

**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 Military and Veterans Affairs, Space, and Domestic Security

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BILL: CS/CS/SB 1622

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee; Environmental Preservation and Conservation Committee; and Senator Flores

SUBJECT: Lands Used for Governmental Purposes

DATE: February 16, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1622 revises the procedures the Department of Economic Opportunity (DEO) must follow for the acquisition of nonconservation lands<sup>1</sup> for the purpose of military base buffering.

The bill revises the procedures the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) must use when acquiring land on an immediate basis by:

- Authorizing the acquisition of lands that will prevent or satisfy private property rights claims resulting from the limitations imposed by the designation of an area of critical state concern, and, if such lands are eligible to receive Florida Forever funding, authorizes up to 15 percent of Florida Forever funds distributed for the purchase such lands;
- Authorizing the waiver or modification of all land acquisition procedures and all competitive bid procedures for the acquisition of such lands; and
- Authorizing the use of reasonably prudent procedures to estimate the value of such lands, if the parcel of land is estimated to be worth \$500,000 or less and the director of the Division of State Lands (DSL) finds that the cost of an outside appraisal is not justified.

The bill requires the Department of Environmental Protection to make recommendations to the Board of Trustees with respect to the purchase of lands that are used to prevent or satisfy private

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<sup>1</sup> The bill redefines the term “nonconservation lands” to mean lands acquired for uses other than conservation, outdoor resource based recreation, or archaeological or historic preservation.

property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the parcel is within an area of critical state concern and is on one of the approved acquisition lists established pursuant to ch. 259, F.S., relating to conservation and recreation lands.

The bill authorizes a land authority to contribute tourist impact tax revenues to the county in which it is located for affordable housing and authorizes a land authority to pay certain costs related to affordable housing projects.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Board of Trustees of the Internal Improvement Trust Fund

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 the state pursuant to Art. II, s. 7 and Art. X, s. 11 of the State Constitution. The Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture constitute the trustees of the internal improvement trust fund.<sup>2</sup> The Department of Environmental Protection (DEP) performs all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees.<sup>3</sup>

Section 253.025, F.S., outlines the procedures the state must follow when acquiring lands. Prior to the acquisition of land, a state agency is required to coordinate with the Division of State Lands (DSL) within the DEP to determine the availability of existing, suitable state-owned lands in the area and the public purpose for which the acquisition is being proposed.<sup>4</sup> Additionally, each parcel of land that is to be acquired must have at least one appraisal.<sup>5</sup> If the cost of land exceeds \$1 million then two appraisals are required. If a parcel is estimated to be worth \$100,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the parcel, provided the public's interest is reasonably protected.<sup>6</sup> The maximum amount that the state may pay for a parcel to be acquired is the value indicated in a single approved appraisal if only one appraisal is required.<sup>7</sup> If two appraisals are required and their values do not differ significantly the maximum amount that may be paid is the higher value indicated.<sup>8</sup>

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<sup>2</sup> FLA. CONST. Art. IV s. 4.

<sup>3</sup> Section 253.002, F.S.

<sup>4</sup> Section 253.025(2), F.S.

<sup>5</sup> Section 253.025(8), F.S. Appraisals are not required for lands donated to the state.

<sup>6</sup> *Id.*

<sup>7</sup> Fla. Admin. Code R. 18-1.006.

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

The Board of Trustees, by an affirmative vote of at least three members, may direct the DEP to purchase lands on an immediate basis using up to 15 percent of Florida Forever funds allocated to the DEP for the acquisition of lands that:

- 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 within which the land is listed for acquisition.

For such acquisitions, the Board of Trustees may waive or modify all land acquisition procedures and all competitive bid procedures. Additionally, lands acquired must, at the time of purchase, be on one of the acquisition lists established pursuant to ch. 259, 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 that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.

