

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1173 Lands Used for Governmental Purposes  
**SPONSOR(S):** Local, Federal & veterans Affairs Subcommittee and Raschein  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 0 N, As CS	Gregory	Miller
2) Ways & Means Committee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

#### **Purchasing Nonconservation Land Buffering a Military Installation**

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of Florida. The Board of Trustees may acquire nonconservation land through the Military Base Protection Program (MBPP) from the annual list submitted by the Department of Economic Opportunity (DEO) to buffer a military installation against encroachment. The bill adds additional procedures for the selection of lands under the MBPP by requiring:

- DEO annually to request military installations in Florida to submit a list of base buffering encroachment lands for acquisitions;
- The Florida Defense Support Task Force to analyze the resulting list and provide ranking recommendations to DEO;
- DEO to submit its final list to the Board of Trustees for acquisition; and
- The Board of Trustees to use federal appraisal standards and to disclose its appraisal to the seller when federal partnership funds are available.

The bill authorizes the Board of Trustees to lease or convey the acquired military buffer land at less than appraised value to the military installation, provided the conveyance states the land will revert to the Board of Trustees if the military installation does not use the land as a buffer or if the military installation closes.

#### **Purchasing Land in an Area of Critical State Concern**

The Governor and Cabinet may designate certain areas within the state containing resources of statewide significance as areas of critical state concern (ACSC). Currently designated ACSCs are the Big Cypress Area, the Green Swamp Area, the Florida Keys Area, the City of Key West Area, and the Apalachicola Bay Area. Under present law, based on recommendations from DEO, the Department of Environmental Protection (DEP) proposes to the Board of Trustees purchasing lands within or outside an ACSC that directly impact the area. The bill authorizes the Board of Trustees to purchase lands within ACSCs to prevent or satisfy private property rights claims resulting from limitations imposed by inclusion within the area without following its normal acquisition procedures. DEP, when purchasing lands in ACSC to prevent or satisfy private property rights claims, could use alternative valuation methods if the parcel is estimated to be worth \$500,000 or less, the cost of an outside appraisal is not justified, and the public's interest is reasonably protected.

Finally, each county where one or more ACSCs are located may create a land authority. The land authority may contribute tourist impact tax revenues to its most populous municipality or the housing authority of such municipality, for the construction, redevelopment, or preservation of affordable housing. The bill authorizes each land authority to contribute tourist impact tax revenues to the county or the county's housing authority to purchase land in the county, not just the most populous municipality, for the construction, redevelopment, or preservation of affordable housing in an ACSC.

The bill provides the act is effective upon becoming law.

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

STORAGE NAME: h1173a.LFV

DATE: 1/26/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Purchasing Nonconservation Land Buffering a Military Installation**

###### Present Situation

The State of Florida owns lands for many purposes including preservation, conservation, recreation, water management, historic preservation, and administration of government. These lands include:

- All swamp and overflowed lands held by the state or which may inure to the state;
- All lands owned by the state by right of its sovereignty;
- All internal improvement lands proper;
- All tidal lands;
- All lands covered by shallow waters of the ocean or gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;
- All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for transportation facilities and transportation corridors and canal rights-of-way; and
- All lands which have accrued, or which may accrue, to the state.<sup>1</sup>

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) holds state lands in trust for the use and benefit of the people of Florida.<sup>2</sup> The Board of Trustees consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. This body may acquire, sell, transfer, and administer state lands in the manner consistent with chapters 253 and 259, F.S.<sup>3</sup> The Department of Environmental Protection (DEP), through its Division of State Lands (DSL), performs all staff duties and functions related to the acquisition, administration, and disposition of state lands.<sup>4</sup>

“Conservation lands” are lands managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation (“nonconservation lands”) are not designated conservation lands. Nonconservation lands include the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, State University or Florida College System institution campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources.<sup>5</sup>

###### *Military Base Protection Program*

The Board of Trustees may acquire, through the Military Base Protection Program (MBPP), nonconservation lands from the annual list submitted by the Department of Economic Opportunity (DEO) to buffer a military installation against encroachment.<sup>6</sup> The MBPP secures nonconservation lands to serve as a buffer to protect military installations against encroachment and supports local community efforts to engage in service partnerships with military installations.<sup>7</sup> DEO annually may submit a list of nonconservation lands recommended for Board of Trustees acquisition through fee simple purchase or through perpetual, less-than-fee interest purchase, to buffer a military installation

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<sup>1</sup> Section 253.03(1), F.S.

<sup>2</sup> Section 253.001, F.S.

