b>Favorable</b>   |
| 2. | Wiehle  | Caldwell       | CU        | <b>Favorable</b>   |
| 3. | Howard  | DeLoach        | AGG       | <b>Favorable</b>   |
| 4. | Howard  | Hansen         | AP        | <b>Pre-meeting</b> |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

**I. Summary:**

SB 326 removes an obsolete reference relating to right-of-way access in Marion County across portions of the Cross Florida Greenway (CFG) and repeals the sale and exchange procedures specific to surplus CFG lands. The repeal makes the procedures for the sale and exchange of surplus former CFG lands consistent with the current Board of Trustees of the Internal Improvement Trust Funds' procedures for the disposal of surplus state conservation lands.

By eliminating the separate procedure for the surplus and exchange of CFG lands, efficiency savings may be realized. In addition, the sale and exchange of surplus CFG lands could increase state revenues. The savings and increased revenues are indeterminate at this time.

The bill amends section 253.7827, Florida Statutes.

The bill repeals section 253.783(2), Florida Statutes.

**II. Present Situation:**

**Cross Florida Greenway**

The Cross Florida Barge Canal Project was begun in 1933 with the goal of creating a deep-water shipping canal across the state. Construction began in 1935 with federal funding as part of the New Deal, but work was suspended in 1936 when both President Franklin D. Roosevelt's

support and funding decreased.<sup>1</sup> With German U-boats off the Florida coast in 1942, Congress passed a bill authorizing construction of another canal following the same route, this one a barge canal. No funding was provided and no work was done.<sup>2</sup>

In 1964, federal money was provided and construction was begun anew.<sup>3</sup> Environmentalists opposed the canal, led by Marjorie Carr, and, in 1971, President Richard Nixon signed an executive order suspending work on the canal.<sup>4</sup> During this time, thousands of acres of land were acquired.

In 1990, Congress officially de-authorized the project in the Water Resources Development Act of 1990 (Act). All federal canal lands and structures were transferred to the state to be managed as a conservation and recreation area, provided that the state:

- Holds the federal government harmless for claims arising from operation of federal lands and facilities;
- Maintains the corridor as a public greenway for compatible recreation purposes, including specified areas;
- Agrees to preserve, enhance, interpret, and manage the natural and cultural resources contained in specified areas;
- Pays Citrus, Clay, Duval, Levy, Marion, and Putnam Counties a minimum aggregate sum of \$32 million, or at the option of the counties, payment by conveyance of surplus barge canal lands selected by the state at current appraised values; and
- Uses any remaining funds generated from the sale of surplus CFG lands to acquire fee title or easements to other lands along the project route. Funds generated from the sale of surplus CFG lands *must* be used for the improvement and management of the greenway corridor. The Act does not dictate the procedures the state must use to surplus CFG lands, only how the funds from the sale of surplus land are to be used.<sup>5</sup>

If the state fails to comply with the above requirements, the Act provides legal remedies. These include: injunctive relief, specific performance, declaratory judgment, or monetary damages. Courts are also authorized to award costs of litigation to prevailing parties.

The former canal land, officially known as the Marjorie Harris Carr Cross Florida Greenway (CFG), is managed by the Office of Greenways and Trails. The CFG is a multi-use area and provides natural resource-based recreation including fishing, camping, hunting, boating, bicycling, and horseback riding.<sup>6</sup>

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<sup>1</sup> Florida Trend, *Lessons from the Cross Florida Barge Canal Project*, (Feb. 1, 2010), <http://www.floridatrend.com/article/4509/lessons-from-the-cross-florida-barge-canal-project> (last visited Feb. 28, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Sec. 1114(d) of the Water Resource Development Act of 1986 as amended by Sec. 402 of the Water Resource Development Act of 1990, available at <http://www.fws.gov/habitatconservation/Omnibus/WRDA1990.pdf> (last visited Feb. 5, 2013).

<sup>6</sup> DEP, *Marjorie Harris Carr Cross Florida Greenway Management Plan*, (June 15, 2007), [http://www.dep.state.fl.us/gwt/cfg/Plan\\_PDF/CFG\\_LMP\\_Final.pdf](http://www.dep.state.fl.us/gwt/cfg/Plan_PDF/CFG_LMP_Final.pdf) (last visited Feb. 4, 2013).

