

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 2102

INTRODUCER: Environmental Preservation Committee and Senator Bennett

SUBJECT: Land Management/Babcock Preserve Act

DATE: March 30, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
3.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	<u>WM</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute creates the Babcock Ranch Preserve (Preserve) on the date title to the state's portion of the Babcock Crescent B Ranch vests with the Board of Trustees of the Internal Improvement Trust Fund (TIIF). The committee substitute provides the purposes for which the Preserve is created, and provides legislative findings that the public interest of the state is served by the creation of a not-for-profit corporation to be known as Babcock Ranch, Inc. whose primary mission is the management and operation of the Babcock Ranch Preserve. The committee substitute creates a nine-member board of directors (board) for the corporation, creates an appointments process for members of the board, and provides for the appointment of initial members of the board within a specified time period.

The committee substitute provides duties of the corporation, requires an annual financial audit of the corporate accounts and records, and requires that an annual detailed, comprehensive report of the operations of the Babcock Ranch, Inc. be provided to the Legislature, the Fish and Wildlife Conservation Commission (FWC or commission), the Department of Agriculture and Consumer Services (DACS or department), and the TIIF. The corporation is directed to prepare an annual budget with a goal of achieving a financially self-sustaining operation within fifteen fiscal years after management of the Preserve begins.

The committee substitute provides for the development of a comprehensive business plan for the Preserve, and provides that the comprehensive plan may only be implemented with input from the FWC and the DACS. The corporation is prohibited from implementing the business plan until the expiration or termination of the Management Agreement executed by the state and the seller, as part of the Agreement for the Sale and Purchase of the Babcock Crescent B Ranch.

Finally, the committee substitute provides that the corporation may only be dissolved by an act of the Legislature, and that upon dissolution, all funds remaining in the corporate accounts shall revert to the state General Revenue fund, or such other state fund as may be consistent with legislative appropriations.

This bill creates s. 259.1053, Florida Statutes.

II. Present Situation:

Babcock Crescent B Ranch

The Babcock Crescent B Ranch covers an area of 143 square miles and is comprised of 81,499 acres in Charlotte County and 9,862 acres in northwest Lee County. The Ranch contains cypress domes, extensive wet (mesic) flatwoods and wet prairies in a block that straddles the Telegraph Swamp, provides habitat for endangered species, and is a high water-recharge area for southwest Florida. The Babcock Ranch is a Florida Forever Group A project which was added to the acquisition list in 2001.

The Ranch is owned by the Babcock family and operated by the Babcock Florida Company, a for-profit corporation registered in Florida and based in Pittsburgh, Pennsylvania. Until around 1940, the primary activity on the Babcock property was the timber business, particularly the harvesting and sale of longleaf pitch pine which was used to shore up and brace diamond mines in South Africa. The Babcock Florida Company, created in 1940 as a result of the merger of the Babcock Carrier Florida Company and the Charlotte-Lee County Land Company, began replanting efforts to replenish the timber harvested from the ranch and also began cattle operations under the leadership of Fred Babcock, the son of Edward Vose Babcock, the original owner of what is now the Crescent B Ranch.

Today, the business of the Babcock Crescent B Ranch includes tenant farms for watermelon and tomatoes on about 4,000 acres; 1,000 acres of sod farming, 2,000 acres of permitted mining activities, and 20,000 acres of improved pasture land. Public access to 6,000 acres covering 6 miles is provided through guided eco-tours conducted by Babcock Wilderness Adventures, Inc. Hunting activities are authorized on 61,000 acres through 22 annual private hunting leases covering an average of 5,000 acres per lease. Prescribed burning activities are conducted on about 25,000 acres, and 72,000 acres are in native vegetation and are grazed rotationally.

State's Purchase of the Babcock Crescent B Ranch

The Babcock Crescent B Ranch was added to the Florida Forever priority list in 2001 and approved for acquisition by the TIF in January, 2002. At that time, the estimated assessed taxable value of the property was \$52.5 million, and the entire ranch was identified for acquisition under the Florida Forever program.

In July 2005, Kitson & Partners, a Palm Beach real estate development firm, announced that it was purchasing the ranch from the Babcock family for an undisclosed sum of money under four conditions:

- The State of Florida, Lee County, and Kitson & Partners would execute a sales contract for approximately 73,400 acres of the ranch. Kitson & Partners would retain ownership of approximately 18,200 acres.