<sup>3</sup> Section 253.02(1), F.S.

<sup>4</sup> Section 253.002(1), F.S.

<sup>5</sup> Section 253.034(2)(c), F.S.

<sup>6</sup> Section 253.025(21), F.S.

<sup>7</sup> Section 288.980(2)(a), F.S.

against encroachment. The Board of Trustees also must consider the recommendations of the Florida Defense Support Task Force (FDSTF) when selecting nonconservation lands to purchase for buffering military installations.<sup>8</sup> For the purpose of this program, "nonconservation lands" are lands not subject to acquisition by the Florida Forever Program.<sup>9</sup> Funds appropriated to the MBPP may be used to address emergent needs relating to mission sustainment, encroachment reduction or prevention, and base retention.<sup>10</sup>

### *Board of Trustees Appraisals*

The Board of Trustees must obtain at least one appraisal when acquiring land. Two appraisals are required when the estimated value of the parcel exceeds \$1 million. If both appraisals exceed \$1 million and differ significantly, the Board of Trustees may obtain a third appraisal. The Director of DSL may use a comparable sales analysis, an appraisal prepared by DSL, or other reasonably prudent procedures to estimate the value of a parcel if the estimated worth is \$100,000 or less, the cost of an outside appraisal is not justified, and the public's interest is reasonably protected. The state need not appraise the value of lands and appurtenances received from donations.<sup>11</sup>

### Effect of the Proposed Changes

The bill amends 253.025(21), F.S., to add additional procedures for the selection of lands under the MBPP. The bill:

- Specifies that the Board of Trustees use DSL when acquiring nonconservation land to buffer a military installation based on a list submitted by DEO. This is consistent with current law;
- Requires DEO annually to request military installations in Florida to submit a list of base buffering encroachment lands for fee simple or less-than-fee simple acquisitions by October 1;
- Requires FDSTF to analyze the list and provide ranking recommendations to DEO;
- Requires DEO to submit its final list of base buffering encroachment lands to DSL for acquisition. The list must include at a minimum a legal description of the land and the property identification number, a detailed map of the land, and a management and monitoring agreement to ensure the land serves a base buffering purpose;
- Requires applying the Uniform Appraisal Standards for Federal Land Acquisitions,<sup>12</sup> commonly known as the Yellow Book appraisal standards, when federal partnership funds are available for the acquisition. These standards are broadly consistent with USPAP, which is used by the Board of Trustees;<sup>13</sup> and
- Requires the Board of Trustees to disclose the appraisal to the seller if federal partnership funds are available.

The bill authorizes the Board of Trustees to lease or convey the acquired military buffer land to the military installation at less than appraised value in accordance with the installation's procedures and state law. The military installation or another governmental entity must provide for the management and monitoring of the land. If the Board of Trustees conveys the land at less than appraised value, then the conveyance must state the land will revert to the Board of Trustees if the military installation does not use the land as a military installation buffer or if the military installation closes.

The bill also amends s. 288.980(2)(c), F.S., to define "nonconservation lands" as lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic

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<sup>8</sup> Section 288.980(2)(b), F.S.

<sup>9</sup> Section 288.980(2)(c), F.S.

<sup>10</sup> Section 288.980(2)(d), F.S.

<sup>11</sup> Section 253.025(8)(b), F.S. The Board of Trustees' appraisal procedures follow the Uniform Standards of Professional Appraisal Practice (USPAP) standards when developing an appraisal. *See* Rule 18-1.006(1), F.A.C.

<sup>12</sup> U.S. Department of Justice, *Uniform Appraisal Standards for Federal Land Acquisitions, 2016*, <https://www.justice.gov/file/408306/download> (last visited January 10, 2018).

<sup>13</sup> *Id.* at 6. *See* Rule 18-1.006(1), F.A.C.

preservation. This will conform this definition of “nonconservation lands” in ch. 288, F.S., with the definition found in ch. 253, F.S.