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

The Board of Trustees is authorized to acquire, pursuant to s. 288.980(2)(b), F.S., nonconservation lands<sup>9</sup> from the annual list submitted by the Department of Economic Opportunity (DEO) for the purpose of buffering a military installation against encroachment.<sup>10</sup> Encroachment includes any external factor that inhibits military readiness, including but not limited to, growing competition for land, airspace, waterfront access, and frequency spectrum.<sup>11</sup> Encroachment can be detrimental to the current and future missions of military installations due to the incompatible use of adjacent land. In recognition of this threat, the Military Base Protection Program was created to:

- Secure nonconservation lands to serve as a buffer to protect military installations against encroachment; and
- Support local community efforts to engage in service partnerships with military installations.<sup>12</sup>

The DEO is authorized to annually submit a list of nonconservation lands to the Board of Trustees to acquire, subject to a specific appropriation, through fee simple purchase or through perpetual, less-than-fee interest purchase, for the purpose of buffering a military installation.<sup>13</sup> The Board of Trustees is required to consider the recommendations of the Florida Defense Support Task Force when selecting nonconservation lands to purchase.<sup>14</sup> The Florida Defense

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<sup>9</sup> The term “nonconservation lands” is defined to mean “lands not subject to acquisition by the Florida Forever Program.”

<sup>10</sup> Section 253.025(21), F.S.

<sup>11</sup> Enterprise Florida, Inc., *Florida Programs to Mitigate Encroachment to Military Installations*, 3 (July 2017), available at <https://www.enterpriseflorida.com/wp-content/uploads/Florida-Programs-to-Mitigate-Encroachment-to-Military-Installations-FINAL-July-12.pdf> (last visited Feb. 13, 2018).

<sup>12</sup> Section 288.980(2)(a), F.S.

<sup>13</sup> Section 288.980(2)(b), F.S.

<sup>14</sup> *Id.*

Support Task Force consists of the Governor and 12 appointed members and was created to make recommendations to preserve and protect military installations.<sup>15</sup> All funds appropriated for the purposes of the Military Base Protection Program are eligible to be used for matching federal funds.

### ***Florida Forever Program***

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.<sup>16</sup> The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.<sup>17</sup> Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.<sup>18</sup>

The DSL oversees the Florida Forever program, under which the state has protected over 737,117 acres of land purchased with \$2.9 billion in Florida Forever funds.<sup>19</sup> Florida Forever projects and acquisitions are required to contribute to the achievement of one or more of the following program goals:

- 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 wetlands 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;
- Preserve significant archaeological or historic sites;
- Increase the amount of forestland available for sustainable management of natural resources; and
- Increase the amount of open space available in urban areas.<sup>20</sup>

The Acquisition and Restoration Council (ARC) is a 10-member body that makes recommendations on the acquisition, management, and disposal of state-owned lands.<sup>21</sup> The ARC accepts applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for Florida

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<sup>15</sup> Section 288.987, F.S.

<sup>16</sup> Chapter 99-247, Laws of Fla.

<sup>17</sup> Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2017), available at [http://publicfiles.dep.state.fl.us/DSL/OES/FloridaForeverAnnualRpts/FLDEP\\_DSL\\_OES\\_FloridaForeverAnnualReport2017\\_20170920.pdf](http://publicfiles.dep.state.fl.us/DSL/OES/FloridaForeverAnnualRpts/FLDEP_DSL_OES_FloridaForeverAnnualReport2017_20170920.pdf) (last visited Feb. 13, 2018).

<sup>18</sup> Section 259.105, F.S.

<sup>19</sup> *Supra* note 17.

<sup>20</sup> Section 259.105(4), F.S.

<sup>21</sup> *Supra* note 17.

Forever funding. In evaluating each application, the ARC is required to consider whether the project:

- Meets multiple program goals;
- 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;
- 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 that would result in multiple ownership and make acquisition of the project more 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 Everglades restoration efforts;
- May be purchased at 80 percent of appraised value;
- May be acquired, in whole or in part, using alternatives to fee simple; or
- Is a joint acquisition.<sup>22</sup>

The ARC is required to give higher priority to: projects for which matching funds are available; project elements previously identified on an acquisition list, which can be acquired at 80 percent or less of appraised value; projects that can be acquired in less-than-fee ownership; projects that contribute to improving the quality or quantity of surface water or groundwater; projects that contribute to improving the water quality and flow of springs; and projects for which the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.<sup>23</sup>

Using the established criteria, the ARC develops a priority list of applications submitted. An affirmative vote of at least five members of the ARC is required to place a proposed project on the priority list. The ARC evaluates and selects projects twice per year, in June and December, and ranks the projects annually.<sup>24</sup> 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.<sup>25</sup> Projects are ranked within each category from highest to lowest priority. The priority list is presented to the Board of Trustees.<sup>26</sup> The Board of Trustees is responsible for acting on the ARC's recommendations by approving the acquisition of each parcel.<sup>27</sup> While the Board of Trustees is authorized to remove projects from the priority list, the Board of Trustees may not add or rearrange projects on the priority list.<sup>28</sup>

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<sup>22</sup> Section 259.105(9), F.S.