- Kitson & Partners, Lee County, Charlotte County, and the state would execute a 4-party Interlocal Agreement to guide the preservation and development of the ranch in a mutually cooperative way.
- Charlotte County would adopt changes to its local comprehensive plan to allow Kitson & Partners to develop approximately 17,800 acres of the "retained property" as a self-sustaining community containing:
 - 19,500 residential units;
 - 6 million square feet of commercial space;
 - 664,067 square feet of industrial space;
 - 600 hotel units; and
 - 72 holes of golf.
- Kitson & Partners would buy and merge into the Babcock Florida Company.

Agreement for Sale and Purchase - State of Florida¹

On November 22, 2005, the TIIF approved the Agreement for Sale and Purchase for the state and Lee County, as Purchasers, to purchase approximately 67,000 acres of the Babcock Crescent B Ranch from MSKP III, Inc.,² a for profit corporation, as Seller, for a total purchase price of \$350 million. Under the Agreement, the following terms and conditions apply:

- The total purchase price for the property, including the Lee County portion, is \$350 million.
- Payment is as follows:
 - \$5 million - Department of Agriculture and Consumer Services
 - \$5 million - Fish and Wildlife Conservation Commission
 - \$40 million - Lee County
 - \$300 million - TIIF
- Property will be purchased in five phases:
 - Phase I - \$100 million
 - Phase II thru Phase V - \$62.5 million in each phase
- Phase I closing is to take place on or before April 1, 2006, if funding is secured, but not later than July 31, 2006. Seller must have merged into Babcock Florida Company by Phase I closing.
- If seller does not merge into the Babcock Florida Company for any reason, there is no liability or obligation to follow through on the sale of the property to the state.
- Seller and purchaser agree to enter into a Management Agreement which requires, among other provisions, that the seller manage cattle and wildlife on the property, and the creation of a land management plan to be approved by the TIIF.
- Water resources:
 - Town and Country Utility Company currently located on the ranch will be wholly owned by seller.
 - The Public Service Commission Certificate No. 613W for Town and Country will be released and terminated as each phase closes.

¹ The full Agreement for Sale and Purchase is available on the Department of Environmental Protection's Division of State Lands website at http://www.dep.state.fl.us/secretary/news/2005/babcock/files/sale_purchase_112105.pdf

² Articles of Incorporation for MSKP III, Inc., a Florida for profit corporation, were filed with the Florida Secretary of State on June 30, 2005, and list a principal office in care of Kitson & Partners, LLC, a limited liability company, located in West Palm Beach, Florida.

- Water service leases entered into between Town and Country Utility and the Babcock Florida Company will terminate as each phase closes.
- Prior to the closing of each phase where the takedown parcel includes a surface water control structure, the parties will agree on the range of seasonal control elevations for surface water, and agree on the party responsible for operating, maintaining, and managing the water control structure.
- The TIIF may grant proprietary authorization for the use of state-owned lands so long as the proposed use is compatible and consistent with the purpose for which the property is acquired.
- When Charlotte County demonstrates the need and demand for a public water supply beyond current capacity and has obtained a consumptive use permit:
 - The county may apply for use of the state property to sink wells, and install pipelines and utilities as necessary.
 - The initial consumptive use application is expected to be for 10 mgd (million gallons per day), but application can be for more.
 - County has access to the property solely for purposes of conducting studies to apply for the consumptive use permit.
 - Staff of the Division of State Lands will accept and process the application for use of state lands from Charlotte County.
 - No well site may be located in Lee County.
 - Water use must be for public water supply purposes.
 - Pipelines to transfer water across Telegraph Swamp must be co-located along existing water control structures or immediately adjacent thereto.
 - Charlotte County must pay a consideration to the TIIF for the placement of water wells.
- Nothing in the contract assures Charlotte County that a consumptive use permit will be issued.
- Authorizations for uses of the state property may only be granted by the TIIF and the ability to authorize use may not be delegated by the TIIF.

