

# 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.)

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Prepared By: Environmental Preservation Committee

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BILL: CS/SB 2070

INTRODUCER: Environmental Preservation Committee

SUBJECT: State Lands

DATE: April 10, 2006

REVISED: 04/19/06

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u></u>	<u></u>	<u></u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
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6.	<u></u>	<u></u>	<u></u>	<u></u>

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## I. Summary:

The committee substitute implements several of the recommendations of the Senate Environmental Preservation Committee's "Interim Report No. 2006-120, Land Acquisition - Florida Forever Mid-Term Review." The committee substitute revises sections of statute pertaining to the management and surplus of state lands, contains conforming and cross-reference corrections, deletes obsolete provisions, and clarifies certain requirements of the Florida Forever Program. Specifically, the bill:

- Requires that all lands titled in the name of the Board of Trustees of the Internal Improvement Trust Fund (BOT) or any state agency be inventoried and mapped.
- Authorizes the Department of Environmental Protection (DEP) to contract with the Florida Natural Areas Inventory (FNAI) to implement the mapping requirements subject to legislative appropriation.
- Clarifies responsibilities of the Division of State Lands (division) at DEP with respect to non-conservation lands.
- Limits the Acquisition and Restoration Council's (ARC) oversight of state lands to conservation lands.
- Revises the state's surplus process to create a distinction between the sale of state lands as surplus property and the exchange of state lands for land of equal or higher benefit.
- Expands the purposes for which a local government may use surplus or exchanged property to include affordable housing projects, and meeting the capital improvements element or a concurrency requirement of a local comprehensive land use plan.
- Directs the division to keep records of all requests for the sale or exchange of state lands, and provides that all requests for the state to sell or exchange property be made in writing.

- Clarifies the purposes and use of the Conservation and Recreation Lands Trust Fund (CARL TF).
- Clarifies procedures and policies for land acquisition under the Florida Forever program.

The committee substitute substantially amends ss. 253.002, 253.03, 253.034, 253.0341, 253.111, 253.115, 253.42, 259.032, 259.0322, 259.035, 259.04, and 259.105, F.S., and creates s. 259.0321, F.S.

The committee substitute amends ss. 201.15, 253.027, 259.036, 259.101, 259.1051, 260.15, 375.045, and 380.0666, F.S., to correct cross-references, and repeals ss. 253.421, 253.422, 270.07, and 270.08, F.S.

## II. Present Situation:

### **Board of Trustees of the Internal Improvement Trust Fund (BOT)**

Art. IV, s. 4 of the State Constitution, establishes the Governor, serving as chair, the Chief Financial Officer, the Attorney General and the Commissioner of Agriculture as the trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, as provided by law. The BOT is charged with the acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may inure to, the state or any of its agencies, except as otherwise provided by law. Section 253.02, F.S., provides that the board may not sell, transfer, or otherwise dispose of any lands the title to which is vested in the BOT except by a vote of at least three of the four trustees.

Statutory provisions governing the acquisition and disposal of lands by the state are contained in chapters 253 and 259, Florida Statutes. The DEP is directed to serve as staff to the BOT, and the Division of State Lands performs staff duties and functions related to the acquisition, administration, and disposition of lands which are titled in the name of the BOT. The BOT is provided broad rulemaking authority to fulfill its responsibilities for buying and selling state lands, and is also provided with the authority to waive certain statutory requirements or any of its own rules when purchasing state lands, so long as the public interest is reasonably protected. Although the state's acquisition programs are "voluntary" or "willing seller" programs, the BOT does have the authority, under certain conditions, to authorize the DEP to acquire property by exercising the power of eminent domain.

### **Land Acquisition**

From 1969 through 1989 Florida acquired one million acres of land, most of which was acquired during the 10-year period from 1979-1989, and was purchased through five primary programs: the Outdoor Recreation Bonds Program, the Environmentally Endangered Lands (EEL) Program, the Conservation and Recreation Lands Program (CARL), Save Our Coast bonds, and the Save Our Rivers program funded through the Water Management Lands Trust Fund.

### **Conservation and Recreation Lands (CARL)**

The CARL program was created by the Legislature in 1979 to acquire and manage public lands, and to conserve and protect environmentally unique lands and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL TF to accomplish the program's

purposes. Projects proposed for acquisition were ranked in priority order on a list which was named the CARL list.

