

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1173 Lands Used for Governmental Purposes

SPONSOR(S): Government Accountability Committee; Local, Federal & Veterans Affairs Subcommittee and Raschein

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/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	18 Y, 0 N	Dugan	Langston
3) Government Accountability Committee	22 Y, 0 N, As CS	Gregory	Williamson

SUMMARY ANALYSIS

The bill makes several changes to the requirements for lands used for governmental purposes. Specifically, the bill:

- Adds procedures for the selection and purchase of lands under the Military Base Protection Program;
- Authorizes the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to lease or convey acquired military buffer land to a military installation at less than appraised value or to private entities at rates determined by competitive bid, which may be less than appraised or market value, for certain operations;
- Requires military buffer lands conveyed at less than appraised value to revert to the Board of Trustees if the military installation does not use the land as a military installation buffer or if the installation closes;
- Authorizes the Board of Trustees, by three affirmative votes, to purchase lands within an Area of Critical State Concern (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 any funds available;
- Authorizes the director of the Division of State Lands (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 in certain instances;
- 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 in certain instances;
- Authorizes each land authority in an ACSC to contribute tourist impact tax revenues to the county or the county's housing authority to purchase any land in the county, not just land within the most populous municipality, for the construction, redevelopment, or preservation of affordable housing in an ACSC;
- Authorizes each land authority in an ACSC to use tourist impact tax funds to pay costs related to affordable housing projects;
- Adds projects that mitigate the effects of natural disasters and floods in developed areas to the criteria and numeric performance measures the Acquisition and Restoration Council must consider when evaluating proposed Florida Forever projects; and
- Requires urban greenways and open space projects undertaken by the Florida Communities Trust to provide recreational opportunities, promote community interaction, and connect communities and the projects may also serve dual functions as flow ways or temporary storage areas to mitigate natural disasters and floods in developed areas.

The bill may have impacts on state and local government expenditures. See the fiscal analysis section.

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

STORAGE NAME: h1173e.GAC

DATE: 2/16/2018

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.¹

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.² 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 chs. 253 and 259, F.S.³ 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.⁴

“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.⁵

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.⁶ 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.⁷ DEO annually may submit a list of nonconservation lands recommended for Board of Trustees acquisition through fee

¹ Section 253.03(1), F.S.

² Section 253.001, F.S.

³ Section 253.02(1), F.S.

⁴ Section 253.002(1), F.S.

⁵ Section 253.034(2)(c), F.S.

⁶ Section 253.025(21), F.S.

⁷ Section 288.980(2)(a), F.S.

simple purchase or through perpetual, less-than-fee interest purchase, to buffer a military installation 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.⁸ For the purpose of this program, “nonconservation lands” are lands not subject to acquisition by the Florida Forever Program.⁹ Funds appropriated to the MBPP may be used to address emergent needs relating to mission sustainment, encroachment reduction or prevention, and base retention.¹⁰

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.¹¹ The Board of Trustee’s appraisal procedures follow the Uniform Standards of Professional Appraisal Practice (USPAP) standards when developing an appraisal.¹²

Effect of Proposed Changes

The bill amends ss. 253.025(21) and 288.980(2)(b), F.S., to add procedures for the selection of lands under the MBPP. The bill:

- 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 DEO to submit the list of base buffering encroachment lands for FDSTF for review;
- Requires FDSTF to review the list and provide ranking recommendations to DEO by December 1.
- Requires DEO to submit its final list of base buffering encroachment lands to the Board of Trustees 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 DSL to apply the Uniform Appraisal Standards for Federal Land Acquisitions,¹³ 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.¹⁴
- 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, state law, and the management and monitoring agreement submitted with the acquisition list. The bill also authorizes the Board of Trustees to lease the acquired military buffer land to private entities at rates determined by competitive bid, which may be less than appraised or market value, to conduct agricultural or silvicultural operations. The agricultural or silvicultural operation must have the approval

⁸ Section 288.980(2)(b), F.S.

⁹ Section 288.980(2)(c), F.S.

¹⁰ Section 288.980(2)(d), F.S.

¹¹ Section 253.025(8)(b), F.S.

¹² Rule 18-1.006(1), F.A.C.