Agreement for Sale and Purchase - Lee County

On November 15, 2005, the Lee County Board of County Commissioners executed the Agreement for Sale and Purchase which committed the county to a purchase of \$40 million for property which will be titled in the county's name. On Tuesday, February 28, 2006, the Lee County Board of County Commissioners voted to spend \$41.5 million instead of the original \$40 million in order to acquire all of the ranch property that is located within Lee County (approximately 5,620 acres) so that none of the property within the county will be owned by the state. It is unclear how this affects the Agreement for Sale and Purchase which has already been signed and approved by the TIIF.

Management Agreement - Babcock Ranch Management, LLC and TIIF, et. al.³

The purpose of the Management Agreement (Agreement) to be executed at closing by the TIIF, the FWC, the DACS, and Lee County, as owners, and Babcock Ranch Management, LLC,⁴ as

³ The Management Agreement, marked as Exhibit "E" to the Agreement for Sale and Purchase, is available at the Department of Environmental Protection, Division of State Lands website at http://www.dep.state.fl.us/secretary/news/2005/babcock/files/management_agreement_112105.pdf

Manager, is to provide for the management and operation of the property as a working ranch and silviculture operation to include:

- Cattle ranching, timber management and timber harvesting, a Florida native plant nursery, apiary (bee) operations, a sod farm, related operations, or any form of agriculture as defined in s. 570.02(1), F.S.⁵, in present use on the property;
- Eco-tourism, natural resource based recreation such as hiking, hunting and fishing;
- Horticultural debris disposal business; and
- Tenant farming which is to be phased out over time.

The ranch shall also be managed and operated to provide sustainable and relatively natural habitat for fish, wildlife, plants or similar ecosystems, to conserve the property as productive agricultural land that sustains for the long term the economic and conservation values of the current uses of the property, and to prevent any use of the property that will cause or result in degradation of its present environmental and conservation quality.

At or before closing, the Babcock Ranch Management, LLC, will assist the state and Lee County with the development of the management plan for the operation of the property, and the business plan which will include items of operational expense and cost factors. All management decisions relating to the property purchased by Lee County must be approved in writing by Lee County. The Agreement provides that the Manager will be responsible for all costs of operations. Once the management plan is adopted and the business plan is approved by the TIIF, neither plan can be amended or modified without the prior written consent of the TIIF, except to prevent or mitigate significant health and safety risks. At the time of closing of each parcel, the Manager is to be designated as the sole and exclusive manager of that parcel.

The Agreement provides that any not-for-profit corporation created for the management of the ranch may only act in an advisory role until the termination of the Agreement.

Term of the Management Agreement

The Management Agreement is a 5-year agreement with an automatic 5-year extension unless the Manager notifies the TIIF not later than 180 days prior to the expiration of the first term, of the decision not to extend. The Agreement may not be extended beyond July 31, 2016. The Agreement takes effect on the date of the Phase I closing no matter when it is executed by all of the parties.

Revenues

The Agreement provides that the Manager is entitled to all revenues from operations from the ranch. During the first 5-year management period, the Manager must reinvest not less than 50 percent of all net revenues, from which employee salaries and benefits may not be deducted, in the management, maintenance and improvement of the property. If the Agreement is extended

⁴ Articles of Organization for Babcock Ranch Management, LLC, were filed with the Florida Secretary of State on October 13, 2005, and list Sydney Kitson as the Manager.

⁵ s. 570.02(1), F.S., defines "agriculture" as the science and art of production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production. Seafood is included for purposes of marketing and promotional activities.

for a second 5-year period, the reinvestment percentage increases by 10 percent each year until it reaches 90 percent.

The Agreement also provides that in the event net revenues of the ranch are detrimentally affected as a result of operational changes required by the management plan adopted by the TIIF, the state is obligated to mitigate the financial damage subject to a legislative appropriation.

Specific Uses of the Property

The Management Agreement provides that the Manager has the right to use the property so long as the uses are subject to the requirements of, and not inconsistent with, the management and business plans adopted and approved by the TIIF. All activities must be conducted in accordance with applicable federal, state and local laws.

Use Restrictions: No commercial, residential, or industrial activity may be undertaken or allowed on the property except for current activities or those allowed by the Agreement.

- No license, easement, or right of passage on or across the property can be allowed or granted to a 3rd party for residential, commercial or industrial activities, unless approved in writing by the TIIF, and Lee County, where applicable.
- Agricultural activities must be conducted in accordance with applicable best management practices (BMPs).