The CARL program was replaced by the Preservation 2000 program. The CARL TF, a nonlapsing, revolving trust fund, receives documentary stamp tax and phosphate severance tax revenues. These revenues are used to manage conservation and recreation lands, but can not be used for land acquisition without explicit permission from the BOT. Over the past five years, no lands have been acquired using CARL TF revenues. Further uses of the CARL TF include the payment of debt service for bonds issued under the EEL program, bonds issued for state capital projects on outdoor recreation lands, and bonds issued to fund the 1981 Save Our Coast program.

### **Preservation 2000 (P2000)**

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 was distributed to the DEP for the purchase of lands prioritized on the CARL list, the five WMDs 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) program. The remainder of the bond proceeds were distributed to smaller acquisition programs at the DEP, the Department of Agriculture & Consumer Services (DACS), and the Fish and Wildlife Conservation Commission (FWC).

In the P2000 program, lands purchased by the DEP, DACS, and the FWC were titled in the name of the BOT. Lands purchased by the WMDs were titled in the name of the acquiring district. Lands acquired by the FCT for permanent state ownership were titled in the name of the BOT, but lands acquired in partnership with a local government were titled in the name of that local government.

The first series of P2000 bonds was authorized by the Legislature in 1990 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 program recipients to purchase more than 1.7 million acres of land. Documentary stamp tax revenue is pledged to pay the debt service on P2000 bonds. Principal and interest payments totaled more than \$2.3 billion through December 31, 2004, and \$1.55 billion in debt service is payable on outstanding P2000 bonds through fiscal year 2012-2013.<sup>1</sup>

### **Acquisition & Restoration Council (ARC)**

The ARC was created as part of the Florida Forever program to serve as the successor agency to the Land Acquisition and Management Advisory Council (LAMAC). The LAMAC was responsible for establishing or updating the CARL list for submission to the BOT for approval. Acquisition projects were ranked in order of priority and the BOT approved all purchases. Today, the ARC is responsible for evaluating, selecting and ranking state lands acquisition projects on the priority list, and can add or delete projects from the list. At least once a year, the list approved by ARC is submitted to the BOT for approval. The BOT can remove projects from

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<sup>1</sup> Debt service information on outstanding P2000 bonds provided by the Legislature's Office of Economic and Demographic Research, and includes refunding bonds.

the list but may not add projects and may not reprioritize the list. The ARC is supported by division staff.

**Florida Forever**

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, preservation and restoration of open space and greenways, and for outdoor recreation purposes. As part of Florida Forever, the Legislature authorized public land acquisition agencies to focus on acquisitions using alternatives to fee simple acquisition. Under the Florida Forever program, bonds may be issued for more or less than the \$300 million per year authorized under the P2000 program, but the entire program is limited to a total of \$3 billion.

<b>Florida Forever Land Acquisition Program - Appropriations &amp; Funding Sources FY 2000-2001 through FY 2005-2006<sup>2</sup></b>				
<b>Fiscal Year</b>	<b>GAA Budget Authority</b>	<b>Bond Proceeds</b>	<b>Bonds Authorized but not issued</b>	<b>Other Revenue</b>
<b>2000-2001</b>	<b>\$300m</b>	<b>\$282m</b>		<b>\$18m - Projected interest earnings</b>
<b>2001-2002</b>	<b>\$300m</b>	<b>\$295m</b>		<b>\$5m - cash reserves</b>
<b>2002-2003</b>	<b>\$300m</b>	<b>\$250m</b>	<b>\$50m</b>	
<b>2003-2004</b>	<b>\$300m</b>		<b>\$200m</b>	<b>\$34.1m - cash \$70.9m- unspent P2000 funds</b>
<b>2004-2005</b>	<b>\$300m</b>			<b>\$263.1m - General Revenue \$36.9m - P2000 TF interest earnings</b>
<b>2005-2006</b>	<b>\$300</b>		<b>\$300m</b>	
<b>Total</b>	<b>\$1.8b</b>	<b>\$827m</b>	<b>\$550m</b>	<b>\$423m</b>

To date, more than \$1.2 billion in bond proceeds and other revenues have been distributed to the entities receiving Florida Forever funding. Outstanding debt service through fiscal year 2030-2031 on all series of Florida Forever bonds issued to date is more \$1.7 billion.<sup>3</sup>

<sup>2</sup> Chart information provided by Ways & Means Committee of the Florida Senate and calculated as of September, 2005.