## **Purchasing Land in an Area of Critical State Concern**

### Present Situation

#### *Areas of Critical State Concern*

The Governor and Cabinet, sitting as the Administration Commission,<sup>14</sup> may designate by rule certain areas within the state that contain resources of statewide significance as areas of critical state concern (ACSCs) based on the recommendations of DEO.<sup>15</sup> To be designated as an ACSC, the area must:

- Contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance, including state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources;<sup>16</sup>
- Contain, or have a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts;<sup>17</sup> or
- Have a significant impact upon, or is being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, highways, ports, airports, energy facilities, and water management projects.<sup>18</sup>

The current designated ACSCs are the Big Cypress Area,<sup>19</sup> the Green Swamp Area,<sup>20</sup> the Florida Keys Area, the City of Key West Area,<sup>21</sup> and the Apalachicola Bay Area.<sup>22</sup>

One hundred and eighty days after an ACSC is established, the local government having jurisdiction may submit to DEO its existing land development regulations and local comprehensive plan for the area. The local government must prepare, adopt, and submit new or modified regulations and comprehensive plan that take into consideration the principles set forth in the rule designating the ACSC.<sup>23</sup>

#### *Board of Trustees Buying Land within an Area of Critical State Concern*

Within 45 days of designation of an ACSC, and annually thereafter, DEP must consider the recommendations of DEO for the purchase of lands within an ACRC or lands outside the area that directly impact it. These lands may include lands used to preserve and protect water supply. DEP must make recommendations to the Board of Trustees to purchase:

- Environmentally endangered lands;
- Outdoor recreation lands;
- Lands that conserve sensitive habitat;
- Lands that protect, restore, or enhance nearshore water quality and fisheries;

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<sup>14</sup> See ss. 14.202 and 380.031(1), F.S.

<sup>15</sup> Section 380.05, F.S.

<sup>16</sup> Section 380.05(2)(a), F.S.

<sup>17</sup> Section 380.05(2)(b), F.S.

<sup>18</sup> Section 380.05(2)(c), F.S.

<sup>19</sup> Section 380.055, F.S.

<sup>20</sup> Section 380.0551, F.S.

<sup>21</sup> Section 380.0552, F.S.

<sup>22</sup> Section 380.0555, F.S.

<sup>23</sup> Section 380.05(5), F.S.

- Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or
- Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC if the acquisition of such lands fulfill a public purpose the Board of Trustees may use when acquiring conservation and recreation lands.<sup>24</sup>

#### *Board of Trustees Purchasing Land Immediately*

The Board of Trustees may direct DEP to purchase conservation lands immediately when the lands:

- Are listed or placed at auction by the federal government as part of the Resolution Trust Corporation sale of lands from failed savings and loan associations;
- Are listed or placed at auction by the federal government as part of the Federal Deposit Insurance Corporation sale of lands from failed banks; or
- Will be developed or otherwise lost to potential public ownership, or for which federal matching funds will be lost, by the time the land can be purchased under the program where the land is listed for acquisition.<sup>25</sup>

Three of the members of the Board of Trustees must vote to acquire the land immediately. The Board of Trustees may waive or modify all acquisition procedures to acquire these lands. Lands acquired immediately must, at the time of purchase, be on one of the acquisition lists or be essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.<sup>26</sup>

#### *Board of Trustees Appraisals*

The Board of Trustees must obtain at least one appraisal when acquiring land. Two appraisals are required when the estimated value of the parcel exceeds \$1 million. If both appraisals exceed \$1 million and differ significantly, the Board of Trustees may obtain a third appraisal. The director of DSL may use a comparable sales analysis, an appraisal prepared by DSL, or other reasonably prudent procedures to estimate the value of a parcel if estimated to be worth \$100,000 or less, the cost of an outside appraisal is not justified, and the public's interest is reasonably protected. The state is not required to appraise the value of lands and appurtenances received from donations.<sup>27</sup>

#### *Local Authority Buying Land within an Area of Critical State Concern*

Each county in which one or more ACSCs are located may create, by ordinance, a public body corporate and politic, known as a land authority.<sup>28</sup> To carry out the purposes of the ACSC program, the land authority may:

- Acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to families whose incomes do not exceed 160 percent of the median family income for the area, prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC, or provide access to management of acquired lands;
- Acquire interests in land by means of land exchanges;
- Contribute tourist impact tax revenues it receives to its most populous municipality or the housing authority of such municipality, at the request of the commission or council of such

<sup>24</sup> Section 259.045, F.S.

<sup>25</sup> Section 253.025(22), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 253.025(8)(b), F.S.