<sup>23</sup> Section 259.105(10), F.S.

<sup>24</sup> DEP, *Frequently Asked Questions about Florida Forever, Who decides which lands to buy?*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Feb. 13, 2018).

<sup>25</sup> Section 259.105(17), F.S.

<sup>26</sup> Section 259.105(14), F.S.

<sup>27</sup> *Supra* note 17.

<sup>28</sup> Section 259.105(14), F.S.

The DSL prepares an annual work plan based on the priority list developed by the ARC, which outlines the specific projects and acquisitions within projects that will be negotiated for purchase with Florida Forever funds available for that fiscal year for land acquisition.<sup>29</sup> As of 2017, there were 43 projects totaling approximately 1.4 million acres in the work plan.<sup>30</sup>

At least \$5 million of the funds allocated to the DSL under the Florida Forever program, beginning in the 2017-2018 Fiscal Year and continuing through the 2026-2027 Fiscal Year, are required to be spent on land acquisition within the Florida Keys area of critical state concern as authorized in s. 259.045, F.S.<sup>31</sup> Section 259.045, F.S., requires the DEP to make recommendations for the acquisition of certain lands to the Board of Trustees.<sup>32</sup>

### **Areas of Critical State Concern**

The Areas of Critical State Concern Program was created in the "Florida Environmental Land and Water Management Act of 1972."<sup>33</sup> The purpose of the program is to ensure that the state, in accordance with s. 7, Art. II of the State Constitution, ensures a water management system that will reverse the deterioration of water quality and provide optimum utilization of the state's limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of residents of this state.<sup>34</sup>

An area of critical state concern<sup>35</sup> may only be designated for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters,<sup>36</sup> and aquifer recharge areas, of which the uncontrolled private or public development would cause substantial deterioration of such resources;
- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, of which the private or public development would cause substantial deterioration or complete loss of such resources, sites, or districts; or

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<sup>29</sup> Section 259.105(17), F.S.

<sup>30</sup> DEP, *Focused on Florida's Future, Florida Forever Program*, 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 Feb. 13, 2018).

<sup>31</sup> Section 259.105(3)(b), F.S.

<sup>32</sup> Section 259.045, F.S.

<sup>33</sup> Chapter 72-317, s. 1, Laws of Fla.

<sup>34</sup> Section 380.021, F.S.

<sup>35</sup> The designated Areas of Critical State Concern are the Apalachicola Bay Area, the Green Swamp Area, the Big Cypress Area, and the Florida Keys Area and the City of Key West Area.

<sup>36</sup> Section 403.061(27), F.S., defines Outstanding Florida Waters as bodies of water worthy of special protection because of their natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality. See DEP, *Outstanding Florida Waters*, <https://floridadep.gov/dear/water-quality-standards/content/outstanding-florida-waters> (last visited Feb. 13, 2018).

- An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, but not limited to, highways, ports, airports, energy facilities, and water management projects.<sup>37</sup>

Within 45 days after an area is designated an area of critical state concern, and annually thereafter, the DEP is required to consider the recommendations of the DEO, relating to the purchase of lands within an area of critical state concern or lands outside an area of critical state concern that directly impact such area, which may include lands used to preserve and protect water supply.<sup>38</sup> Pursuant to s. 259.045, F.S., the DEP is required to make recommendations to the Board of Trustees with respect to the purchase of any such lands that are:

- 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 area of critical state concern if the acquisition of such lands fulfills a public purpose listed in s. 259.032(2), F.S., relating to conservation and recreation lands.<sup>39</sup>

Within 180 days after an area is designated an area of critical state concern, the applicable local government may submit to the DEO, as the state land planning agency, its existing land development regulations and local comprehensive plan for the area taking into consideration the rules and principles adopted guiding development in the area of critical state concern.<sup>40</sup> If the DEO determines that the administration of the local land development regulations or the local comprehensive plan within the area is inadequate to protect state or regional interests, the agency may institute appropriate judicial proceedings to complete proper enforcement of the land development regulations or plans.<sup>41</sup>

In recognition of the difficulty of dealing with challenges implementing comprehensive land use plans pursuant to the Areas of Critical State Concern Program, each county in which one or more areas of critical state concern are located is authorized to create, by ordinance, a land authority.<sup>42</sup> A land authority is governed by the governing board of the county and has the flexibility to address plan implementation innovatively and act as an intermediary between individual landowners and the governmental entities regulating land use within the county.<sup>43</sup>

Additionally, any county creating a land authority is authorized to levy by ordinance a tourist impact tax on the taxable privileges on proceeds received from every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel,

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<sup>37</sup> Section 380.05(2), F.S.

