

**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 Environmental Preservation and Conservation

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BILL: SB 584

INTRODUCER: Senator Hays

SUBJECT: Purchase of Land by a Governmental Entity

DATE: April 1, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Uchino	EP	<b>Pre-meeting</b>
2.			CA	
3.			JU	
4.				
5.				
6.				

**I. Summary:**

SB 584 creates three unnumbered sections of law to provide criteria for purchase of conservation lands by the state, counties, and municipalities. The bill requires the state, counties and municipalities to create an inventory of government-owned property, ensure there is enough funding for current and future maintenance needs, and sell an equal amount of nonconservation property before a conservation lands acquisition.

**II. Present Situation:**

Florida has a long history of land acquisition dating back to 1855, with the creation of the Board of Trustees of the Internal Improvement Trust Fund (BOT). Since 1963 there has been a series of land acquisition programs, including Outdoor Recreation and Conservation (1963), Environmentally Endangered Lands (EEL, 1972), Conservation and Recreation Lands (CARL, 1979), Save Our Rivers (SOR, 1981), Save Our Coast (SOC, 1981), Florida Communities Trust (FCT, 1989), Preservation 2000 (P2000, 1990), and Florida Forever.<sup>1</sup>

In 1990, the Legislature established the P2000 program in an effort to protect Florida’s water resources, wildlife habitat, recreational areas, wetlands, and forests from a rapidly growing population. During the ten-year, \$3 billion program, more than 1.7 million acres were acquired.<sup>2</sup> The Florida Forever Program was created by the Legislature in 1999 as a successor to P2000, and authorizes the issuance of bonds for land acquisition, water resource development projects,

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<sup>1</sup> Section 259.105, F.S.

<sup>2</sup> Comm. on Environmental Preservation and Conservation, The Florida Senate, *Land Acquisition in Florida* (Report Number 2008-123) (Jan. 2008).

the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Florida Forever is the largest public land acquisition program of its kind in the United States with approximately 9.9 million acres of land managed for conservation.<sup>3</sup>

All lands acquired under the Florida Forever program are managed for multiple-use purposes. Projects and acquisitions that receive funding must:<sup>4</sup>

- Enhance the coordination and completion of land acquisition projects;
- Increase the biodiversity of species, natural communities and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetland systems;
- Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state;
- Increase natural resource-based public, recreational, and educational opportunities;
- Preserve significant archaeological and historic sites;
- Increase the amount of forest land available for sustainable management of natural resources; and
- Increase the amount of open space in urban areas.

The Florida Forever Trust Fund serves as the depository of Florida Forever bond proceeds and is administered by DEP. The funds are distributed to various state agencies and programs for the purpose of acquiring and maintaining environmentally significant lands. Specifically, s. 259.105(3)(a-j), F.S., sets the distribution schedule for funds:

- The DEP receives 93.5 percent of the funds to distribute to the programs, including:
  - 35 percent to the DEP for acquisitions and projects;
  - 30 percent to the water management districts (WMDs) for acquisitions and projects;
  - 21 percent to the Florida Communities Trust for acquisition of urban and suburban parks and other green space;
  - 2.5 percent to protect working waterfronts;
  - 1.5 percent for the Florida Recreation Development Assistance Program;
  - 1.5 percent to the Office of Greenways and Trails; and
  - 1.5 percent for the purchase of inholdings and additions.
- The Department of Agriculture and Consumer Services receives 3.5 percent for acquisition of less-than-fee interests in agricultural lands;
- The Florida Fish and Wildlife Conservation Commission (FWC) receives 1.5 percent for the acquisition of inholdings and additions; and
- The Florida Forrest Service receives 1.5 percent for acquisition of inholdings and additions, reforestation and sustainable forest efforts, and capital projects.

### **Land Management Review Team**

Pursuant to s. 259.036, F.S., the DEP conducts land management reviews of state-owned conservation lands by establishing teams of experts from state agencies and the general public to evaluate the management practices on state lands.

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

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

Each park, forest, or management area has a management plan describing the resources and recreational activities. Team members review each site plan to see if it adequately addresses management needs. The team also visits each site to evaluate whether the property is being managed for the purposes of the acquisition and in accordance with the approved management plan.<sup>5</sup>

According to the DEP's website, parks, forests, and management areas each have a management plan for the resources and recreational activities. These plans are reviewed to ensure the sites are being properly managed, and staff conduct site visits to make certain the purposes for acquisition and the management plan are being met. After conducting 388 reviews on over 147 sites, which encompass more than two million acres, the Land Management Review Team found that 98 percent of the sites reviewed were managed appropriately.<sup>6</sup>

### **Surplus of State Land**

The BOT 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 and nonconservation 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 government 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.

The WMDs may also sell and exchange land that is no longer needed for conservation purposes. Pursuant to s. 373.089, F.S., the WMDs must confirm by a two-thirds vote of the Governing Board the lands purchased for conservation purposes are no longer needed for conservation.

### **Florida State-Owned Lands and Records Information System (FL-SOLARIS)**

Chapter 2009-77, L.O.F., enacted in 2009, required the Department of Management Services (DMS) and the DEP to develop a database to record and maintain an inventory of real-estate properties that are owned, leased, rented or otherwise occupied by any state government entity. The Florida State Owned Lands and Records Information System (FL-SOLARIS) is designed

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<sup>5</sup> See s. 259.036, F.S.

