

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.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: PCS/SB 7086 (621020)

INTRODUCER: Appropriations Subcommittee on General Government and Environmental Preservation and Conservation Committee

SUBJECT: State Lands

DATE: April 16, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Gudeman</u>	<u>Uchino</u>		EP Submitted as Committee Bill
1.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Fav/CS
2.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7086:

- Provides legislative findings regarding the acreage of conservation lands in Florida;
- Defines “low-impact agriculture”;
- Includes the preservation of low-impact agriculture as a measureable objective in land management plans;
- Requires updated land management plans to identify conservation lands that could support low-impact agriculture and those lands that are no longer needed for conservation purposes;
- Requires the Division of State Lands (division), within the Department of Environmental Protection (DEP), to review state-owned conservation lands and determine if the lands could support low-impact agriculture or be disposed of;
- Requires the division to submit a list of such lands to the Acquisition and Restoration Council (ARC);
- Requires the ARC to provide recommendations to the division and authorizes the division to direct managing agencies to offer agreements for low-impact agriculture on such lands under certain conditions;
- Specifies the Board of Trustees of the Internal Improvement Trust Fund (BOT) may dispose of such lands under certain conditions;

- Requires the DEP to review certain nonconservation lands every ten years and make recommendations to the BOT whether the lands should be retained by the state or disposed of;
- Allows the water management districts (WMDs) to sell parcels of land valued at \$25,000 or less subject to specific noticing requirements;
- Requires the DEP to conduct an inventory of federal and state-owned lands and update the Florida State-Owned Lands and Records Information System (SOLARIS) every five years;
- Requires the DEP to include certain county, municipality, and financially disadvantaged small community lands in SOLARIS;
- Requires counties, municipalities, and financially disadvantaged small communities to submit a list of certain lands to the DEP every five years;
- Requires the DEP to conduct a study and submit a report on the technical and economic feasibility of including certain lands in the SOLARIS database;
- Requires the ARC to give increased priority to certain projects; and
- Requires the DEP to consolidate all individually titled parcels of conservation lands owned by the BOT that are contiguous to other parcels of conservation lands owned by the BOT under a single, unified title and legal description.

This bill has a significant fiscal impact to the Department of Environmental Protection (DEP) (see Section V, Fiscal Impact Statement).

The bill is effective July 1, 2015.

II. Present Situation:

The division is responsible for acquiring and managing state lands as directed by the Board of Trustees of the Internal Improvement Trust Fund (BOT). The division oversees approximately 12 million acres of public lands and 700 freshwater springs. It is also responsible for upland leases for state parks, forests, wildlife management areas, historic sites, educational facilities, vegetable farming, and mineral, oil and gas exploration.¹

Conservation Land Management Plans

Section 253.034, F.S., specifies that state lands acquired under ch. 259, F.S., must be managed to serve a public interest by protecting and conserving land, air, water, and the state's natural resources. The conservation lands must be managed to provide areas for natural resource based recreation, ensure the survival of plant and animal species, and protect the state's renewable natural resources.

All conservation lands require a land management plan pursuant ss. 253.034(5) and 259.032(1), F.S. The management plans must include the stated use of the lands, the management activities necessary to preserve and protect natural and cultural resources, a management schedule, a cost estimate of management activities, and a determination of public uses and access. The land management plans must also include short- and long-term management goals. The short-term goals must be achievable within a two-year planning period and the long-term goals must be

¹ DEP, *Division of State Lands*, http://www.dep.state.fl.us/lands/statelands_cont.htm (last visited Apr. 6, 2015).

achievable within a ten-year period. The goals must include measurable objectives and be the basis for all future land management activities. The measurable objectives are:

- Habitat restoration and improvement;
- Public access and recreational opportunities;
- Hydrological preservation and restoration;
- Sustainable forest management;
- Exotic and invasive species maintenance and control;
- Capital facilities and infrastructure;
- Cultural and historical resources; and
- Imperiled species habitat maintenance, enhancement, restoration, or population restoration.

The law also requires parcels over 160 acres to have a land management plan developed with input from an advisory group. A public hearing must be held prior to the adoption of the management plan.²

Acquisition and Restoration Council (ARC)

The ARC is a ten-member council that consists of four members appointed by the Governor, representatives from four state agencies, and one member each appointed by the Florida Fish and Wildlife Conservation Commission and the Commissioner of Agriculture. The ARC is responsible for evaluating, selecting, and ranking state land acquisition projects on the Florida Forever Priority list, and reviewing management plans and land uses for all state-owned conservation lands.

Disposition of State-owned Conservation Lands

Section 253.42, F.S., allows for the exchange of state lands that are vested or titled in the BOT. The BOT may request land of equal conservation value from local governments for the exchange of conservation lands for which no consideration was paid. If consideration was paid for the conservation lands, the exchange must result in an equal or greater conservation benefit to the state.

