

**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.)

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

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BILL: SB 326

INTRODUCER: Senator Hays

SUBJECT: Powers and Duties of the Department of Environmental Protection

DATE: February 28, 2013      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Gudeman | Uchino         | EP        | <b>Favorable</b>   |
| 2. | Wiehle  | Caldwell       | CU        | <b>Pre-meeting</b> |
| 3. |         |                | AGG       |                    |
| 4. |         |                | AP        |                    |
| 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 surplus and exchange procedures specific to CFG lands. The repeal of the specific CFG surplus and exchange procedures appears to allow the Department of Environmental Protection’s (DEP) Office of Greenways and Trails to follow current DEP Division of State Lands procedures for the surplus and exchange of conservation lands.

The bill amends s. 253.7827 and repeals s. 253.783(2), of the Florida Statutes.

**I. 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 Roosevelt’s support and funding dwindled.<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. However, no funding was provided and no work was done.<sup>2</sup> In 1964, federal money was again provided and construction was begun anew.<sup>3</sup> However, environmentalists again opposed the

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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.*

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 and 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;
- 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. Any remaining funds generated from the sale of surplus CFG lands *must* be used for the improvement and management of the greenway corridor. It 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 managed.<sup>5</sup>

The Act also provides for certain legal remedies if the state fails to comply with the above requirements.<sup>6</sup>

The canal land was officially named the Marjorie Harris Carr Cross Florida Greenway (CFG) and is now 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>7</sup>

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

The CFG extends through portions of Marion County, requiring that Marion County receive right-of-way access across portions of the CFG. Section 253.7827(3), F.S., provides that Marion County may purchase right-of-way access at 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. Marion County is no longer subject to reimbursement, therefore this provision is obsolete.<sup>8</sup>

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<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> *Id.*

<sup>7</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).

<sup>8</sup> Email from Pierce Schuessler, Legislative Affairs Director, DEP, (Feb. 4, 2013)(on file with the Senate Committee on Environmental Preservation and Conservation).

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

CFG lands are subject to specific surplus procedures that were created in order to generate funds needed to refund counties the ad valorem taxes that the counties paid to the Cross Florida Canal Navigation District.<sup>9</sup> Section 253.783(2), F.S., provides the following CFG-specific surplus procedures:

- 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, which is in conflict with the requirements of the Act.

All counties within the CFG corridor have been fully reimbursed; therefore, the reimbursement procedures contained in this section are obsolete.<sup>10</sup>

### **Conservation Land Surplus Procedures**

As to surplus conservation land in general (as opposed to surplus CFG land), the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) has the authority to 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 surplus procedures for conservation lands as follows:

- The Acquisition and Restoration Council must first confirm that the request to surplus conservation land is consistent with the resource values and management objectives of the land;
- The Board of Trustees approves the 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 opt out of purchasing 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.

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

<sup>10</sup> *Id.*

## II. Effect of Proposed Changes:

**Section 1** amends s. 253.7827(3), F.S., deleting the option of Marion County to subtract the fair market value of lands or right-of-ways needed to expand 60th Avenue. As is stated above, all reimbursement funds have been repaid to Marion County; therefore this option is obsolete.

**Section 2** repeals s. 253.783(2), F.S., and appears to allow the surplus procedures of CFG lands to be consistent with current Board of Trustees surplus procedures. This provides for better management of CFG lands and will close ownership gaps within the CFG boundary. The repeal provides consistency between the federal requirements for the funds acquired from the surplus of CFG lands and the manner in which the state manages the funds.<sup>11</sup>

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

### **Other Potential Implications:**

The current surplus procedures outlined in s. 253.783(2), F.S., violate the Water Resource Development Act of 1990. The Act specifies any remaining funds from surplus lands after acquisition of fee title or easements must be used for maintenance of the greenway, while s. 253.783(2)(e), F.S., is permissive for such remaining funds. Repeal of this section remedies this violation. However, the bill does not specify that the funds generated from surplus former federal CFG lands must adhere to the Act's requirements when using the usual surplus procedures outlined in s. 253.034(6), F.S. As stated above, if the state fails to follow the Act's requirements, it may be subject to certain legal remedies.

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.

## III. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

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<sup>11</sup> *Supra* note 8.

**IV. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

There may be an indeterminate cost savings to the DEP by not having a separate procedure for surplussing CFG lands. Additionally, the current procedure for surplussing CFG lands may require multiple public notices placed in newspapers and lengthy legal determinations on the rights of people claiming to be heirs or those claiming a leasehold interest in the lands.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.

**VII. 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.