<sup>38</sup> Section 259.045, F.S.

<sup>39</sup> *Id.*

<sup>40</sup> Section 380.05(5), F.S.

<sup>41</sup> Section 380.05(13), F.S.

<sup>42</sup> Section 380.0661, F.S.

<sup>43</sup> *Id.*

motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less, unless such establishment is exempt.<sup>44</sup> Revenues received are required to be distributed as follows:

- Fifty percent to the land authority to be used in accordance with s. 380.0666, F.S., in the area of critical state concern for which the revenue is generated, with up to 5 percent authorized to be used for administration and other costs incident to the exercise of said powers; and
- Fifty percent to the governing body of the county where the revenue was generated. Such proceeds shall be used to offset the loss of ad valorem taxes due to acquisitions provided for by this act.<sup>45</sup>

Section 380.0666, F.S., authorizes a land authority to contribute tourist impact tax revenues to its most populous municipality or housing authority of such municipality at the request of the commission or council of such municipality, for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality.

### ***The Florida Keys and the City of Key West areas of state concern***

The Legislature designated the Florida Keys (Monroe County and its municipalities) and the City of Key West as areas of critical state concern in 1975 due to the area's environmental sensitivity and mounting development pressures.<sup>46</sup> The legislative intent was to establish a land use management system for the Florida Keys that would achieve the following:

- Protect the natural environment and improve the nearshore water quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;
- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing in close proximity to places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.<sup>47</sup>

Land development in the Keys has displaced nearly 50 percent of all upland habitats and created a patchwork of land cover resulting in reduced ecological functions such as lower biodiversity, increased vulnerability to invasion by exotic plant and animal species, and decreased gene flow among species.<sup>48</sup> Land development in the Florida Keys is limited because the Florida Keys are home to many endangered and threatened species, and all permanent residents of the Florida Keys Area are required to be evacuated within a 24 hour clearance time.<sup>49</sup>

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<sup>44</sup> Section 125.0108, F.S. See s. 212.03, F.S. for exemptions from the tourist impact tax.

<sup>45</sup> *Id.*

<sup>46</sup> Department of Economic Opportunity (DEO), *Florida Keys Area of Critical State Concern 2015 Annual Report*, 1 (Nov. 30, 2015), available at <http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmt-y-plan-acsc/2015-florida-keys-area-of-critical-state-concern-annual-report.pdf?sfvrsn=2> (last visited Feb. 13, 2018).

<sup>47</sup> *Id.*, at 2.

<sup>48</sup> *Id.*

<sup>49</sup> Section 380.0552 (9)(a)2., F.S.

In 1992, Monroe County created and implemented the Rate of Growth Ordinance (ROGO) to be consistent with the 1985 Growth Management Act.<sup>50</sup> The ROGO is designed to control growth in a manner that is beneficial to the local environment, as well as the local residents, and establishes rules and procedures for the competitive process to obtain a building permit. The ROGO drew legal challenges from numerous parties with litigation lasting several years. To simplify the ROGO process, a tiered system was adopted in 2006, which includes a built in method of directing growth to acceptable areas and allowing conservation in areas with environmental sensitivity.<sup>51</sup> The process is based on a point system that allows everyone applying for a new residential or commercial building permit to compete against each other for the limited number of allocations issued each year.<sup>52</sup>

Based upon current development trends and hurricane evacuation modeling, it is anticipated that by 2023 there will remain more than 7,000 undeveloped, privately owned parcels that would be prohibited from development within Monroe County at an estimated acquisition value of \$322 million.<sup>53</sup> The prohibition on land development could potentially result in litigation under the Takings Clause of the United States Constitution,<sup>54</sup> which requires the government to compensate a property owner when it takes his or her property for public use or when the state excessively regulates his or her property.

