

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 33 State Lands

SPONSOR(S): Agriculture and Natural Resources Subcommittee and Smith

TIED BILLS: None **IDEN./SIM. BILLS:** SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 1 N, As CS	Kaiser	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution, provides that the fee interest in real property held by an entity of the state and designated for natural resources conservation purposes must be managed for the benefit of the citizens of this state and may be disposed of only if the members of the Board of Trustees of the Internal Improvement Trust Fund (board) determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board. Current law also grants the board with the power to exchange lands vested or titled in the name of the board for other lands in the state owned by local governments, individuals, or private or public corporations.

The bill authorizes a private individual or public or private corporation with privately held land contiguous to state-owned land to submit a request directly to the board to exchange state-owned land for a permanent conservation easement over the privately held land. This provision does not apply to any state-owned sovereign submerged lands. The board must consider the request within 180 days after receiving it and may approve the request only if certain conditions are met. Special consideration will be given to a request that maintains public access for any recreational purposes allowed on the state-owned land at the time the request is submitted to the board.

The bill also provides that the exchange may be in an amount of state-owned land equal in size to the monetary equivalent of privately held land that the individual or private or public corporation is willing to put into a permanent conservation easement, not to exceed 1280 acres per exchange. The board must maintain a permanent conservation easement over the state-owned land being exchanged that is similar to the permanent conservation easement that is being established over the privately owned land.

The bill further provides that if any land uses or activities occur on the state-owned land being transferred to an individual or public or private corporation that are not authorized under the permanent conservation easement, the land rights of the state and the individual or public or private corporation will revert back to the condition prior to the initial exchange, unless the private individual or public or private corporation ends the unauthorized use or activity and corrects any adverse impacts to the property resulting from such use or activity to the satisfaction of the Department of Environmental Protection (DEP) within 60 days. Low-impact operations such as grazing, forest management, prescribed burning, and wildlife management practices on the state-owned lands are allowed.

Lastly, the bill provides that lands that are exchanged are subject to inspection by the department to ensure compliance with the terms of all permanent conservation easements constituting the exchange.

The bill appears to have a negative fiscal impact on state and local governments (See Fiscal Comments).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 253.001, F.S., provides that all lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund (board) are held in trust for the use and benefit of the people of the state pursuant to Art. 11, s. 7 and Art. X, s. 11, of the Florida Constitution. The board is comprised of the Governor and Cabinet and is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state. The Division of State Lands (division) within the Department of Environmental Protection (DEP) performs the staff duties related to the board's authority over state lands. Requests for exchanges are handled by the division in accordance with Rule 18-2, Florida Administrative Code (F.A.C.).

Article X, section 18 of the Florida Constitution, provides that the fee interest in real property held by an entity of the state and designated for natural resources conservation purposes must be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a two-thirds vote of the governing board.

Section 253.42, F.S., grants the board with the power to exchange lands vested or titled in the name of the board for other lands in the state owned by local governments, individuals, or private or public corporations. Any nonconservation lands that were acquired by the state through gift, donation, or any other conveyance for which no consideration was paid must first be offered at no cost to a county or local government, unless otherwise provided in a deed restriction of record or other legal impediment, and so long as the use proposed by the county or local government is for a public purpose. For conservation lands acquired by the state through gift, donation, or any other conveyance for which no consideration was paid, the state may request land of equal conservation value from the county or local government but no other consideration.

When exchanging conservation lands that were not acquired through gift or donation, the board must request an exchange of equal value, which means the conservation benefit of the lands being offered for exchange is equal to or greater than the conservation benefit of the state-owned lands.¹ In exchanges of this type, the Acquisition and Restoration Council (ARC)² must make a determination of a net-positive conservation benefit, regardless of appraised value.

Effect of Proposed Changes

The bill amends s. 253.42, F.S., to provide that a private individual or public or private corporation with privately held land contiguous to state-owned land may submit a request directly to the board to exchange state-owned land for a permanent conservation easement over the privately held land. This provision does not apply to any state-owned sovereign submerged lands.

The bill provides that the exchange may be in an amount of state-owned land equal in size to the monetary equivalent of privately held land that the individual or private or public corporation is willing to put into a permanent conservation easement, not to exceed 1280 acres per exchange. The board must maintain a permanent conservation easement over the state-owned land being exchanged that is

¹ Section 253.42(2), F.S.

² The Acquisition and Restoration Council (ARC) is a 10-member group with representatives from various agencies as well as appointees by the governor, the Florida Fish and Wildlife Conservation Commission, and the Commissioner of Agriculture. The ARC is responsible for the evaluation, selection and ranking of state land acquisition and capital improvement projects for the Florida Forever priority list, as well as the review of management plans and land use plans for all state-owned conservation lands.

similar to the permanent conservation easement that is being established over the privately owned land.

The bill provides that the board must consider the request within 180 days after receiving it and may approve the request only if:

- The privately held land is surrounded by state-owned land on at least 30 percent of its perimeter, and the exchange does not create an inholding.
- The board makes an affirmative determination that the property is no longer needed for conservation purposes pursuant to article X, section 18 of the Florida Constitution.
- The approval does not result in the board, department, Department of Agriculture and Consumer Services, Fish and Wildlife Conservation Commission, or any of the water management districts violating the terms of a pre-existing lease agreement.
- The exchange of privately held land and state-owned land does not result in a net loss of conservation value.
- Such request is approved by a two-thirds vote of the board.

