

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1355
SPONSOR(S): Mayfield and others
TIED BILLS:

Department of Environmental Protection

IDEN./SIM. BILLS: SB 2636

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Government Accountability Act Council	15 Y, 0 N, As CS	Zeiler	Hansen
2)	Agriculture & Natural Resources Policy Committee			
3)	General Government Policy Council			
4)	Natural Resources Appropriations Committee			
5)				

SUMMARY ANALYSIS

House Bill 1355 (bill) provides the Legislature’s finding and declaration regarding its investment in and management of conservation lands.

The bill:

- Directs the Office of Program Analysis and Government Accountability (OPPAGA) to conduct a study to determine the most efficient means to restructure the state’s land acquisition and land management functions, and report its results to the Legislature.
- Requires the DEP to issue request for proposals (RFP) for two separate 5-year public-private land management demonstration pilot project. One pilot project is to address lands currently managed by DEP (**State Parks and Greenway and Trials**) and a second pilot project is to address specified **conservation lands**. The bill requires that selected contractors submit land management plans to the Acquisition and Restoration Council (ARC) for approval and the Legislative Budget Commission (LBC) prior to release of funds held in reserve for such pilot project.

Each pilot project has fiscal impact of \$4.5 M annually for 5 years. These funds would come from existing land management activities and would be diverted from funds used for land management performed by state agencies to land management performed by a private contractor. The purpose of the pilot projects is to determine whether private vendors can manage state lands more cost effectively than state agencies.

The bill provides a July 1, 2009 effective date.

The bill was substantially amended by the Government Accountability Act Council on March 17, 2009. See “Section IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES” of the bill analysis for an explanation of the adopted strike-all amendment.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Legislature provided \$4,500,000 in the 2008 Appropriations Act (HB 5001, Ch. 2008-152; section 1824) to fund a public-private land management demonstration pilot project (demonstration project). The demonstration project sought to have private contractor to conduct all land management activities, except for law enforcement, on approximately 200,000 acres state conservation lands for a period of 5 years.

The purpose of the demonstration project was to determine the cost effectiveness of land management activities conducted by a private entity compared to those conducted by the state. A similar project was conducted by the FWC on a smaller scale, known as Snipe Island. This project demonstrated that both the state land managers and private land managers were able to be cost effective on different activities. In renewing the Snipe Island contract, FWC bundled services in a manner that allows the state to maximize the benefit of contracting out land management activities.

The DEP, in consultation with the FWC and Department of Agriculture and Consumer Services (DACCS), issued a Request for Proposals (RFP) on October 1, 2008. The one proposal received was deemed inadequate and rejected, and the RFP was withdrawn.

According to the James Madison Institute¹ (JMI), "failure to find an acceptable bidder was not due to lack of interest", but rather "land management firms that had interest in the job decided it would not be profitable". The JMI concluded the RFP:

- required a number of cumbersome activities for compliance,
- contained provisions that were open-ended,
- included reporting requirements were burdensome, and
- the State could terminate the contract at anytime without cause.

Effects of Proposed Changes

CS/HB 1355 provides for extensive legislative findings with regard to land management. The bill declares that land acquisition programs have provided tremendous financial resources for purchasing

¹ Randall G Holcombe, *Creating a Public/Private Partnership of Florida's Conservation Land Management*, The James Madison Institute Backgrounder, Number 59, March 2009.

environmentally significant lands to protect those lands from imminent development or alteration, thereby ensuring present and future generations' access to important waterway, open spaces, and recreation and conservation lands. It specifies that over the past 30 years the state has invested over \$6 billion to conserve 3.8 million acres of environmentally sensitive land, and that land management expenditures have increased to \$215 million or \$66 per acre. The bill cites a report that the current level of land management funding is insufficient to provide for the full funding of land management needs and concludes that if the state is to achieve the full benefits of its investment of public dollars in conservation lands, it must manage these lands as effectively and efficiently as possible. It finds that given the limited financial resources to fund competing priorities and increasing funding needs to manage public lands, the state cannot afford to fund unnecessary duplicative management functions in multiple state agencies and, therefore, declares a privatization pilot program for land management would allow the Legislature to better evaluate the effectiveness and efficiency of the state's land management activities by identifying and achieving cost efficiencies and reductions in administrative and operating costs, and reducing duplication.

This bill directs the OPAGGA to conduct a study of DACS, DEP, FWC and any related law enforcement positions to determine the most efficient means of centralizing the land acquisition and land management activities of the state. The study is to be submitted to the President of the Senate and the Speaker of the House of Representatives by December 1, 2009.