The state of Florida has purchased 10,501 acres in the Keys at a cost of \$243.9 million for natural resource protection.<sup>55</sup> Monroe County developed a ranking tool to prioritize land for acquisition, which is weighted to consider attributes for conservation lands, listed species focus areas, military influence areas, and lands targeted for acquisition through the Florida Forever program.<sup>56</sup> The evaluation resulted in a report that indicates a need for acquisition of 4,269 conservation parcels at an estimated cost of \$82.7 million and a potential purchase of over 900 vacant developable privately owned parcels with an acquisition cost of \$29 million.<sup>57</sup> Additionally, there are an estimated 2,339 parcels in Marathon and Islamorada valued at \$127 million which may be in need of acquisition or other appropriate strategies to reduce or otherwise account for platted lots.<sup>58</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 253.025(21), F.S., to allow nonconservation lands acquired by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) under the military base buffering program in s. 288.980(2)(b), F.S., to be leased or conveyed at less than appraised value to the benefiting military installation. Such lands must be conveyed or leased in accordance with the installation's procedures, state law, and the terms of the management and monitoring

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<sup>50</sup> Monroe County Growth Management Division, *A New Era in Growth Management: The Tier System, A Layman's Guide to Residential ROGO*, available at <http://www.floridakeyskeywestrealestate.com/pdf/laymansguideROGO.pdf> (last visited Feb. 13, 2018).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> U.S. Const. amend. V.

<sup>55</sup> *Supra* note 46, at 12.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*, at 13.

agreement provided in accordance with s. 288.980(2)(b). A conveyance at less than appraised value must state that the land will revert to the Board of Trustees if the land is not used for its intended purpose as a military installation buffer or if the military installation closes.

The bill also allows the Board of Trustees to lease such military buffer lands at rates determined by competitive bid, which may be less than appraised or market value, to private entities to conduct agricultural or silvicultural operations under terms requiring approval of the military installation. The private entity must implement the best management practices applicable to such operations as adopted by the Department of Agriculture and Consumer Services.

Additionally, the bill provides that if federal partnership funds are available before a military base buffer land is acquired, the Division of State Lands must apply Yellow Book appraisal standards<sup>59</sup> and disclose the appraised value to the seller.

Section 253.025(22), F.S., is amended and subsection (23) is created to authorize the Board of Trustees by an affirmative vote of at least three members to direct the DEP to purchase lands on an immediate basis which will prevent or satisfy private property rights claims resulting from the limitations imposed by the designation of an area of critical state concern. The Board of Trustees is authorized to use up to 15 percent of the funds allocated to the DEP through the Florida Forever Trust Fund for the acquisition of such lands, if the lands acquired are, at the time of purchase, on one of the acquisition lists established pursuant to ch. 259, or essential for water resource development, protection, or restoration, or a significant portion of the lands must contain natural communities or plant or animal species that are listed by the Florida Natural Areas Inventory as critically imperiled, imperiled, or rare, or as excellent quality occurrences of natural communities.<sup>60</sup> The Board of Trustees is authorized to waive or modify all land acquisition procedures and all competitive bid procedures for the acquisition of such lands.

Additionally, if a parcel that is to be acquired by the Board of Trustees on an immediate basis is estimated to be worth \$500,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures may be used by the DSL to estimate the value of the land, provided the public's interest is reasonably protected.

**Section 2** amends s. 259.045, F.S., to require the Department of Environmental Protection (DEP) to make recommendations to the Board of Trustees with respect to the purchase of lands that are used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the parcel is within an area of critical state concern and is on one of the approved acquisition lists established pursuant to ch. 259, F.S., relating to conservation and recreation lands. This provision authorizes the Board of Trustees to use Florida Forever funds to purchase such lands as provided in s. 259.105(3)(b), F.S.

The bill authorizes the use of a comparable sales analysis, an appraisal prepared by the DSL, or other reasonably prudent procedures for the purpose of the acquisition of lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an

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<sup>59</sup> Yellow Book appraisal standards refer to the uniform appraisal standards for federal land acquisitions.

<sup>60</sup> Section 253.025(22), F.S.

area of critical state concern if the parcel is estimated to be worth \$500,000 or less and the director of the DSL finds that the cost of an outside appraisal is not justified, provided the public's interest is reasonably protected.