¹³ 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).

¹⁴ *Id.* at 6. *See* r. 18-1.006(1), F.A.C.

of the military installation and must implement the best management practices applicable to such operations as adopted by the Department of Agriculture and Consumer Services. 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 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,¹⁵ 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.¹⁶ 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;
- 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; 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.¹⁷

The current designated ACSCs are the Big Cypress Area,¹⁸ the Green Swamp Area,¹⁹ the Florida Keys Area, the City of Key West Area,²⁰ and the Apalachicola Bay Area.²¹

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.²²

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 ACSC or lands outside the area that

¹⁵ See ss. 14.202 and 380.031(1), F.S.

¹⁶ Section 380.05, F.S.

¹⁷ Section 380.05(2), F.S.

¹⁸ Section 380.055, F.S.

¹⁹ Section 380.0551, F.S.

²⁰ Section 380.0552, F.S.

²¹ Section 380.0555, F.S.

²² Section 380.05(5), F.S.

directly impact the ACSC. 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;
- 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.²³

Board of Trustees Purchasing Land Immediately

The Board of Trustees may direct DEP to purchase conservation lands using 15 percent of Florida Forever funds 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.²⁴

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.²⁵

Board of Trustees Appraisals

As discussed above, the Board of Trustees must obtain at least one appraisal when acquiring land.²⁶

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.²⁷ 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

²³ Section 259.045, F.S.

²⁴ Section 253.025(22), F.S.

²⁵ *Id.*

²⁶ Section 253.025(8)(b), F.S.

²⁷ 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.²⁸

The land authority may only make such an acquisition or contribution if:

- The acquisition or contribution is consistent with land development regulations and local comprehensive plans;
- The property acquired is within an ACSC at the time of acquisition or is within an area that was designated as an ACSC for at least 20 consecutive years prior to removal of the designation;
- Another local, regional, state, or federal public land acquisition program has not selected the property for purchase. This restriction does not apply if the land authority cooperates with the other public land acquisition programs that listed the lands for acquisition, to coordinate the acquisition and disposition of such lands; and
- The land authority does not use the acquisition or contribution to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.²⁹

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 50 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.³⁰ Half of the tax revenues must be distributed to the land authority to be used to effectuate the purposes of the ACSC, and the other half must be distributed to the governing body of the county to be used to offset property tax losses due to land acquisition under the tax.³¹

Effect of Proposed Changes

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

The bill amends s. 253.025(22), F.S., and adds ss. 253.034(23) and (24), 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, by three affirmative votes, to purchase lands within an 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 15 percent of Florida Forever funds;
- The Board of Trustees, by three affirmative votes, to purchase lands within an 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 any available funds; and
- 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

²⁸ Section 380.0666(3), F.S.

²⁹ Section 380.0666(3)(a) – (d), F.S.

³⁰ Section 125.0108(1), F.S.

³¹ Section 125.0108(3), F.S.

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 authorize the Board of Trustees to purchase lands within an 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.

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

The bill amends s. 380.0666(3), F.S., to authorize each land authority to contribute tourist impact tax revenues to the county or the county's housing authority to purchase any land in the county, not just land within the most populous municipality, for the construction, redevelopment, or preservation of affordable housing in an ACSC.

The bill creates s. 380.0666(3)(e), F.S., to authorize each land authority to use tourist impact tax funds to pay costs related to affordable housing projects, including:

- The cost of acquiring real property and any buildings thereon, including payments for contracts to purchase properties.
- The cost of site preparation, demolition, environmental remediation that is not reimbursed by another governmental funding program, and development.
- Professional fees in connection with the planning, design, and construction of the project, such as those of architects, engineers, attorneys, and accountants.
- The cost of studies, surveys, and plans.
- The cost of the construction, rehabilitation, and equipping of the project, excluding permit and impact fees and mitigation requirements.
- The cost of on-site land improvements, such as landscaping, parking, and ingress and egress, excluding permit and impact fees and mitigation requirements.
- The cost of offsite access roads, except those required to meet hurricane evacuation clearance times.