Pursuant to Article X, section 18 of the Florida Constitution, and ss. 253.42 and 253.034(6)(e), F.S., the BOT, with the ARC's recommendation, must determine if the conservation lands proposed for exchange are no longer needed for conservation purposes. Section 253.034(6), F.S., requires the BOT to make the determination that the exchange will result in a net-positive conservation benefit. Additionally, s. 253.034(15), F.S., requires the BOT to first offer surplus lands proposed for lease, sublease, or sale, to universities, community colleges, and state agencies before they are offered to the general public.

Since 2000, approximately 3,041 conservation acres have been declared surplus and disposed of and approximately 940 acres have been exchanged.³

² Section 259.032(10), F.S.

³ DEP, *Senate Bill 7086 Agency Analysis*, 3 (Mar. 23, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Florida Forever Act

The Florida Forever Program was created in 1999 as the successor program to the Preservation 2000 Program. The Florida Forever Program reinforces the state's commitment to conservation and expands the state's role in protecting its natural resources. The stated goals of the Florida Forever Program are to acquire lands and water areas to preserve natural resources and protect water supply, provide opportunities for agricultural activities on working lands, provide outdoor recreational opportunities, preserve the Everglades, prioritize the land acquisition process based on science-based assessments of the natural resources, and enhance imperiled species management.⁴

Land acquisitions proposed under the Florida Forever Program are developed by the ARC. The ARC adopted rules to evaluate, select, and rank projects eligible for funds according to specific criteria. The ARC gives weight to projects that:

- Are consistent with the goals of the Florida Forever Program;
- Restore or protect developed areas or water resources that are part of an ongoing government project;
- Enhance or facilitate the management of properties already under public ownership;
- Have significant archeological or historic value;
- Have a funding sources through at least the first two years;
- Have the potential to resolve regional water resource issues;
- Are located in an area that is in imminent threat of losing natural attributes or recreational open space, or are in danger of subdivision that would result in multiple ownership;
- Implement a plan developed by an ecosystem management team;
- Are a component of the Everglades restoration effort;
- May be purchased at 80 percent of appraised value;
- May be acquired using alternatives to fee simple; and
- Are a joint acquisition with other public agencies, nonprofit organizations, private entities, and public-private partnerships.⁵

Section 259.105(11), F.S., also requires ARC to give increased priority to projects where 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.

Sale or Exchange of Water Management District Lands

Section 373.089, F.S., provides the mechanisms and the noticing requirements for Water Management Districts (WMDs) to sell WMD land. The law authorizes land determined to be surplus to be sold at the highest possible price but not less than the appraised value of the land. Before selling any surplus land the WMD must publish the notice of intent to sell the land in a newspaper circulated in the same county as the property for sale. The notice must be published each week for three successive weeks with the first publication occurring no more than 45 days prior to the sale.

⁴ Section 259.105, F.S.

⁵ Fla. Admin. Code R. 18-24.0021 (2010).

State Lands Database

Section 253.0325, F.S., was created in 1990 to require the Department of Environmental Protection (DEP) to establish a computerized system for state lands records. The DEP contracted with a vendor to create the mainframe-based land record system for documents related to lands where title is vested in the BOT. In 1999, the system was updated to include new technologies and integration components and referred to as the Board of Trustees Land Document System (BTLDS). The law requires the program to include, at a minimum, a document management component, a lands and records management component, an evaluation component, and a mapping component. The DEP is responsible for ensuring the information system is compatible within the DEP and other state, local, and regional government agencies.

In 2008, s. 253.0325, F.S., was amended to require the DEP to include all lands purchased with Preservation 2000 funds and Florida Forever funds.⁶ To comply with the requirement, the DEP contracted with an outside vendor to conduct a BTLDS Feasibility Study. The study determined the division would be the clearinghouse for all state lands data and be solely responsible for maintaining the database.

In 2010, s. 216.0153, F.S., directed the DEP to create, administer, operate, and maintain a comprehensive system and automated inventory of all state lands and real property leased, owned, rented, occupied, or maintained by a state agency, judicial branch, or water management district (WMD). In order to meet the requirement, the DEP created the SOLARIS database. The database includes all state-owned lands in which the state has a fee interest, including conservation easements acquired through a formal acquisition process for conservation.

The SOLARIS database has been implemented by the DEP and the Department of Management Services to include a facility information component and land information component. The Facility Information Tracking System includes 332 users and 65 different agencies, and the Lands Information Tracking System includes 140 users and 50 different agencies.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 253.034, F.S., to provide legislative findings that the land area of Florida is approximately 34.7 million acres including 3.2 million acres of conservation lands titled to the Board of Trustees of the Internal Improvement Trust Fund (BOT), of which 1.2 million acres are uplands.