The bill also provides that low-impact operations such as grazing, forest management, prescribed burning, and wildlife management practices on the state-owned lands will be allowed. In addition, the bill provides that special consideration will be given to a request that maintains public access for any recreational purposes allowed on the state-owned land at the time the request is submitted to the board.

The bill provides that if any land uses or activities occur on the state-owned land being transferred to an individual or public or private corporation that are not authorized under the permanent conservation easement, the land rights of the state and the individual or public or private corporation will revert back to the condition prior to the initial exchange, unless the private individual or public or private corporation ends the unauthorized use or activity and corrects any adverse impacts to the property resulting from such use or activity to the satisfaction of the department within 60 days.

Lastly, the bill provides that lands that are exchanged are subject to inspection by the department to ensure compliance with the terms of all permanent conservation easements constituting the exchange.

B. SECTION DIRECTORY:

Section 1: Amends s. 253.42, F.S., authorizing individuals to submit requests to the Board of Trustees of the Internal Improvement Trust Fund to exchange state-owned land for conservation easements; providing criteria for such requests; and, authorizing certain operations on such lands.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section below.

2. Expenditures:

See Fiscal Comments section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative fiscal impact on local governments if the conservation easement resulting from the exchange reduces ad valorem property taxes. This may result in a loss of revenues from property taxes and fees generated from state-owned lands exchanged for conservation easements.

2. Expenditures:

See Fiscal Comments section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows private land owners to receive title to state-owned lands that may not be available for exchange under current law. Also, by obtaining conservation easements on their property, private landowners could potentially reduce the amount of property tax owed.

Public access would be hindered to the extent that state-owned land that becomes the property of a private landowner would no longer be available for public uses, such as hunting, fishing, camping, hiking, etc. Additionally, conservation easements acquired by the state in exchange for state-owned land do not inherently contain a public right of access.

The silvicultural industry may be affected if acreage is taken out of production.

D. FISCAL COMMENTS:

The Department of Environmental Protection states that the bill could result in a negative fiscal impact, but the exact amount is indeterminate.

The Department of Agriculture and Consumer Services (DACS) estimates that the bill could potentially result in an annual net loss of approximately \$1.1 million: \$800,000 from timber sales and other forest products and \$300,000 from uses such as oil, gas, and mineral exploration, as well as seismic testing. Additionally, the state could incur annual expenditures of approximately \$250,000 associated with additional staff to process land negotiations as well as the costs associated with surveying, maps, brochures, and reestablishing fire breaks, roads, and fencing. However, the exact fiscal impact to the state is indeterminate because the costs would be on a case-by-case basis. Some transactions could be insignificant while others could be significant.

The Florida Fish and Wildlife Commission stated that the legislation could result in a reduction of revenues generated on state-owned lands from public use fees, timber harvests, grazing, and other allowable uses of state-owned lands that currently generate revenue for the state. However, the board would have the discretion as to whether to approve the exchange of any land that could result in a loss of revenue to a specific governmental entity. The bill could also potentially reduce the state's land management costs, since the cost to the state of compliance monitoring for conservation easements is less than the costs for management of full-fee state-owned lands.

Proponents of the bill state this legislation will alleviate land management costs for the state by transferring the land to private ownership. Additionally, the privately-held land will be returned to the tax rolls, thus providing revenue for local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

Pursuant to Article X Section 18 of the Florida Constitution, "real property held by the state and designated for natural resources conservation purposes may be disposed of only if the members of

the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.”

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment to HB 33. The strike-all amendment amends s. 253.42, F.S., to provide that a private individual or public or private corporation with privately held land contiguous to state-owned land may submit a request directly to the board to exchange state-owned land for a permanent conservation easement over the privately held land. This provision does not apply to any state-owned sovereign submerged lands.

The amendment also provides that the exchange may be in an amount of state-owned land equal in size to the monetary equivalent of privately held land that the individual or private or public corporation is willing to put into a permanent conservation easement, not to exceed 1280 acres per exchange. The board must maintain a permanent conservation easement over the state-owned land being exchanged that is similar to the permanent conservation easement that is being established over the privately owned land.

The amendment provides that the board must consider the request within 180 days after receiving it and may approve the request only if:

- The privately held land is surrounded by state-owned land on at least 30 percent of its perimeter, and the exchange does not create an inholding.
- The board makes an affirmative determination that the property is no longer needed for conservation purposes pursuant to article X, section 18 of the Florida Constitution.
- The approval does not result in the board, department, Department of Agriculture and Consumer Services, Fish and Wildlife Conservation Commission, or any of the water management districts violating the terms of a pre-existing lease agreement.
- The exchange of privately held land and state-owned land does not result in a net loss of conservation value.
- Such request is approved by a two-thirds vote of the board.

The amendment also provides that low-impact operations such as grazing, forest management, prescribed burning, and wildlife management practices on the state-owned lands will be allowed. In addition, the amendment provides that special consideration will be given to a request that maintains public access for any recreational purposes allowed on the state-owned land at the time the request is submitted to the board.

The amendment provides that if any land uses or activities occur on the state-owned land being transferred to an individual or public or private corporation that are not authorized under the permanent conservation easement, the land rights of the state and the individual or public or private corporation will revert back to the condition prior to the initial exchange, unless the private individual or public or private corporation ends the unauthorized use or activity and corrects any adverse impacts to the property resulting from such use or activity to the satisfaction of the department within 60 days.

Lastly, the amendment provides that lands that are exchanged are subject to inspection by the department to ensure compliance with the terms of all permanent conservation easements constituting the exchange.