<sup>28</sup> Section 380.0663, F.S.

municipality, for the construction, redevelopment, or preservation of affordable housing in an ACSC within such municipality;

- Contribute funds to DEP for the purchase of lands by the department; and
- Enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements.<sup>29</sup>

### *Tourist Impact Tax*

Any county creating a land authority is authorized to levy by ordinance, in the area or areas designated as an ACSC, a tourist impact tax on every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of six months or less, unless such establishment is exempt. If the area or ACSC are greater than fifty percent of the land area of the county, the tax may be levied throughout the entire county. The county levies the tourist impact tax at the rate of one percent of each dollar and major fraction thereof of the total consideration charged for such taxable privilege.<sup>30</sup>

### Effect of the Proposed Changes

#### *Board of Trustees Purchasing Land Immediately within an Area of Critical State Concern*

The bill amends s. 253.025(22), F.S., to change the qualifications and methods for the Board of Trustees to purchase land immediately. Specifically the bill:

- Authorizes the Board of Trustees to use “any available funding sources” to purchase lands immediately;
- Adds lands to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC to the types of lands the Board of Trustees may purchase immediately. This will allow the Board of Trustees to circumvent its usual acquisition procedures when quickly purchasing such property;
- Adds lands within an ACSC to the list of areas where lands purchased immediately must be located at the time of purchase; and
- Authorizes the director of DSL, when purchasing lands immediately, to use a comparable sales analysis, an appraisal prepared by DSL, or other reasonably prudent procedures to estimate the value of such parcels if the parcel is estimated to be worth \$500,000 or less, the cost of an outside appraisal is not justified, and the public’s interest is reasonably protected. This raises the threshold estimated value of the land for which DSL may use alternative land valuation techniques when purchasing land immediately.

The bill amends s. 259.045, F.S., to add authorization for the Board of Trustees to purchase lands within ACSC to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC using Florida Forever funds if those lands are on a Board of Trustee’s approved conservation lands acquisition list. Further, the bill authorizes the Board of Trustees to utilize alternative valuation techniques, other than a formal appraisal, to purchase lands within an ACSC to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC if the parcel is estimated to be valued at \$500,000 or less, cost of an outside appraisal is not justified, and the public interest is protected.

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<sup>29</sup> Section 380.0666(3), F.S.

<sup>30</sup> Section 125.0108(1), F.S.

*Use of the Tourist Impact Tax to Purchase Land for Affordable Housing*

The bill authorizes each land authority to contribute tourist impact tax revenues to the county or the county's housing authority to purchase land in the county, not just the most populous municipality, for the construction, redevelopment, or preservation of affordable housing in an ACSC.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 253.025, F.S., relating to acquisition of state lands.

**Section 2.** Amends s. 380.006, F.S., relating to powers of the land authority.

**Section 3.** Provides and effective date on becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on DEO by requiring the agency follow additional procedures to create a list of lands to purchase to buffer military installations.

The bill may have a negative fiscal impact on the Board of Trustees because it requires the Board of Trustees to disclose the appraisal of military buffer land to the seller if federal partnership funds are available. This may put the Board of Trustees at a negotiating disadvantage.

The bill may have a negative fiscal impact on the Board of Trustees because it authorizes the Board of Trustees to lease or convey the acquired military buffer land to the military installation at less than appraised value. This may cause a negative fiscal impact if the Board of Trustees bought the land at appraised value.

The bill may have a positive fiscal impact on DEP by authorizing the department to use alternative valuation methods to ascertain the value of land bought immediately if the parcel is estimated to be worth \$500,000 or less, the cost of an outside appraisal is not justified, and the public's interest is reasonably protected.

The bill may have a positive fiscal impact on DEP by authorizing the department to use alternative valuation methods to ascertain the value of land bought within ACSC to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC if the parcel is estimated to be worth \$500,000 or less, the cost of an outside appraisal is not justified, and the public's interest is reasonably protected.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on municipalities or municipal housing authorities within ACSCs who receive tourist impact tax revenues for affordable housing because the bill authorizes the land authority to also distribute those funds to counties or county housing authorities within the ACSC.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on landowners who intend to sell their land to the Board of Trustees by requiring the Board of Trustees to disclose the appraisal of lands to the seller if federal partnership funds are available. The seller will be aware of the Board of Trustee's appraisal and estimated land value without purchasing its own appraisal. This may create a negotiation advantage for the seller.

### 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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized the Board of Trustees to purchase lands within ACSCs to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC using Florida Forever funds if those lands are on a Board of Trustee's approved conservation lands acquisition list;
- Authorized the Board of Trustees to purchase lands within ACSC without following its normal acquisition procedures to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC using:
  - Florida Forever funds if those lands meet a conservation and recreation purpose or are on a Board of Trustee's approved conservation lands acquisition list; or
  - Other available funding mechanisms.
- Authorized the Board of Trustees to utilize alternative valuation techniques, other than a formal appraisal, to purchase lands within an ACSC to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC if the parcel is estimated to be valued at \$500,000 or less, cost of an outside appraisal is not justified, and the public interest is protected; and
- Conforms the definition of "nonconservations lands" in the defense conversion and transitions statutes with the definition in the state lands statute.