Roads: All road construction and maintenance must be included in the management plan, and must in accordance with applicable BMPs. Construction and maintenance activities may include disking, plowing, grading, excavating, and the application of clay, gravel, shell or other like material, or other activities necessary in the Manager's performance of responsibilities under the Agreement.

Firelines and Breaks: Existing fire lines and breaks must be maintained by the Manager. Manager may plow new fire lines and breaks as necessary for fire prevention and control, subject to applicable federal, state, and local permitting requirements. Activities must be conducted in accordance with applicable BMPs.

Waters: Manager must maintain all existing culverts, ditches, drains, swales, and other control structures on the property, and may install wells, subject to applicable permitting requirements, for activities allowed under the Agreement.

Nurseries: Manager can establish nurseries, not to exceed 5,000 acres in total at a location or locations to be agreed upon by the Manager, the state and Lee County, as owners, to propagate native species to be used on the property, to be used by the TIIF off-site, and to be used by MSKP III, Inc., as owner of the "retained property." Nurseries must be state of the art systems to ensure land and water conservation and stewardship.

Public Access: Manager must allow public access in areas deemed safe by the owners and as provided in the management plan adopted by the TIIF. Areas of active cattle grazing, hunting, mechanical operations, and other functions which could cause risk to public users shall not be open to public access.

- Until the adoption of the management plan by the TIIF, all parties will cooperate in the development of an Interim Access Agreement to provide public access to the property to the greatest extent that is safe and practicable, and to the extent that access is reasonably consistent with the existing uses and operation of the property.

Research and Education Center: Manager will establish a research and education center on the property, subject to mutual agreement between the TIIF and the Manager as to location and size. The center will be established in cooperation with the Florida Gulf Coast University.

Off-Highway Vehicles: Except for Manager's maintenance activities, emergency situations, and to comply with the Americans with Disabilities Act, no off-highway vehicles will be allowed on the property.

Construction: No construction of or placing of buildings, infrastructure, or roads, signs, billboards or other advertising, utilities or other structures on, under or above ground is allowed except as provided in the Management Agreement.

Dumping: Unless authorized by the TIIF, or Lee County where applicable, there shall be no dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, solid or liquid waste, including sludge, or hazardous materials, wastes or substances, toxic waste or substances, pollutants or contaminants, or unsightly or offensive materials. Exceptions are provided for activities allowed under the Agreement.

Exotics and Invasive Species: No nuisance exotic and non-native vegetation may be planted on or encouraged to grow on the property.

Horticultural Debris Disposal: Debris disposal operations on the property may continue to alleviate disposal of plant waste generated through normal agricultural operations, and to assist in the disposal of exotic and non-native invasive vegetation.

Pesticides/Herbicides and Fertilizer: Must be applied in accordance with label instructions, and in accordance with applicable permitting processes, all applicable BMPs, and applications of such must be included within the Rural Land Stewardship Plan to be established for the property.

Mining and Excavation: None unless authorized by the TIIF, Lee County where applicable, or as provided in the Agreement.

Conversion of Natural Areas: No conversion of natural lands to other uses.

Improved Pastures: Pastures currently improved for cattle and equine operations may continue to be used as improvement pasture. Habitat management practices shall include forage crop rotation.

Silviculture: Manager can conduct commercial forestry operations and timber harvesting in accordance with applicable BMPs. No harvesting of wetlands or cypress trees is authorized anywhere on the property.

Ranch Operation: Manager shall maintain commercial cattle and equine operations in accordance with Natural Resources Conservation Service, the DACS BMPs, and local soil and water conservation districts, as and to the extent contemplated in the management and business plans. Existing wells can be maintained and used for irrigation subject to regulatory approval.

Roads, Game Plots, Vehicular Game Trails and Utilities: All existing roads, game plots, vehicular game trails and utilities must be maintained by Manager. Manager is authorized to expand and install such impervious roads, trails and utilities as may be, or may become necessary to manage the property, subject to certain requirements contained in the Agreement.

Hunting, Wildlife Management, and Nature Study Rights: Manager can exercise wildlife viewing and nature study rights on or related to the property during the term of the Agreement. The Manager acknowledges that the FWC will manage hunting and wildlife management activities on the property. Until the management plan to be adopted by the TIIF is also approved by the FWC, there will be no hunting on the property or changes to existing wildlife management.