<sup>3</sup> Debt service information on outstanding Florida Forever bonds provided by the Legislature's Office of Economic and Demographic Research, and includes refunding bonds.

<b>Florida Forever Projects Acquired or Approved for Acquisition by December 31, 2004<sup>4</sup></b>							
<b>Agency</b>	<b>No. of Projects Acquired</b>	<b>Percentage of Total Projects Acquired</b>	<b>Acres Acquired</b>	<b>Percent of acres acquired</b>	<b>Per Acre Cost<sup>5</sup></b>	<b>Funds Expended<sup>6</sup></b>	<b>Percentage of expenditures</b>
DACS	32	6%	14,297	3%	\$1,148	\$16.42m	2%
DEP	89	17%	229,616	53%	\$1,868	\$428.82m	46%
FCT	181	34%	22,032	5%	\$10,696	\$235.66m	25%
FWC	22	4%	6,581	2%	\$1,682	\$11.07m	1%
NFWMD	11	2%	7,623	2%	\$1,508	\$11.49m	1%
SFWMD	72	13%	5,276	1%	\$11,213	\$59.16m	6%
SJRWMD	37	7%	64,051	15%	\$931	\$59.65m	6%
SRWMD	36	7%	55,471	13%	\$418	\$23.17m	3%
SWFWMD	54	10%	24,693	6%	\$3,500	\$86.42m	10%
<b>TOTAL</b>	<b>534</b>	<b>100%</b>	<b>429,640</b>	<b>100%</b>	<b>Avg. - \$2,169</b>	<b>\$931.86m</b>	<b>100%</b>

### **Surplus lands**

The surplusing of state lands is controlled by statutory and constitutional<sup>7</sup> provisions which provide for the sale or exchange of state lands. To dispose of non-conservation lands, the BOT must determine that the property is no longer needed. To dispose of conservation lands, the BOT must determine that the property is no longer needed for the conservation purposes for which it was acquired, and in cases where conservation land is exchanged, the exchange must result in a net positive conservation benefit to the state. In all cases, the surplusing of state lands requires an affirmative vote of at least three of the members of the BOT. All property being sold or exchanged by the BOT must first be offered to the county in which the property is located.

<sup>4</sup> Chart information provided by state agencies and water management districts receiving Florida Forever funds.

<sup>5</sup> Per acre cost calculated using Florida Forever funds only. Average per acre cost including all funding sources such as local government matching or ad valorem tax dollars is \$2,188 per acre.

<sup>6</sup> Total indicates total Florida Forever funds expended. Total expended including all funding sources such as local government matching or ad valorem tax dollars is \$1.24 billion.

<sup>7</sup> Art. X, s. 18, State Constitution, adopted in November, 1998.

Section 253.0341, F.S., creates an expedited surplus process for local governments to submit a surplus request directly to the BOT. The BOT may make a determination to surplus non-conservation lands without a recommendation of the ARC or the division, and must consider the local government request within 60 days of receipt. Local government requests for the state to surplus conservation lands must be reviewed by the ARC for a recommendation on the request, and a final determination must be made by the BOT within 120 days of receipt of the request. Surplus property sold to a local government may not be sold for more than price the state paid when acquiring the property, regardless of the appraised value. However, local governments purchasing surplus property for less than appraised value must retain title for at least ten years. Surplus land requests may be made by any public or private entity or person and are submitted to the lead managing agency for review prior to review by the ARC. Requests to surplus property submitted by an entity other than a local government are guided by the provisions of s. 253.034 (6), F.S.