### **Right of Way Access in Marion County**

The CFG extends through portions of Marion County. Section 253.7827, F.S., requires that the county receive right-of-way access across portions of the CFG at the land's fair market value, or that the value of the right-of-way be subtracted from the amount of reimbursement due to the county, pursuant to s. 253.783, F.S. The requirement that the market value be subtracted from the reimbursement due Marion County is obsolete; the county has already received the required reimbursement.<sup>7</sup>

### **Cross Florida Greenway Surplus Procedures**

The CFG lands are subject to specific procedures for the sale of surplus land which were created to generate funds to reimburse counties for the ad valorem taxes that they paid to the Cross Florida Canal Navigation District.<sup>8</sup> Section 253.783(2), F.S., provides the following CFG-specific procedures for the sale of surplus land:

- The county where the surplus land is located has the first right of refusal to acquire the land at current appraised value by buying it or subtracting the value from its reimbursement;
- The original owner of the land or the original owner's heirs have second right of refusal to acquire the land at current appraised value;
- Any person having a leasehold interest in the land has the third right of refusal to acquire the land at current appraised value;
- Surplus land that is not acquired as stated above is offered in a public sale to the highest bidder. The minimum acceptable bid is the current appraised value;
- Proceeds from the sale of CFG land are refunded to the counties for ad valorem taxes paid by the counties to the Cross Florida Canal Navigation District;
- Interest refunded to the counties is compounded annually at rates specified in s. 253.0783(2)(f), F.S.; and
- Any excess funds from the sale of surplus lands *may* be used for the maintenance of the greenway corridor. However, this requirement conflicts with the Act because the Act requires any excess funds be used to maintain the greenway.

All counties within the CFG corridor have been fully reimbursed; therefore, the reimbursement procedures contained in this section are obsolete.<sup>9</sup>

### **Conservation Land Surplus Procedures**

Generally (and except for surplus CFG land), the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) has the authority to sell or exchange surplus conservation land if it is determined that the land is no longer needed for conservation purposes. Section 253.034(6), F.S., outlines the procedures for selling surplus conservation lands which include:

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<sup>7</sup> Email from Pierce Schuessler, Legislative Affairs Director, DEP, (Feb. 4, 2013)(on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>8</sup> *Id.*

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

- The Acquisition and Restoration Council must first confirm that the request to declare conservation land as surplus is consistent with the resource values and management objectives of the land;
- The Board of Trustees must approve declaring land to be surplus by a vote of at least three members;
- State agencies, colleges, and universities are given priority to lease the surplus land;
- State, county, or local governments are offered second right of refusal to purchase the surplus land;
- If governmental agencies, colleges, and universities elect not to lease or purchase the surplus land, then the land is available for sale on the private market;
- The sale price is negotiated or competitively bid (determined by market value) pursuant to s. 253.034(6)(g), F.S., and Rule 18-2.020, F.A.C.; and
- Proceeds from the sale of surplus land are deposited into the fund from which the lands were acquired. If the trust fund from which the lands were acquired no longer exists, the funds are deposited into an appropriate account to be used for land management.

### III. Effect of Proposed Changes:

**Section 1** amends s. 253.7827(3), F.S., to delete the option for Marion County to subtract the fair market value of lands or right-of-ways needed to expand 60th Avenue from the reimbursement funds due to the county. This provision is obsolete; all reimbursement funds due Marion County have been paid.

**Section 2** repeals s. 253.783(2), F.S., to make the procedures used for disposing of surplus CFG lands consistent with current Board of Trustees procedures for disposing of other surplus conservation lands. This will provide for better management of CFG lands and will close ownership gaps within the CFG boundary.

**Section 3** provides an effective date of July 1, 2013.

#### **Other Potential Implications:**

The current procedures for disposal of surplus CFG lands outlined in s. 253.783(2), F.S., may violate the Act. The Act specifies any funds remaining from the sale of surplus CFG lands, after acquisition of fee title or easements, must be used for maintenance of the greenway. Section 253.783(2)(e), F.S., is permissive as to the uses allowed for those funds. Repeal of s. 253.783(2), F.S., remedies that possible problem.

However, the bill does not require that the funds generated from the sale of surplus former federal CFG lands specifically be used to maintain the greenway, as required by the Act. Section 253.034(6), F.S., does not specify the use of funds generated from the sale of surplus conservation lands; instead that section specifies the fund into which those funds must be deposited. As indicated in the Act, the state may be subject to legal remedies if it fails to comply with the Act.

The repeal of s. 253.0783(2), F.S., implies that the sale and exchange of surplus CFG lands may continue under the existing process for conservation lands titled in the Board of Trustees as outlined in s. 253.034(6), F.S.; however, the bill does not explicitly state this.

**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:

None.

C. Government Sector Impact:

By eliminating a separate procedure for the sale and exchange and surplus CFG lands, the DEP may realize cost savings in the future. The sale and exchange of surplus CFG lands could increase state revenues. The amounts of these savings and increased revenues are indeterminate.

**VI. Technical Deficiencies:**

None.

**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.)

None.

B. Amendments:

None.

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

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