Gopher Tortoise Mitigation Park: If the FWC establishes a Gopher Tortoise Mitigation Park on the property, then that area shall be managed by the FWC.

Cypress Lodge and Other Dwellings: Manager will operate and manage the Cypress Lodge, and can coordinate with a member of the state university system and community college system to advance hotel/restaurant management job training.

Camping Areas: Manager shall cooperate with owners to develop and place a camp/cottage system on the property under the terms of the adopted management plan. The system can include activities such as canoeing, bird watching, or horseback trail rides in areas deemed safe for public use. Primitive campsites can be developed where feasible.

Greenway System: Manager can develop a comprehensive greenway system for the use of the public which can be connected to a greenway system planned for the "retained property."

Ecosystem tours: Manager will continue to manage and operate the ecosystem tour program currently in operation on the property.

Property Owners Association: All of the funds collected by the property owners association on the "retained property" for the purpose of supporting environmental stewardship activities on the property shall be deposited into the property management account and used for the management, maintenance and improvement of the property, and for the research and education center.

III. Effect of Proposed Changes:

Section 1. Creates s. 259.1053, F.S., which may be cited as the Babcock Ranch Preserve Act, for the following purposes:

Establishes definitions for the following terms for purposes of the Act:

- "Babcock Ranch Preserve" and "Preserve."

- "Babcock Ranch, Inc." and "corporation."
- "Board of Directors."
- "Commission", "Commissioner", "Department", and "Executive Director."
- "Financially self-sustaining" and "Management and operating expenditures."
- "Multiple use" and "sustained yield of renewable surface resources."

Provides the following:

- The acquisition of the Babcock Crescent B Ranch is a conservation acquisition under the Florida Forever program established in s. 259.105, F.S.
- Upon the date of acquisition of the Babcock Ranch, the Babcock Ranch Preserve is established and will be managed for the following purposes:
 - The protection and preservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Preserve.
 - To provide for the multiple use and sustained yield of the renewable surface resources within the Preserve.
- Clarifies that Babcock Ranch, Inc., and its officers and directors, will participate in the management of the Babcock Ranch Preserve in an advisory capacity only until the Management Agreement is terminated or expires.
- The constitutional responsibilities of the FWC with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping within the Preserve, are protected.
- The maintenance and use of roads and trails, or the relocation of roads in existence on the effective date of the act is authorized, as is the construction, maintenance, and use of new trails, or any motorized access necessary for the administration of the land within the Preserve, including motorized access for emergencies.
- Clarifies the responsibilities of the lead managing agencies and the not-for-profit corporation with regard to establishing resource protection values.
- Clarifies the responsibilities of the not-for-profit corporation and the lead managing agencies with regard to establishing operational values for the working ranch.

Creates Babcock Ranch, Inc., a not-for-profit corporation, which shall:

- Be registered, incorporated, organized and operated in compliance with the provisions of ch. 617, F.S.
- Be a corporation acting primarily as an instrumentality of the state for purposes of sovereign immunity, but otherwise shall not be agency within the meaning of s. 20.03(11), F.S.,⁶ or a unit or entity of state government.
- Be organized on a nonstock basis and operate in a manner consistent with its public purpose and in the best interests of the state.
- Be subject to the provisions of ch. 119, F.S., for public records purposes.
- Be subject to the provisions of ch. 286, F.S., for public meetings and records purposes for any corporate meetings.

Establishes the purposes of Babcock Ranch, Inc.

⁶ Section 20.03(11), F.S. defines "agency", as the context requires, as an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government.

- To provide management and administrative services for the Preserve.
- To establish and implement management policies that achieves the purpose and requirements of the Babcock Ranch Preserve Act.
- To cooperate with state agencies to further the purposes of the Preserve.
- To establish administrative and accounting procedures for the operation of the corporation.