The bill defines “low-impact agriculture” as any agricultural activity that, when occurring on conservation land or on land under a permanent conservation easement:

- Does not cause or contribute to violations of water quality standards as evidenced by water quality monitoring prescribed by the Department of Environmental Protection (DEP) or an applicable Water Management District (WMD);
- Is consistent with an adopted land management plan;
- Does not adversely impact the land’s conservation purpose; and

⁶ Chapter 2008-229, s. 4, Laws of Fla.

⁷ DEP, *State of Florida Lands and Facilities Inventory Search*, <http://webapps.dep.state.fl.us/DslPi/splash?Create=new> (last visited Apr. 6, 2015).

- Does not adversely limit recreational use.

The bill specifies the preservation of low-impact agriculture on conservation lands must be a measureable objective in establishing short- and long-term management goals.

Land management plans, updated on a rotating basis every ten years, must identify conservation lands that:

- May support low-impact agricultural uses while maintaining the land's conservation purpose; and
- Are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement.

The bill requires the division to review all state-owned conservation lands titled to the BOT to determine if the lands could support low-impact agricultural uses while maintaining the land's conservation purpose. The division must submit a list of these identified lands and the lands identified in an updated land management plan to the Acquisition and Restoration Council (ARC). The ARC is required to provide recommendations as to whether the lands could support low-impact agriculture to the division within nine months of receiving the list. The bill authorizes the division to direct managing agencies to offer agreements for low-impact agriculture on the conservation lands. The agreements may not exceed 10 years and may be renewed with division approval. The bill does not prohibit a managing agency from entering into agreements as otherwise provided by law.

The bill renumbers a section of statute that requires the division to review all state-owned conservation lands titled to the BOT to determine if the lands are no longer needed for conservation purposes and could be disposed of in fee simple or with the state retaining a permanent conservation easement. The bill requires the review to include additional lands identified in an updated land management plan. The bill also requires that within nine months of receiving the list, the ARC is required to recommend to the division whether the lands are no longer needed for conservation purposes and could be disposed of in fee simple or if the state should retain a permanent conservation easement. The BOT may dispose of the land by an affirmative vote of at least three BOT members.

The bill also requires division to review all encumbered and unencumbered nonconservation lands titled to the BOT and determine if the lands should remain in public ownership or be disposed of by the BOT. The BOT may dispose of the land by an affirmative vote of three BOT members.

Section 2 creates s. 253.87, F.S., to require the DEP to include in the Florida State-Owned Lands and Records Information System (SOLARIS) database by July 1, 2017:

- All federally owned conservation lands;
- All lands on which the federal government retains a permanent conservation easement; and
- All lands on which the state retains a permanent conservation easement.

The bill requires each county, municipality, and financially disadvantaged small communities as defined in s. 403.1838, F.S., to identify all conservation lands that are owned in fee simple and all lands that are retained in a permanent conservation easement. Counties and municipalities

must submit their lists to the DEP by July 1, 2017, and disadvantaged small communities must submit their lists by July 1, 2018. The DEP must include these properties in the SOLARIS database within six months after receiving the list.

The bill also requires the DEP to conduct a study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the technical and economic feasibility of including the following lands in the SOLARIS database or a similar public lands inventory:

- All lands on which local comprehensive plans, land use restrictions, zoning ordinances, or land development regulations prohibit the land from being developed or limit the amount of development to one unit per 40 or more acres;
- All publicly and privately owned lands for which development rights have been transferred;
- All privately owned lands under a permanent conservation easement;
- All lands owned by a nonprofit or nongovernmental organization for conservation purposes; and
- All lands that are part of a mitigation bank

Section 3 amends s. 259.105, F.S., to require ARC to give projects increased priority for Florida Forever funding that:

- May be acquired in less than fee ownership, such as a permanent conservation easement;
- Contribute to improving the quality and quantity of surface water and groundwater;
- Contribute to improving the water quality and flow of springs; and
- Contribute to a 20-year strategy for implementation of Article X, section 28 of the Florida Constitution that achieve the goals in s. 259.105(5), F.S.

Section 4 amends s. 373.089, F.S., to allow the WMDs to sell parcels of land valued at \$25,000 or less and no longer necessary for conservation purposes. A WMD is required to send notice of the intent to sell to adjacent property owners within 45 days of the sale and post the notice on its website. The WMD's governing board may close the sale of the parcel without receiving bids after 14 days of publication. If two or more adjacent property owners offer to purchase the property, the WMD must accept sealed bids and sell the property to the highest bidder. The WMDs are authorized to restrict the future use of parcels as a term and condition of sale.