In addition, the bill requires the DEP to issue two separate RFP's for 5-year public-private land management demonstration pilot projects. The first of these RFP's is to address lands currently managed by DEP (**State Parks and Greenway and Trails**) and the proposed fee is limited to an annual average of \$75 per acre. This RFP is to be awarded by December 31, 2009. Once awarded, the contractor is required to prepare a land management plan (LMP) that is to be submitted to ARC for approval. The LMP is to be submitted to the LBC for approval along with DEP's request to release any funds appropriated to the pilot project. Funds appropriated to the pilot project are to be held in reserve until the LBC approves the LMP and a plan to expend funds according to an awarded RFP. OPPAGA is required to evaluate the pilot project and compare the results of private land management activities with that of similar state land management activities and determine the pilot project's effectiveness. The results of OPAGGA's evaluation are to be submitted to President of the Senate and the Speaker of the House of Representatives, ARC and the LBC. Pilot project costs are capped at \$4,500,000 per year.

A second pilot project requires DEP, in consultation with FWC and DACS, to issue a RFP for a 5-year public-private land management demonstration pilot project for **conservation lands**. This RFP is to clearly identify the management goals of conservation lands and allow private contractors to propose how these goals would be met within the prescribed budget. Legislative intent specifies a particular interest in how a contractor would account for and report costs, activities, and achievements and innovate the manner in which management plans are formulated, presented and implemented. A performance bond of not more than \$1,000,000 is required for the contract and the contract cannot be cancelled by the state, unless the contractor is in default. The bill requires that the project shall consist of the nonsubmerged lands within the following conservation properties: Andrews Wildlife Management Area, Big Bend Wildlife Management Area, Cedar Key Scrub State Reserve, Waccasassa Bay Preserve State Park, Ross Prairie State Forest, Indian Lake State Forest, and Goethe State forest. Fees are limited for the RFP to annual an average of \$25 per acre. The RFP is to be awarded by December 31, 2009. Once awarded, the contractor is required to prepare a LMP consistent with duties and responsibilities of the agencies and the certification standards of the Forest Stewardship Council, and submitted to ARC for approval. The LMP is to be submitted to the LBC for approval along with DEP's request to release any fund appropriated to the pilot project. Funds appropriated to the pilot project are to be held in reserve until the LBC approves the LMP. Contained within the bill is a requirement that the contractor shall be responsible for all land management activities except for law enforcement, wildfire suppression, derelict vessel removal, manatee surveys, water sampling, or any other regulatory activities not specifically related to management of state conservation lands. DEP is required to hire an auditor certified by the Forest Stewardship Council who will be responsible for reviewing, evaluating, and reporting on the results of the pilot project in comparison to similar conservation land management activities conducted by the state. The auditor's report is to be submitted to President of the Senate and the Speaker of the House of Representatives, ARC and the LBC. Costs of the pilot project are capped at \$4,500,000 per year.

The bill is effective July 1, 2009.

B. SECTION DIRECTORY:

- Section 1. Provides the Legislature's finding and declarations.
- Section 2. Directs the OPPAGA to conduct a study to determine the most efficient means to restructure the DEP's land acquisition and land management functions
- Section 3. Requires the DEP to issue a RFP for a 5-year public-private land management demonstration pilot project on DEP managed lands (existing state parks, greenways and trails).
- Section 4. Requires the DEP to issue a RFP for a 5-year public-private land management demonstration pilot project on DEP managed conservation lands.
- Section 5. Provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments below. In addition, DEP will be required to hire an auditor certified by the Forest Stewardship Council to conduct a study on the pilot project on conservation lands. The cost of an audit is unknown and would be based on the scope of the audit.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown, the bill may increase funding allocated to private land management activities. The impact would be the result of allocation decisions made by the state land management agencies (DEP, DACS, and FWC)

D. FISCAL COMMENTS:

The intent of the bill is to utilize current funding provided to the DEP for land management activities and direct it to make payments to the private land management contractor who will be conducting land management activities previously performed by DEP. Each of the pilot projects RFP's will cost \$4.5 M annually. For the conservation lands pilot project contained in Section 4, the funding could come from the Conservation Lands Trust Fund. These funds would be placed in reserve in the budget and released after the RFP is approved by DEP and the LBC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, in the Government Accountability Act Council, and Representative Mayfield introduced and the council adopted a strike-all amendment to HB 1355. The amendment removed the portions of the original bill relating to the transfer of the Office of Coastal and Aquatic Managed Areas (CAMA) from DEP to FWC, and amended the remaining portions of the original bill that related to land management. The amendment directs OPPAGA to conduct a study of DACS, DEP, FWC and any related law enforcement positions to determine and report on the most efficient means of centralizing land management activities of the state. In addition, the amendment provided a \$4,500,000 funding cap on each public-private land management demonstration pilot project proposed and contracted by DEP, indentified specific lands where the pilot project on conservation lands can be conducted, and eliminate certain land management activities that would be required of the private sector.