**Section 3** amends s. 288.980, F.S., to revise the procedures the Department of Economic Opportunity (DEO) must follow in relation to the acquisition of nonconservation lands for the purpose of military base buffering. The bill requires the DEO to request all military installations in the state to provide the agency with a list of base buffering encroachment lands for fee simple or less-than-fee simple acquisitions by October 1 of each year. The Florida Defense Support Task Force is required to analyze the list and provide its recommendations for ranking the lands to the DEO by December 1 of each year. The DEO is required to submit the final list to the DSL, which must contain the following information for each parcel:

- A legal description of the land and its property identification number;
- A detailed map of the land; and
- A management and monitoring agreement to ensure the land serves a base buffering purpose.

The bill also redefines the term “nonconservation lands” to mean lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation. Under current law, the term is defined to mean lands not subject to acquisition by the Florida Forever Program.<sup>61</sup> The revised definition attempts to conform the definition in ch. 288, F.S., with the definition of conservation lands<sup>62</sup> in ch. 253, F.S.

**Section 4** amends s. 380.0666, F.S., to authorize a land authority to contribute tourist impact tax revenues to the county in which it is located, instead of just its most populous municipality or housing authority of such municipality, at the request of the county commission for the construction, redevelopment, or preservation of affordable housing in an area of critical state concern within such municipality or any other area of the county.

The bill also authorizes land authority funds to be used to pay the following costs related to affordable housing projects:

- Acquiring real property and any buildings, including payments for contracts to purchase properties;
- 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;

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<sup>61</sup> Section 288.980(2)(c), F.S.

<sup>62</sup> The term “conservation lands” is defined in s. 253.034, F.S., to mean lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands that were 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 may not be designated conservation lands except as otherwise authorized under this section. These lands shall include, but not be limited to, 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 do not possess significant natural or historical resources. However, lands acquired solely to facilitate the acquisition of other conservation lands, and for which the land management plan has not yet been completed or updated, may be evaluated by the Board of Trustees of the Internal Improvement Trust Fund on a case-by-case basis to determine if they will be designated conservation lands.

- Studies, surveys, and plans;
- Construction, rehabilitation, and equipping of the project, excluding permit and impact fees and mitigation requirements;
- Onsite land improvements, such as landscaping, parking, and ingress and egress, excluding permit and impact fees and mitigation requirements; and
- The cost of offsite access roads, except those required to meet hurricane evacuation clearance times.

The bill takes effect upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely have a positive fiscal impact on property owners whose property is purchased.

C. Government Sector Impact:

The bill may have a positive, indeterminate impact on the Department of Environmental Protection by authorizing the agency to use alternative valuation methods to ascertain the value of certain lands, which may cost less than a certified appraisal.

The bill may shift some affordable housing funds generated by the tourist impact tax from municipalities to the county, if the land authority chooses to contribute the tourist impact tax revenues directly to the county, as authorized under the bill.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 253.025, 259.045, 288.980, and 380.0666.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Military and Veterans Affairs, Space, and Domestic Security on February 15, 2018:**

The Committee Substitute:

- Allows the Board of Trustees to lease land used for military base buffering to private entities to conduct agricultural or silvicultural operations under terms approved by the military installation.
- Relocates provisions amended in s. 253.025, F.S., directing DEO to develop a list of military base encroachment lands, to s. 288.980, F.S.
- Authorizes the Board of Trustees to purchase lands within an area of critical state concern to prevent or satisfy private property rights claims for lands on an approved acquisition list established pursuant to ch. 259, F.S. The Board of Trustees may utilize alternative valuation techniques when purchasing such lands if the parcel is estimated to be valued at \$500,000 or less and if the cost of an outside appraisal is not justified, provided the public's interest is protected.
- Specifies the activities related to affordable housing projects that can be paid for using tourist impact tax revenues.

**CS by Environmental Conservation and Preservation on February 5, 2018:**

The Committee Substitute:

- Removes the authorization for the use of Florida Forever funds for the acquisition of lands that will satisfy private property rights claims within an area of critical state concern generally. Florida Forever funds may be used to acquire such lands but only if the lands are otherwise eligible for Florida Forever funding.
- Redefines the term “nonconservation lands” to mean lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation.
- Authorizes a land authority to pay certain costs related to affordable housing projects.

**B. Amendments:**

None.