<b>Surplused P2000 &amp; Florida Forever Property by reporting entity 2000-2004</b>				
<b>Entity</b>	<b>P2000 Acreage</b>	<b>Sold or Exchanged</b>	<b>Florida Forever acreage</b>	<b>Sold or exchanged</b>
<b>DACS</b>	None		None	
<b>DEP</b>	1,534 acres	Exchanged for 288 acres of high conservation value lands	None	
	1,507 acres	Exchanged for 14 acres.		
	5 acres	Exchanged for 5 acres.		
	2 acres	\$33,000 plus improvements		
	10 acres	\$135,000		
<b>FWC</b>	None		None	
<b>NFWFMD</b>	1 acre	To provide public access	None	
	198 acres	Exchanged for 179 acres		
	19 acres	Exchanged for 52 acres		
	3 acres	For use as a cemetery.		
<b>SFWMD</b>	.74 acres	\$30,919	None	
	2.29 acres	\$95,681		
<b>SJRWMD</b>	1,306 acres	\$1.13m	11 acres	\$27,740
	79 acres	Equal exchange	58 acres (in process)	
	6 acres	\$425,000		
<b>SRWMD</b>	None		None	
<b>SWFWMD</b>	487 acres	\$375,000	1,296 acres (request pending)	
	27 acres	\$156,700		
	99 acres	\$150,900		
	221	Exchanged for 488 acres		

### III. Effect of Proposed Changes:

**Section 1.** Substantially revises s. 253.002, F.S., to clarify the duties of the DEP, the water management districts (WMDs), and the DACS with respect to state lands.

Provides that DEP staff duties include the collection, compiling, distribution and mapping of data that documents all state-owned lands and identifies conservation and non-conservation lands. Requires that all lands titled in the name of the BOT or any state agency shall be inventoried and mapped. Prohibits the negotiation of water rights as a condition of acquiring property.

Authorizes the DEP to contract with the FNAI to implement the mapping requirements subject to legislative appropriation.

Provides that neither the BOT or DEP staff can negotiate the ability to use, transfer, withdraw, or sell water on or under lands, title to which is vested in the BOT or any state agency.

**Section 2.** Amends s. 253.025, F.S., to correct a cross-reference.

**Section 3.** Amends s. 253.03, F.S., to provide the BOT annual inventory of all publicly owned lands in the state include a summary of all surplus lands sold and exchanged by the state each year, and must indicate if those lands were acquired or managed by the state for conservation purposes, or if they were non-conservation lands.

Directs the Department of Revenue to share current tax roll data used to prepare the BOT inventory with the Division of State Lands for use in compiling an additional inventory of all state, federal, water management district, and local government lands.

**Section 4.** Amends s. 253.034, F.S., to substantially revise laws relating to the surplus of state lands, and to reorganize and clarify certain other provisions of law.

Revises the duties and responsibilities of the division to:

- Authorize the division to review all requests to sublease non-conservation lands, all requests to sublease conservation lands that are less than 160 acres in size, all land management plans for non-conservation lands, and all requests to sell or exchange non-conservation lands owned by the state.

Revises the duties and responsibilities of the ARC to:

- Remove all responsibilities relating to non-conservation lands.
- Clarify that ARC will review all requests to sublease conservation lands which are larger than 160 acres in size, all land management plans for conservation lands, and all requests to sell or exchange conservation lands owned by the state.

Revises the state's surplus process to:

- Provide that conservation lands determined by the BOT to be eligible for sale or exchange will be reclassified as non-conservation lands.

- Provide that all lands determined by the BOT to be eligible for sale will be designated as surplus land and may be sold by an affirmative vote of at least 3 BOT members.
- Provide that all lands determined by the BOT to be eligible for exchange are not considered surplus property but must be exchanged by a vote of at least 3 BOT members.
- Clarify that conservation land exchanges must result in a net positive conservation benefit to the state.
- Expand the purposes for which a local government may use surplus or exchanged property to include affordable housing projects, and meeting the capital improvements element or a concurrency requirement of a local comprehensive land use plan.
- Require that requests for the sale or exchange of state lands must be submitted in writing by the public or private entity or person making the request, and that denial of a request for the sale or exchange of state lands must be made in writing and must include the reason for denial.
- Direct the division to keep records of all requests for the sale or exchange of state lands and keep records of approvals or denials of those requests.
- Direct the lead managing agency to submit a copy of the request for sale or exchange of state lands to the division for their records.
- Direct the BOT to adopt rules to implement procedures for administering requests for the sale or exchange of lands and criteria for when the division may approve requests on behalf of the board for the sale or exchange of state non-conservation lands.
- Create a presumption that all non-conservation lands titled in the name of the BOT, and that are not being actively managed by any state agency or for which a land use plan is not completed, are surplus lands to be recommended for sale or exchange unless the division can justify in writing to the BOT why such recommendation is not justified.

**Section 5.** Amends s. 253.041, F.S., to clarify that requests submitted by counties and other units of local governments for the sale or exchange of state lands must be submitted in writing.

