



The Florida Senate

Interim Project Summary 2008-123

January 2008

Committee on Environmental Preservation and Conservation

LAND ACQUISITION IN FLORIDA

SUMMARY

Florida has a long history of land acquisition dating back to 1855, with the creation of the Board of Trustees, and has the most unique and ambitious land acquisition program in the nation.

Funding for the acquisition of conservation lands began in the 1960's with the establishment of a \$20 million bond program to acquire recreational lands. In the early 1970's, an additional \$40 million outdoor recreational bond program was created as well as the \$200 million Environmentally Endangered Lands Program. In 1979, the landmark Conservation and Recreational Lands (CARL) program was established to preserve Florida's unique natural heritage.

In 1990, Florida established the Preservation 2000 (P2000) program in an effort to protect Florida's water resources, wildlife habitat, recreational areas, wetlands, and forests from a rapidly growing population. During the 10-year, \$3 billion program, more than 1.7 million acres were acquired to ensure that future generations can enjoy Florida's unique and fragile ecosystem.

The Florida Forever program was created in 1999 as a successor program to P2000, and authorizes the issuance of not more than \$3 billion in bonds for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. As part of Florida Forever, the Legislature provided public land acquisition agencies with the authority to purchase eligible properties using alternatives to fee simple acquisitions. Since 2001, the Florida Forever program has acquired more than 601,000¹ acres of land at a cost of over \$2.6² billion.

¹ Total acreage includes acquisitions approved by the Board for the 2007-2008 fiscal year

² Includes funds provided under the Florida Forever Act as well as monies provided from other sources.

BACKGROUND

The P2000 program was created in 1990 as a \$3 billion land acquisition program funded through the annual sale of bonds. Each year for 10 years, the majority of \$300 million in bond proceeds (less the cost of issuance) was distributed to the Department of Environmental Protection (DEP) for the purchase of lands prioritized on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs (DCA) for land acquisition loans and grants to local governments under the Florida Communities Trust (FCT). The remainder of the bond proceeds was distributed to smaller acquisition programs at DEP, the Department of Agriculture and Consumer Services (DACS), and the Fish and Wildlife Conservation Commission (FWCC). Under P2000, lands purchased by DEP, DACS, and the FWCC were required to be titled in the name of the Board of Trustees for the Internal Improvement Trust Fund (Board). Lands purchased by the water management districts are titled in the name of the acquiring district. Under FCT, lands acquired by the Trust for permanent state ownership were required to be titled in the name of the Board but lands acquired in partnership with a city or county were titled in the name of the local government.

The first series of P2000 bonds was authorized by the Legislature in 1990 (ch. 90-217, Laws of Florida) and issued in the spring of 1991, and the last series was authorized in 1999 and issued in the spring of 2000. More than \$3 billion in bond proceeds and interest earnings have been distributed to the recipients. The debt service for these bonds comes from documentary stamp tax revenues. Through July 1, 2007, principle and interest payments have totaled more than \$2.9 billion.

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In each year that bonds are issued, bond proceeds are deposited into the Florida Forever Trust Fund to be administered by DEP. The DEP distributes revenues from the trust fund to the five water management districts, DACS, FWCC, and FCT. Lands purchased under the Florida Forever program are titled in the name of the Board, except that lands purchased by a water management district vest in the name of that district. Lands purchased under FCT in partnership with a county or city vest in the name of the acquiring local government. Lands purchased by a nonprofit organization using grant funds provided by FCT must remain permanently in public use through a reversion of title to local or state government, a conservation easement, or another appropriate mechanism.

The first series of bonds was authorized by the Legislature in 2000 and issued in the spring of 2001. Through July 2007, the Legislature has authorized a total of \$1.7 billion in bonds, of which \$400 million is left to be sold³. In addition to authorized bonding, \$1.01 billion has been spent utilizing general revenue and monies transferred from other trust funds bringing the total Florida Forever expenditures to just over \$2.6 billion while acquiring more than 601,000⁴ acres of land⁵.

METHODOLOGY

The first objective of the interim project was to review and analyze all data related to the current state land acquisition program Florida Forever. This included:

- Evaluation of the effectiveness of the program in meeting its statutory goals and objectives;
- Evaluation of acquisition methods and incentives utilized;
- Review of acquisition list development; and

- Review of methods used for financing acquisitions.

To assist staff with acquiring the necessary information regarding Florida Forever, all entities receiving funds from the program were asked to provide the following:

- An accounting of all monies received from the Florida Forever Trust Fund;
- A list of all lands acquired utilizing Florida Forever funding; and
- Methods of acquisition.

The second objective of the interim project was to review acquisition programs utilized by the federal government, local governments, and other states. Information was requested from the Legislative Committee on Intergovernmental Relations to assist staff with this objective.

The third objective of the interim project was to compile data on the state's funding methods and history. With the assistance from the Committee on General Government Appropriations, staff compiled a spreadsheet comparing Florida Forever outstanding and authorized debt to the states overall bonding capacity.