<sup>6</sup> DEP, *Stewardship*, <http://www.dep.state.fl.us/lands/stewardship.htm> (last visited Apr. 1, 2013).

with two main components: the Facility Information Tracking System (FITS) and the Lands Information Tracking System (LITS). The law requires state agencies, the judicial branch and WMDs to enter the required real property information into the tracking systems. The law also requires DEP, in coordination with DMS, to provide an annual report to the governor and Legislature on properties that are recommended for sale or other disposition actions.<sup>7</sup>

### **Local Governments and Municipalities**

Florida has 477 local governments which includes the 67 counties and 410 local municipalities. The Florida Department of Economic Opportunity estimates that five to ten percent of the local governments have their own conservation land acquisition programs, while the majority of local governments rely on state and federal programs to cost-share in conservation land purchases. The Florida Communities Trust receives funds from the Florida Forever Trust Fund and partners with local governments to acquire land for parks, open space and greenways projects.<sup>8</sup>

### **III. Effect of Proposed Changes:**

**Sections 1-3** create three unnumbered sections of law that apply criteria for conservation land purchases to the state, counties and municipalities, respectively, before acquisition may proceed. Specifically, the bill requires the state, and each county and municipality to:

- Develop an accurate inventory, not more than one year old, of government-owned property to be made public;
- Ensure sufficient funds are available in their annual budgets for the maintenance of existing properties;
- Complete an analysis describing the annual cost of maintenance for the proposal land under consideration for purchase; and
- Sell an equal amount of public property not held in conservation to the private sector at fair market value.

**Section 4** provides an effective date of July 1, 2013.

### **Other Potential Implications:**

The bill could prohibit a large majority of conservation land purchases for the state, counties, and municipalities, regardless of available funding. The Florida Constitution requires that conservation lands be declared “no longer need for conservation purposes” before they may be disposed of;<sup>9</sup> therefore, the ability to sell lands that were acquired specifically for conservation must comply with the BOT’s requirements to surplus such lands. The bill requires that an equal amount of public property that is not being held in conservation be returned or sold at fair market value to the private sector. The BOT owns approximately three million acres of conservation

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<sup>7</sup> DMS, *Senate Bill 584 Agency Analysis* (Feb. 11, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>8</sup> Conversation with Mike McDaniel, Florida Department of Economic Opportunity (Mar. 29, 2013), and ss. 380.501-380.515, F.S.

<sup>9</sup> FLA. CONST. art. X, s. 18.

lands and approximately 200,000 acres of nonconservation lands.<sup>10</sup> For purchases of larger conservation lands, it may be difficult to find equal amount of nonconservation lands that are no longer needed because the state owns much more conservation land than nonconservation land. Additionally, if the conservation land is available for sale, there may not be a buyer for the land, which would further prevent the state or local governments from making necessary conservation land purchases.<sup>11</sup>

Most local governments are not able to surplus conservation land because of limited capacities; therefore, the requirement that an equal amount of public property not held in conservation must be returned or sold at fair market value to the private sector would be difficult to comply with for the local governments.<sup>12</sup>

It is assumed that the WMDs are included in the definition of “state”; however, “state” is not defined in the bill and the WMDs are not specifically included. Pursuant to s. 373.139, F.S., the WMDs are authorized to purchase land for flood control, water storage, water management, conservation and protection of water resources, water supply development, and preservation of wetlands, streams, and lakes. The provisions of the bill would hinder the WMDs ability to purchase land and may cause a significant delay in acquiring property that is necessary for public health and welfare.<sup>13</sup>

The bill requires an analysis by a governmental entity describing the annual cost of maintenance of the proposed land purchase. For the state, this requirement could be satisfied by information that is included in the management proposals that are prepared for Florida Forever Projects when they are added to the Florida Forever Project List. However, these are estimates that encompass an entire project, and it is unclear if this information could be easily extrapolated to individual parcel acquisitions, or whether it would actually be sufficient. Local governments may also not have the resources in place to satisfy this requirement.<sup>14</sup>

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

<sup>10</sup> DEP, *Florida’s Lands and Water – Brief Facts*, available at [http://www.dep.state.fl.us/lands/files/FloridaNumbers\\_031011.pdf](http://www.dep.state.fl.us/lands/files/FloridaNumbers_031011.pdf) (last visited Apr. 1, 2013).

<sup>11</sup> DEP, *Senate Bill 584 Agency Analysis* (Feb. 22, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>12</sup> *Supra* note 7.

<sup>13</sup> *See* s. 373.193, F.S.

<sup>14</sup> *Supra* note 11.

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

None.

**B. Private Sector Impact:**

Individuals may not be able to sell their land to a governmental entity, even if funding for acquisition is available. In addition, the time frame to complete the sale of offsetting nonconservation lands prior to acquisition of conservation lands, could create delays sufficient to discourage otherwise willing sellers of their lands.<sup>15</sup>

**C. Government Sector Impact:**

The state may be unable to expend appropriated funds or exercise authorized spending authority due to the additional criteria. If any funds are derived from tax-exempt bonds, their expenditure prior to the federally imposed deadlines may be in jeopardy, thus threatening their tax-exempt status and incurring tax penalties by the state.<sup>16</sup>

Local governments fund their conservation land acquisition programs through ballot initiatives that provide funding through ad valorem taxes, bond sales that are paid back through ad valorem taxes, or through a dedicated revenue source. Implementation of the constraints for conservation acquisition in the bill could render the local governments unable to spend funds over which there is no direct legislative authority. Lastly, local governments could incur substantial costs in preparing the required land inventory.<sup>17</sup>

**VI. Technical Deficiencies:**

“Sufficient funds” is not defined, and it is unclear how that determination would be made.<sup>18</sup>

“State” is not defined. It is unclear if “state” implies all state agencies and agencies of the state including the WMDs.

**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.

<sup>15</sup> DEP, *Senate Bill 584 Agency Analysis* (Feb. 22, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

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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