**Section 6.** Substantially amends s. 253.111, F.S., to correct inconsistencies in notices provided by the BOT to counties for the sale of state lands.

**Section 7.** Amends s. 253.115, F.S., to clarify notice and publication requirements for the sale, lease, or exchange of, or a grant of easement on, over, under, above or across state lands. Expands exemption from notice and publication requirements to include homestead, railroad, or canal grants as provided by law, and lands conveyed pursuant to s. 253.111, F.S.

**Section 8.** Amends s. 253.42, F.S., to clarify provisions governing the BOT's exchange of lands. Expands the public purposes for which exchanged lands may be used to include affordable housing projects, and the capital improvement elements or concurrency requirements of a local comprehensive land use plan.

**Section 9.** Amends s. 259.032, F.S., to clarify the purposes and uses of the CARL TF.

Deletes the following obsolete provisions:

- Provisions establishing the policy of state for public ownership of natural areas.
- Ability of the BOT to use money in the CARL TF for land acquisition.

- Provisions governing the acquisition of conservation and recreation lands.
- References to the priority acquisition list.

Deletes land management provisions which are relocated to s. 259.0321, F.S., created in the committee substitute. Deletes payment-in-lieu of taxes provisions which are relocated to s. 259.0322, F.S.

**Section 10.** Creates s. 259.0321, F.S., providing for the management of conservation lands by transferring provisions from s. 259.032, F.S.

**Section 11.** Amends s. 259.0322, F.S., to incorporate payment-in-lieu of taxes provisions transferred from s. 259.032, F.S.

**Section 12.** Amends s. 259.035, F.S.; to clarify the duties and responsibilities of the ARC for state conservation lands, and deletes the following provisions which are relocated to s. 259.105, F.S.:

- Authority for ARC to competitively evaluate, select, and rank projects eligible for the CARL list and Florida Forever funds.
- Provisions requiring an affirmative vote of 5 members of the ARC to change a project boundary or add a project to the priority list.

**Section 13.** Amends s. 259.04, F.S., to clarify that the ARC will assist the BOT in the development and execution of a comprehensive, statewide, 5-year plan to conserve, restore, and protect lands identified under the Preservation 2000 program and the Florida Forever program.

**Section 14.** Amends s. 259.105, F.S., the Florida Forever program, to:

- Clarify funding for the Florida Recreation and Development Assistant Program at DEP.
- Direct the BOT to adopt rules governing the acquisition of additions through the use of boundary amendments for lands otherwise not identified for acquisition as part of a Florida Forever purchase, a land management plan, or a management prospectus.
- Clarify that the acquisition of boundary properties meeting the purchase requirements of the Florida Forever program are exempt from ARC's competitive selection process if the estimated value of the inholding or addition does not exceed \$500,000.
- Authorize ARC to develop a Florida Forever project list more than once a year.
- Clarify that the project list include projects approved for funding under the Preservation 2000 or earlier conservation programs which appeared on the CARL list.
- Clarify the process by which the ARC evaluates, selects and ranks projects for acquisition as an "A" list project or a "B" list project.
- Clarify that there is only one project acquisition list entitled the "Florida Forever" list.
- Clarify that legislative appropriations and not just bond proceeds may be expended for purposes of the Florida Forever program.
- Delete language authorizing the ARC to amend CARL projects, and add or delete projects to the CARL list.
- Require that priority be given to projects that protect and buffer military installations.

**Sections 15 through 23.** Amends ss. 201.15, 253.027, 259.036, 259.101, 259.1051, 260.015, 375.045, and 380.0666, F. S., to conform and to correct cross-references.

**Section 24.** Repeals the following:

- Section 253.421, F.S., relating to lands proposed for exchange considered of equal value.
- Section 253.422, F.S., relating to “Chapman Exchange” lands.
- Sections 270.07 and 270.08, F.S.; relating to the sale of certain public lands without advertisement and notice of sale of public lands. (Relocated to and updated in ss. 253.111 and 253.115, F.S.)

**Section 32.** Provides that act shall take effect July 1, 2006, except as otherwise expressly provided.

#### **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 revenues 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:**

None expected.

##### **C. Government Sector Impact:**

Counties and other units of local government may see some benefits due to the expanded purposes for which sold or exchanged state lands may be used by local governments.

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

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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