Mitigating the Effects of Natural Disasters and Floods in Developed Areas

Present Situation

Select Committee on Hurricane Response and Preparedness

In September 2017, Hurricane Irma struck Florida causing significant damage, death, and many emergency response problems statewide. In the aftermath of Hurricane Irma, the Speaker of the Florida House of Representatives created the Select Committee on Hurricane Response and Preparedness. The Speaker directed the committee to gather information, solicit ideas for improvement, and make recommendations to the executive branch and suggest legislative options to address hurricane preparedness and response for consideration during the 2018 Legislative Session. Of the many recommendations, the Select Committee recommended two responses to mitigate future damage:

- Invest in plans that cost-effectively mitigate flood risks to developed areas, including protection of greenways and blueways that act as flow ways or provide temporary storage during high water events;

- Identify areas where rebuilding after a disaster may be high-risk and consider options for not rebuilding in those areas, including the purchase of these properties and using them to create additional open space and natural buffers.³²

Florida Forever

The Florida Forever Program seeks to purchase environmentally sensitive lands to protect natural resources, avoid degradation of water resources, improve recreational opportunities, and preserve wildlife habitat.³³ The state may issue up to \$5.3 billion in Florida Forever bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources in urban and rural settings for:

- Restoration, conservation, recreation, water resource development, or historical preservation; and
- Capital improvements to lands and water areas that accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.³⁴

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever program. DEP administers the Florida Forever Trust Fund. The Florida Forever Trust Fund receives its funding from the Land Acquisition Trust Fund.³⁵ DEP must distribute revenues from the Florida Forever Trust Fund in accordance with the Florida Forever Act.³⁶

Florida Forever Projects

Florida Forever is Florida's conservation and recreation lands acquisition program, a blueprint for conserving natural resources and renewing Florida's commitment to conserve the state's natural and cultural heritage.³⁷ The Acquisition and Recreation Council (ARC),³⁸ with the assistance of the Florida Natural Area Inventories and several state agencies, evaluates applications for acquisition projects under the Florida Forever Program and provides recommendations to the Board of Trustees on the projects to pursue.³⁹ To be considered for acquisition under the Florida Forever Program, the project must contribute to the achievement of the following goals, which are evaluated in accordance with specific criteria and numeric performance measures:

- Enhance the coordination and completion of land acquisition projects;
- Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels;
- Protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state;
- 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;

³² Florida House of Representatives, *Select Committee on Hurricane Response & Preparedness Final Report January 16, 2018*, <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2978&Session=2018&DocumentType=General%20Publications&FileName=SCHRP%20-%20Final%20Report%20online.pdf> (last visited February 15, 2018).

³³ Section 259.105(2), F.S.

³⁴ Section 215.618(1)(a), F.S.

³⁵ Section 259.1051, F.S.

³⁶ Section 215.618(5), F.S.

³⁷ DEP, *Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/florida-forever-0> (last visited January 18, 2018).

³⁸ ARC is a 10-member board established to assist the Board of Trustees to review the recommendations and plans for state-owned lands. Four members are appointed by the Governor, one member is appointed by the Secretary of DEP, one member is appointed by the Director of the Florida Forest Service, two members are appointed by the Executive Director of the Fish and Wildlife Conservation Commission, one member is appointed by the Secretary of the Department of State, and one member is appointed by the Commissioner of Agriculture. Section 259.035(1), F.S.

³⁹ Sections 259.105(8), (14), and (15), F.S.

- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources; or
- Increase the amount of open space available in urban areas.⁴⁰

Further, ARC must consider the following factors when reviewing project applications to determine whether the project:

- Meets multiple goals described above;
- Is part of an ongoing governmental effort to restore, protect, or develop land areas or water resources;
- Enhances or facilitates management of properties already under public ownership;
- Has significant archaeological or historic value;
- Has funding sources that are identified and assured through at least the first two years of the project;
- Contributes to the solution of water resource problems on a regional basis;
- Has a significant portion of its land area in imminent danger of development, in imminent danger of losing its significant natural attributes or recreational open space, or in imminent danger of subdivision which would result in multiple ownership and make acquisition of the project costly or less likely to be accomplished;
- Implements an element from a plan developed by an ecosystem management team;
- Is one of the components of the Everglades restoration effort;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple, including but not limited to, tax incentives, mitigation funds, or other revenues; the purchase of development rights, hunting rights, agricultural or silvicultural rights, or mineral rights; or obtaining conservation easements or flowage easements; and
- Is a joint acquisition, either among public agencies, nonprofit organizations, or private entities, or by a public-private partnership.⁴¹