To assist with the completion of the project, staff interviewed representatives from various interest groups to gather information regarding the success of the current program as well as recommendations for the establishment of a successor program.

FINDINGS

Methodology Objective 1

Evaluation of the effectiveness of the program in meeting its statutory goals and objectives:

In reviewing the data provided by each agency, staff concluded that, overall, the Florida Forever program has met its statutory goals. However, there were some inconsistencies in how appraisals of certain parcels were obtained and whether the appraisal price was influenced in any way by DEP. In particular, four such inconsistencies were noted in Auditor General Report No. 2008-109, *Department of Environmental Protection Land Acquisitions Operational Audit*, dated September 2007, which found the following:

- Documentation supporting the Babcock Ranch acquisition gave an appearance of influence of the appraisal amounts by the DEP in the establishment of value estimates on contracted fee appraisers.

³ Information provided by the Division of Bond Finance

⁴ Total acreage includes acquisitions approved by the Board for the 2007-2008 fiscal year

⁵ Information provided by the Department of Environmental Protection

- The DEP relied on hypothetical conditions in the appraisal of the Norfolk Southern acquisition; even though it was demonstrated in the appraisal reports that it was unlikely the hypothetical conditions would occur.
- Inconsistencies and deficiencies in the highest and best use analysis and conclusions on appraisals for the Overstreet Ranch and Tiger Island acquisitions may have impacted the value estimates for those parcels.
- There was a lack of documentation of the DEP's appropriate consideration of the prior sale, the value estimates in the appraisal reports, and the negotiation process of the Three Rivers acquisition.

In the report, each finding had a detailed management response from the DEP; however, in each case, the Auditor General found no reason to amend his findings following the response.

Evaluation of acquisition methods and incentives used:

In reviewing the data provided by each agency regarding types of acquisition methods utilized, professional staff concluded the following:

- Overwhelmingly, the method of choice for the acquisition of lands under the Florida Forever program has been full fee or fee simple.
- 84 percent of all acreage acquired by the Board has come with fee simple purchase.
- Collectively, the water management districts have done a better job utilizing less-than-fee alternatives with only 68 percent of lands acquired utilizing full fee options.

As land values and land management costs continue to escalate, less-than-fee alternatives need to be utilized to their advantage. However, the state needs to weigh those costs with the benefits of land conservation and public access before considering less-than-fee options.

Review of acquisition list development:

In reviewing the information provided by DEP regarding how the Florida Forever acquisition list is developed, professional staff concluded the following:

- The development of the acquisition list has been completed within statutory guidelines and goals of prioritizing lands that meet a combination of conservation goals.

- With the assistance of the Florida Natural Areas Inventory (FNAI), the DEP has continued to refine how projects are placed on the list ensuring that they meet specific conservation values.
- The process for ranking certain parcels based on conservation values and needs is not adequately defined in statute.
- The benefit of the State's acquisition of certain parcels, based on conservation values and needs, is not adequately defined in statute.

Although statute clearly defines that acquisitions should be based on the State's expectation of meeting a combination of conservation and resource goals, those goals are too broadly defined with no clear direction as to how they can ever be achieved. Specific targets should be identified for certain conservation values so that the State can meet definable needs.

Review of methods used for financing acquisitions:

In reviewing the methods used for financing acquisitions, professional staff concluded the following:

- The majority of financing for land acquisitions comes from the sale of bonds. Annually, this requires the Legislature to provide approximately \$22 million in additional funds to pay bond debt services.
- For fiscal year 2007 – 2008, the total debt service for all P2000 and Florida Forever bonds is approximately \$366 million.
- On two occasions Florida Forever acquisitions were funded wholly from cash provided from general revenue⁶.

The state should consider using alternatives to bond financing for conservation land acquisitions. Although bond financing provides a quick infusion to a land conservation trust fund, the debt service on those bonds can bind future legislature's ability to finance other programs through recurring debt service.

Methodology Objective II

Review of acquisition programs utilized by the federal government, local governments, and other states:

In attempting to gather information regarding other acquisition programs, staff requested feedback from the Legislative Committee of Intergovernmental Relations

⁶In fiscal years 2004/2005 and 2006/2007, \$300 million was appropriated from general revenue into the Florida Forever Trust Fund for land acquisition.

as well as from outside land acquisition groups such as Trust for Public Lands and the Nature Conservancy. Very little information was readily available regarding other acquisition programs, however most of the federal land acquisition data was provided by the Trust for Public Lands via their online data portal⁷.

In reviewing the information regarding other federal, state and local land acquisition programs, professional staff noted the following:

- Florida ranks last in federal land acquisition funding of all states that received such funds. This could be attributed to:
- Florida ranking first in state funded acquisition programs limiting the need for federal acquisition dollars; or
- The states lack of effort in seeking federal land acquisition dollars.

Although bonding is utilized as financing in other acquisition programs, it does not appear to be the only source for the majority of programs. Other sources of funding such as individual foundations, development impact fees, land trusts, agricultural and conservation easement donations, and federal funding are all utilized in lieu of bonding.