Creates a governance structure for Babcock Ranch, Inc.:

- The corporation will be governed by a 9-member Board of Directors.
- Members are appointed to staggered terms in the following manner:
 - The TIIF shall appoint 4 voting members, none of whom may be an employee of any governmental entity.
 - 1 member with expertise in aspects of domesticated livestock management and livestock business management, production, and marketing.
 - 1 member with expertise in the management of game and nongame fish and wildlife populations.
 - 1 member with expertise in the sustainable management of forest lands for commodity purposes.
 - 1 member with expertise in financial management.
 - The executive director of the FWC will appoint 1 voting member with expertise in hunting, fishing, nongame species management or wildlife habitat management, restoration, and conservation.
 - The Commissioner of Agriculture shall appoint one member with expertise in agricultural operations or forestry management.
 - The Babcock Florida Company, its successors or assigns, will appoint 1 voting member with expertise in the activities and management of the Babcock Crescent B Ranch.
 - Upon termination or expiration of the Management Agreement, the person serving as the head of the Property Owner's Association on the "retained property" shall serve as a member of the board of directors.
 - The Charlotte County Board of County Commissioners shall appoint 1 county resident active in an organization concerned with the activities of the ranch.
 - The Lee County Board of County Commissioners shall appoint 1 county resident with experience in land conservation and management, who shall serve as a member of the board only so long as Lee County participates in the state's land management plan for the Preserve.
- All members of the Board of Directors shall be appointed no later than 90 days following the initial acquisition of the Babcock Crescent B Ranch by the state.
- Members shall serve staggered terms with each of the 4 TIIF appointees initially serving a 4-year term and all other initial appointees serving a 2-year term. Thereafter, all appointments shall be for 4 years.
- With the exception of the member appointed by the Babcock Florida Company, no director of Babcock Ranch, Inc., can be an officer, director, or a shareholder in any entity that contracts with or receives funds from the corporation or its subsidiaries.
- No member of the board can vote in an official capacity on a measure that would inure to his or her special gain or loss, or the special gain or loss of any principal by which the board

member is retained, or that the board member knows would inure to the special gain or loss of a relative or business associate.

- The nature of the board member's relationship must be disclosed prior to a vote.
- Within 15 days of vote, the board member must disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for keeping the corporate records.
- Each member of the board is accountable for the proper performance of duties.
- Each member of the board owes a fiduciary duty to the people of the state to ensure that funds provided in furtherance of the act are disbursed and used as prescribed by law.
- Any official appointing a member of the board may remove that member for:
 - Malfeasance (illegal act) or misfeasance (performing a lawful act in an illegal manner);
 - Neglect of duty, incompetence, permanent inability to perform duties;
 - Unexcused absence from 3 consecutive meetings of the board;
 - Arrest or indictment for a felony or misdemeanor involving theft or a crime of dishonesty; or
 - Pleading nolo contendere ("no contest"), or being found guilty of a crime.
- Board members serve without compensation but are entitled to per diem and travel expenses from the corporation.

Provides for the organization of and meetings of Babcock Ranch, Inc.

- The Board of Directors shall annually elect a chair and vice chair.
- The Chair shall ensure that records of the proceedings of the board are kept, and is the custodian of all books, documents, and papers filed with the board, minutes of the board meetings, and the corporation's official seal.
- The board must meet at the call of the chair at least 3 times per year in either Charlotte or Lee counties.
- A majority of the board represents a quorum to conduct business.

Establishes powers and duties of Babcock Ranch, Inc.

- The board shall adopt articles of incorporation and bylaws necessary to govern activities.
 - The articles of incorporation and bylaws must be approved by the TIIF prior to being filed with the Secretary of State.
- The board shall review and approve any individual management plan for the management of lands in Preserve prior to the submission of the plan to the TIIF for adoption.
- The board shall have the power to solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other public or private entities.
 - All funds must be deposited into the corporate operating fund.
- The board shall have the ability to designate hunting, fishing, and trapping zones with the written approval of the FWC and the DACS.
- The board shall have the ability to establish additional periods when hunting, fishing, or trapping are not permitted for reasons of public safety and other purposes.
- The corporation shall have the sole and exclusive right to use "Babcock Ranch, Inc."
- The corporation may appoint advisory committees which reflect the expertise necessary for the particular function for which the advisory committee was created.

- The corporation shall have the power to assume all authority to manage the Preserve upon a determination by the TIIF that the corporation is able to conduct business, and that provision has been made for essential services on the Preserve.
- The corporation must comply with state laws and rules governing the procurement of commodities and services by state agencies as provided in s. 287.057, F.S.⁷
- The corporation must provide equal employment opportunities for all persons.