Using its established criteria, ARC develops a priority list of applications submitted. An affirmative vote of at least five members of ARC is required to place a proposed project on the priority list. ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.⁴² Each project on the priority list is placed in one of the following categories of expenditure for land conservation projects: climate change, critical natural, less-than-fee, partnerships, greater than 85 percent complete, and critical historical.⁴³ ARC ranks the projects within each category from highest to lowest priority.

ARC presents the priority list to the Board of Trustees.⁴⁴ Florida Forever projects may only be implemented if the Board of Trustees approves ARC's recommendations to acquire the particular parcel.⁴⁵ While the Board of Trustees may remove projects from the priority list, the Board of Trustees may not add or rearrange projects on the priority list.⁴⁶

DSL prepares an annual work plan based on the priority list developed by ARC. This work plan outlines the specific projects and acquisitions within projects that DEP will seek to acquire with Florida Forever

⁴⁰ Section 259.105(4), F.S.

⁴¹ Section 259.105(9), F.S.

⁴² DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited January 18, 2018).

⁴³ Section 259.105(17), F.S.

⁴⁴ Section 259.105(14), F.S.

⁴⁵ Section 259.105(16), F.S.

⁴⁶ Section 259.105(14), F.S.

funds available for that fiscal year.⁴⁷ Currently, there are 43 projects, totaling approximately 1.4 million acres, in the work plan.⁴⁸

Florida Communities Trust and Stan Mayfield Working Waterfronts Program Projects

Florida Communities Trust (FCT) assists communities to protect important natural resources, provide recreational opportunities, and preserve Florida's traditional working waterfronts through the competitive criteria in the Parks and Open Space Florida Forever Grant Program and the Stan Mayfield Working Waterfronts Florida Forever Grant Program. These local land acquisition grant programs provide funding to local governments and eligible non-profit organizations to acquire land for parks, open spaces, greenways, and projects supporting Florida's seafood harvesting and aquaculture industries.⁴⁹ A five-member board that includes the Secretary of the DEP or his or her designee and four members of the public appointed by the Governor governs FCT.⁵⁰ Members of FCT evaluate projects submitted by applicants that meet certain criteria and select projects based on scores developed by rule to receive funding.⁵¹ FCT's selection criteria must be consistent with the Florida Communities Trust Act and the Florida Forever Act.⁵² From the funds available to FCT and used for land acquisition, local governments must match at least 75 percent on a dollar-for-dollar basis.⁵³

Projects or activities FCT undertakes, coordinates, or funds in any manner must comply with the following guidelines:

- The purpose of redevelopment projects must be to restore areas that are adversely affected by scattered ownership, poor lot layout, inadequate park and open space, incompatible land uses, or other conditions, which endanger the environment or impede orderly development.
- The purpose of resource enhancement must be to enhance natural resources which, because of indiscriminate dredging or filling, improper location of improvements, natural or human-induced events, or incompatible land uses, have suffered loss of natural and scenic values.
- The purpose of public access projects must be to acquire interests in and initially develop lands that are suitable for and which will be used for public accessways to surface waters.
- The purpose of urban waterfront restoration projects must be to restore deteriorated or deteriorating urban waterfronts for public use and enjoyment. Urban waterfront restoration projects must include public access sites.
- The purpose of working waterfront projects must be to restore and preserve working waterfronts.⁵⁴

Effect of Proposed Changes

The bill amends s. 259.105(4), F.S., to add criteria and numeric performance measures ARC must consider when evaluating proposed Florida Forever projects. ARC must evaluate whether a proposed project mitigates the effects of natural disasters and floods in developed areas, as measured by:

- The number of acres acquired within a 100-year floodplain or a Coastal High Hazard Area;
- The number of acres acquired or developed to serve dual functions as:
 - Flow ways or temporary water storage areas during flooding or high water events, not including permanent reservoirs; and
 - Greenways or open spaces available to the public for recreation;

⁴⁷ Section 259.105(17), F.S.