Methodology Objective III

Compile data on the state's funding methods and history:

In reviewing the data compiled on Florida Forever funding methods professional staff noted the following:

- The state has purchased more than 601,000 acres of land at a cost in excess of \$2.3 billion.
- Of the \$2.3 billion authorized, \$1.7 billion has come from bonds.
- Including existing bonds from the P2000 program, the state's annual debt service is approximately \$366 million.
- Although the legislature has not yet appropriated funds for the 2008- 2009 and 2009 – 2010 fiscal years, the Board has approved approximately \$82 million in acquisitions for those years.
- The Division of State Lands (DSL) has approximately \$430 million of additional anticipated acquisitions for fiscal years 2008 – 2009 and 2009 – 2010.

- Based on the data provided from DSL, the Florida Forever program is almost completely committed through the 2009 – 2010 fiscal year leaving approximately \$4 million for unanticipated acquisitions through the remainder of the program.

The information indicates that certain statutorily designated entities for which Florida Forever funds are disbursed may be overcommitted in fiscal years 2008 - 2009 and 2009 – 2010. For example, the DSL has more than \$31 million in Board approved commitments in 2008 – 2009 and \$9 million in 2009 – 2010 even though they indicate an anticipated cash balance of approximately \$16.5 million at the end of fiscal year 2007 – 2008. Although none of the approved commitments are binding unless funds are appropriated by the Legislature, there is at least an appearance of the willingness of the state to acquire real property without Legislative authorization.

CONCLUSIONS AND RECOMMENDATIONS

The success of Florida's land acquisition programs is unquestioned. Preservation 2000 and its successor Florida Forever have acquired in excess of 2 million acres of environmentally important lands. The programs have been and still are national models for environmental protection.

However the purpose of this interim project is to evaluate the state's progress and make recommendations on the potential future of land acquisition efforts. In reviewing the findings, professional staff concluded there were three options for the completion of the current program and development of a successor program. These options include:

Option 1:

Allow the Florida Forever land acquisition program to end and shift the acquisition of conservation lands to federal, local, or private efforts.

- Such programs could be funded through various federal grants or private donations.
- The state could still participate in the acquisition of highly valued "target" parcels that meet multiple needs. Those could be financed through one-time appropriations on an as-needed basis.
- The state could create a land acquisition grant program funded by dedicated revenue sources

⁷ Data portal is not yet active for public viewing. Access was provided by Trust for Public Lands staff.

such as documentary stamp taxes or by a mechanism similar to that of the City of Portland's park system development charge.

- Converting a conservation lands acquisition program over to federal, local, or private efforts could save the state approximately \$22 million annually in debt service payments.

Option 2:

Modification of the existing Florida Forever program to include:

- A reworking of the entire acquisition list. The current list, although it follows statutory guidelines, does not provide any mechanism for achieving conservation goals.
- The development of specific targets for each conservation measure so that acquisition efforts can be tracked and goals can be reached.
- The creation of additional oversight in the acquisition of mega-parcels. As identified in the Auditor General's report, there was some concern over how appraisals were obtained for the Babcock Ranch acquisition, raising the question of should it have required additional legislative oversight. The legislature could put a limit on the size or cost of certain acquisitions that do not require legislative approval thus minimizing the likelihood of departmental influence on mega-parcel appraisals.
- Limiting DSL's ability to enter into any contractual agreements with property owners without prior legislative appropriation or authorization.
- Prohibit the acquisition of or commitment to, purchase lands before adequate legislative authorization or appropriations are provided.
- An increased emphasis on using less-than-fee alternatives. Rising land values and land management issues are significant reasons to seek less-than-fee acquisitions. Types of methods could include conservation contracts, land trusts, and easement donations.
- Consideration of the effects of sea level rise on conservation lands currently in state ownership and any future acquisitions that are located at or below five feet above sea level.
- A sustained funding source for land management. Evaluate sovereignty submerged land leases to determine the potential for

dedicating some portion of the lease fees to land management.

- Requiring managing agencies to take advantage of capital improvement dollars available during the time of acquisition. Closer coordination is needed between managing agencies and DSL to identify potential improvements during the appraisal process.
- Expanding land management options that allow for revenue opportunities to pay for the management of the land while not interfering with the intended purpose of the acquisition. Options could include any activities that took place on the land prior to state acquisition such as hunting and agricultural leases, or timber harvesting.
- Developing a database system to track all acquisition activity associated with Florida Forever. One agency should be charged with housing the acquisition data whether it falls on DSL, on another agency currently associated with the program, or an entity created solely for this purpose.

Option 3:

Creation of an entirely new conservation lands program that includes:

- Allowing for the completion of the current Florida Forever program to assess conservation land holdings.
- Identifying additional conservation lands through scientifically definable measures such as those utilized by FNAI.
- Establishing measurable goals for each measure.
- Creating a mix of fiscally responsible funding options for the new program. Such a mix could include bonding, cash, federal grants, donations, development charges, and land trusts. Additional sources could come from the sale of surplus lands that hold minimal or no conservation values.
- Other recommendations also listed in Option 2.