Provides restrictions on the powers of Babcock Ranch, Inc.

- The board of directors may not increase its membership in any way.
- The corporation may not purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real property, or any interest therein, wherever situated.
- The corporation may not sell, convey, mortgage, pledge, lease, exchange, transfer or otherwise dispose of any real property.
- The corporation may not purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of or otherwise use and deal in and with, shares and other interests in, obligations of, other domestic or foreign corporations.
- The corporation may not lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the repayment of funds loaned or invested.
- The corporation may not merge with other corporations or other business entities.
- The corporation may not enter into any contract, lease, or other agreement related to the use of ground or surface waters located in, on, or through the Preserve without the consent of the TIIF, and any permits which may be required by the Department of Environmental Protection or the appropriate water management district.
- The corporation may not grant any easements in, on, or across the preserve.
- Any easements to be granted for the use of, access to, or ingress and egress across state property must be executed by the TIIF, or Lee County, where appropriate.
- The corporation may not enter into any contract, lease, or other agreement related to the use and occupancy of the property for greater than a 10-year period.

Creates financial, budget, audit, and reporting requirements:

- The board of directors may establish and manage an operating fund to facilitate the management and operation of the Preserve as a working ranch.
 - A cash balance reserve of not more than 25 percent of the annual management and operating expenditures of the corporation may accumulate and be maintained in the operating fund at any time.
- The board must provide for an annual financial audit of its accounts and records.

⁷ Section 287.057, F.S., requires the complete procurement of commodities and services, and permits agencies to use state term contracts procured by the Department of Management Services, in lieu of doing their own competitive solicitations. Pursuant to s. 287.056, F.S., “eligible users” may also use such state term contracts. The DMS defines “eligible users” in Rule 60A-1.005, F.A.C., as all “governmental agencies” as defined in s. 163.3164, F.S., which includes “instrumentalities” of the state. Because the bill provides the corporation is an instrumentality of the state specifically for purposes of sovereign immunity, it does not appear to be entitled to use state term contracts procured by the DMS.

- Audit to be conducted by an independent certified public accountant in accordance with rules of the Auditor General.
 - Report to be submitted 3 months after the end of the fiscal year to the Auditor General, the President of the Senate, the Speaker of the House, and the appropriate substantive and fiscal committees of the Legislature.
- By January 15 of each year, the corporation must submit a comprehensive, detailed report on the operations, activities, accomplishments and goals of the corporation to the TIIF, the President of the Senate and the Speaker of the House, the DACS, and the FWC.
- The corporation shall prepare an annual budget to be used to achieve financial self-sustainability within 15 full fiscal years after assuming management of the Preserve.
- The corporation may request legislative appropriations through the DACS.
 - Requests for appropriations must be submitted to the DACS for inclusion in the agency legislative budget request.
 - Requests for appropriations must be timely submitted to allow the DACS to meet the statutory requirements of s. 216.023, F.S.
 - The DACS may not deny an appropriations request or refuse to include such request in the agency legislative budget request.
 - Requests for appropriations must be included in the agency budget as a separate line item.
- All moneys received from donations or from management of the Preserve shall be retained by the corporation in the operating fund to be used for the administration, preservation, restoration, operation and maintenance, improvements, repairs, and related expenses on the property managed by the corporation.
- Funds in the corporate operating fund are not subject to distribution by the state except under certain conditions.

Provides for the creation of the Babcock Ranch Comprehensive Business Plan.

- Not less than 2 years before assuming management of the Preserve, the corporation shall develop a comprehensive business plan, with input from the DACS and the FWC, to provide for:
 - The operation of the Preserve as a working ranch.
 - The protection and preservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Preserve.
 - The promotion of high-quality public hunting experiences.
 - The multiple use and sustained yield of the renewable surface resources.
 - Public use of and access to the Preserve for recreational purposes.
 - Renewable resource use and management alternatives that benefit local communities and small businesses to the greatest extent practicable, and which should result in cost savings to the corporation through the exchange of services for labor and maintenance, or for resources or services provided to the corporation.
- The comprehensive business plan can only be implemented upon termination or expiration of the Management Agreement.

- Any decision to adopt or amend the comprehensive business plan, or to approve any activity related to the management of the Preserve's renewable surface resources, must be made in session which are open to the public and which provide opportunity for public comment.