⁴⁸ DEP, *Focused on Florida's Future, Florida Forever Program*, p. 7, presentation before the Senate Appropriations Subcommittee on the Environment and Natural Resources (Oct. 25, 2017), available at:

<https://www.flsenate.gov/Committees/Show/AEN/Meeting%20Packet/3992> (last visited January 18, 2018).

⁴⁹ DEP, *Florida Communities Trust Home*, <https://floridadep.gov/ooo/land-and-recreation-grants/content/florida-communities-trust-fct-home> (last visited January 18, 2018); *see also* s. 380.507, F.S.

⁵⁰ Section 380.504(1), F.S.

⁵¹ Sections 380.508 and 380.5105, F.S.; rr. 62-815.008, 62-818.007, and 62-820.006, F.A.C.

⁵² Sections 380.507(11) and 380.508(4) and (5), F.S.

⁵³ Section 259.105(3)(c), F.S.

⁵⁴ Section 380.508(4)(a) – (e), F.S.

- The number of acres that protect existing open spaces and natural buffer areas within a floodplain that also serve as natural flow ways or natural temporary water storage areas; and
- The percentage of the land acquired within the project boundary that creates additional open spaces, natural buffer areas, and greenways within a floodplain, while precluding rebuilding in areas that repeatedly flood.

FCT may also use these criteria and numeric performance measures when evaluating projects.⁵⁵

The bill amends s. 380.508(4)(e), F.S., to require urban greenways and open space projects undertaken by FCT to provide recreational opportunities, promote community interaction, and connect communities. These projects may also serve dual functions as flow ways or temporary water storage areas, not including permanent reservoirs, to mitigate natural disasters and floods in developed areas.

These changes may require DEP to update its Florida Forever and FCT selection rules.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 253.025, F.S., relating to acquisition of state lands.
- Section 2.** Amends s. 253.045, F.S., relating to purchase of lands in ACSCs.
- Section 3.** Amends s. 259.105, F.S., relating to the Florida Forever Act.
- Section 4.** Amends s. 288.980, F.S., relating to military base retention, legislative intent, grant program.
- Section 5.** Amends s. 380.0666, F.S., relating to powers of the land authority.
- Section 6.** Amends s. 380.508, F.S., relating to FCT projects, development, review, and approval.
- Section 7.** Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may increase costs to DEO by requiring the agency follow additional procedures to create a list of lands to purchase to buffer military installations.

The bill may increase costs to 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.

⁵⁵ See s. 380.507(11), F.S.
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DATE: 2/16/2018

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 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 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 negative fiscal impact on DEP because it will likely require the department to update its Florida Forever and FCT selection criteria adopted in rule. DEP can likely absorb this cost with its existing resources.

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 also authorizes the land authority to 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.

The bill may have a positive fiscal impact on private entities that conduct agricultural and silvicultural activities because the bill authorizes the Board of Trustees to lease acquired military buffer land to private entities at rates determined by competitive bid, which may be less than appraised or market value, to conduct agricultural or silvicultural operations.

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 may require DEP to update its Florida Forever and FCT selection rules.

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 an 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 "nonconservation lands" in the defense conversion and transitions statutes with the definition in the state lands statute.

On February 13, 2018, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized the Board of Trustees to lease the land purchased adjacent to a military installation to agricultural and silvicultural operations at less than the appraised market value based on rates determined by competitive bid;
- Authorized the Board of Trustees to purchase lands to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC without following its typical acquisitions procedures using any funds available;
- Authorized each land authority to use tourist impact tax funds to pay costs related to affordable housing projects;
- Added projects that mitigate the effects of natural disasters and floods in developed areas to the criteria and numeric performance measures the ARC must consider when evaluating proposed Florida Forever projects; and
- Required urban greenways and open space projects undertaken by FCT to provide recreational opportunities, promote community interaction, and connect communities. These projects may also serve dual functions as flow ways or temporary storage areas to mitigate natural disasters and floods in developed areas.

This analysis is drafted to the committee substitute passed by the Government Accountability Committee.