Section 5 creates an unnumbered section of law to require the DEP to consolidate all individually titled parcels of conservation lands solely owned by the BOT and are contiguous to other parcels of conservation lands solely owned by the BOT under a single, unified title and legal description.

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill requires each county, municipality, and financially disadvantaged small community to submit to DEP a list of all conservation lands owned in fee simple by the entity and lands on which the entity holds a permanent conservation easement. The bill

may require counties and municipalities to take actions requiring the expenditure of funds. As a result, the county and municipality mandates provision of Article VII, Section 18, of the Florida Constitution may apply. A law having an insignificant fiscal impact is exempt from the requirements of Article VII, section 18, of the Florida Constitution. The cost to counties and municipalities to identify and submit the list to the DEP is indeterminate.

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 ability to conduct low-impact agricultural activities on conservation lands that support such activities may provide a positive fiscal impact to the agriculture industry.

C. Government Sector Impact:

The ability for the Water Management Districts (WMDs) to sell parcels of land valued at less than \$25,000 will have a positive fiscal impact to the WMDs. The number of parcels that may qualify for this type of sale is unknown; therefore, the potential revenue to the WMDs is indeterminate. The WMDs will also be relieved from managing the small parcels, providing an indeterminate positive fiscal impact.

According to the Department of Environmental Protection (DEP), the additional detailed environmental assessment of state conservation lands every ten years, in addition to the five-year review currently conducted for all conservation land management plans, will cost \$184,400. This estimate includes salary and benefits for two additional employees and expenses.⁸

The cost to review encumbered and unencumbered nonconservation lands is unknown; however, the DEP conducted a similar review of state-owned land in 2014 at a cost of \$150,000.⁹

The DEP estimates the cost to update the SOLARIS database to be \$1,135,784. This cost includes salaries and benefits for two full time employees, recurring and nonrecurring

⁸ *Supra* note 3, at 7

⁹. *Supra* note 3, at 7

expenses, and contracted services. The cost to the DEP to conduct a study to determine the economic feasibility of including lands in the SOLARIS database is unknown; however, a similar study cost over \$500,000.¹⁰

The DEP estimates the cost to consolidate the title of the state-owned conservation land, including separate metes and bounds descriptions that encompass all of the contiguous parcels, to be \$6,556,998, over the next three fiscal years. (\$2,185,666 for each fiscal year).¹¹ This cost estimate assumes title review of 35,000 documents at ten documents per day and \$1,000 per day. The cost estimate also includes 480 Board of Trustees conservation units at a rate of \$2,650 per unity of title to process. The DEP estimates seven additional staff, including two attorneys, two surveyors, two Geographic Information System technicians, and one planning manager will be required. The estimate is calculated with the assumption that all of the title reviews will be conducted without legal challenge. Legal challenges could increase these costs dramatically.

The cost to counties and municipalities to identify and submit a list of conservation lands to the DEP is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the preservation of low-impact agriculture to be considered when establishing the short- and long-term measurable objectives in a land management plan. The bill also allows the DEP to direct managing agencies to offer agreements for low-impact agriculture on conservation lands. Sections 259.105(3)(i) and 570.71, F.S., allow the BOT to purchase conservation easements on agricultural lands. Rule 5I-7.001, F.A.C., provides the application procedures, priority ranking, and acquisition procedures to implement these sections. It is not clear how the bill will be implemented in conjunction with current law.

The bill does not expressly provide the DEP with rulemaking authority to implement the criteria for increased priority funding for Florida Forever projects based on the new criteria.

Section 3 of the bill requires the ARC to give increased priority to projects that contribute to the 20-year strategy for the implementation of Article X, section 28 of the Florida Constitution. According to the DEP, there is no 20-year strategy, therefore, it is unclear what is meant by this reference.

According to the DEP, in Section 5 of the bill, it is not clear what “shall consolidate under a single unified title and legal description” means. This may mean the descriptions for all contiguous parcels must be identified and listed separately in a document such as a Unity of Title or a separate metes and bounds description must be created that encompasses all of the parcels

¹⁰ *Supra* note 3, at 8.

¹¹ *Supra* note 3, at 9.

that were acquired separately. This would necessitate a title amendment each time another parcel is acquired.¹²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 253.034, 259.105, and 373.089.

This bill creates section 253.87 of the Florida Statutes and an undesignated section of Florida Law.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on General Government on April 14, 2015:

The committee substitute requires updated land management plans to identify conservation lands that could support low-impact agriculture and those lands that are no longer needed for conservation purposes. The CS removed an exemption to this requirement for lands managed as a state park or preserve.

- B. **Amendments:**

None.

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

¹² *Supra* note 3, at 5.