Provides for management of the Preserve and the assessment of fees.

- The corporation shall assume all authority to management and operate the Preserve as a working ranch upon a determination by the TIIF that the corporation is able to conduct business, and that essential services on the ranch have been provided for.
- After assuming management and operation of the Preserve, the corporation, with input from the DACS and the FWC, shall manage the Preserve to:
 - Administer and operate the Preserve as a working ranch;
 - Administer and operate activities necessary for the preservation and development of the land and renewable surface resources of the Preserve;
 - Administer and operate activities necessary for the public use and occupancy of the facilities and lands within the Preserve; and
 - Maintain, rehabilitate, repair and improve property within the Preserve.
- The corporation may develop programs and activities related to the management of the Preserve as a working ranch.
- The corporation may negotiate directly with and enter into agreements, leases, contracts, and other arrangements with any person, firm, association, organization, corporation, or governmental entity as are necessary to carry out authorized activities.
- The corporation must establish procedures for entering into lease agreements and other agreements for the use and occupancy of facilities on the Preserve.
 - Procedures must ensure reasonable competition and set guidelines for determining reasonable fees, terms and conditions for agreements.
- The corporation must assess reasonable fees for admission to, use of, and occupancy of the Preserve in order to offset the costs of operating the Preserve as a working ranch. These fees must be deposited into the corporate operating fund.

Miscellaneous provisions:

- On or before the date on which title to the Babcock Crescent B Ranch is vested with the TIIF, Babcock Ranch Management LLC shall provide the FWC and the DACS with the propriety management plan and business plan in place for operation of the ranch on November 22, 2005, the date the acquisition was approved by the TIIF.
- In any conflict between the provisions of s. 259.1053 and chapter 617, F.S., the provisions of s. 259.1053 shall prevail.
- Officers and employees of Babcock Ranch, Inc. are private employees. However, at the request of the board of directors, state employees may provide assistance in implementing the Babcock Ranch Preserve Act. Any state assistance provided for more than 30 days must be reimbursed.

Dissolution of Babcock Ranch, Inc.

- Babcock Ranch, Inc., may only be dissolved by an act of the Legislature.
- Upon dissolution of the corporation, management responsibilities for the Preserve will revert to the FWC and the DACS.

- Upon dissolution of the corporation, any cash balances shall revert to the General Revenue fund or any appropriate state fund.

Section 2. Provides that the act shall take effect on the same date that SB 1226⁸ or similar legislation takes effect, if enacted into law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The committee substitute does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons accessing the Preserve for recreational opportunities may have to pay user fees.

C. Government Sector Impact:

The fiscal impact of the committee substitute can not be determined at this time. Interim land management funding for the DACS and the FWC is estimated to be \$1.9 million⁹, and recurring funding needs have not yet been calculated.

Although the committee substitute provides for the expenditure of corporate revenues, those revenues won't be generated until Babcock Ranch, Inc. takes over management of the Preserve sometime in the next 10 years. Because SB 2102 provides for an immediate appointments process and provides for the corporation to begin organizing immediately, funds for operation and management of the corporation will need to be provided, as will

⁸ Senate Bill 1226, relating to land acquisition, provides the funding for the state's purchase of the Babcock Crescent B Ranch, and if enacted by the Legislature, will take effect upon becoming a law.

⁹ Interim land management funding estimate provided by the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.

funding for corporate expenses such as travel and per diem when trustees travel for meetings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill subjects the corporation to state laws governing the procurement of commodities and services in s. 287.057, F.S., so the corporation may be subject to the Administrative Procedure Act in Chapter 120, F.S., as applicable to protests of contract solicitations and awards.

Outstanding issues to be addressed include:

1. Provisions of the committee substitute which prohibit the corporation from improving, using, or otherwise dealing in and with real property may conflict with the corporation's responsibility to manage and operate a working ranch.
2. Provisions of the bill which prohibit the corporation from investing and reinvesting funds may conflict with provisions which require that the corporation can not accumulate a cash balance of more than 25% of annual expenditures in the corporate operating account.
3. Establishing the corporate fiscal year.
4. Although the committee substitute provides for the creation of Babcock Ranch, Inc., the actual corporation won't exist until Articles of Incorporation are filed with the Secretary of State.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
