



FLORIDA'S Water & Land Legacy

MEMORANDUM

TO: Financial Impact Estimating Conference

FROM: Land and Water Legacy Committee

SUBJECT: Response to Questions Posed May 7, 2013

DATE: May 13, 2013

This memo is our response to questions posed by committee members and staff at the meeting of the Financial Impact Estimating Conference held on May 7, 2013:

Have there been other constitutional amendments proposed by initiative and ratified which dedicated a specific source of revenue?

Art. X Sec. 27 Fla. Const. was proposed as an initiative and ratified by the voters in 2006. It established the Comprehensive Statewide Tobacco Education and Prevention Program and required that 15% of the Tobacco Settlement funds be paid into the program and that percentage would be adjusted each year for inflation.

Art. X Sec. 15 Fla. Const was proposed as an initiative and ratified by the voters in 1986. It authorized the lottery and established the State Education Lotteries Trust Fund where net proceeds from the lottery are deposited and appropriated by the Legislature for education purposes.

Does the proposed initiative change the manner in which the state imposes a service charge on the documentary stamp tax?

The proposed initiative would dedicate 33 percent of the "net revenues" from the "existing excise tax on documents" as defined in statutes in effect on January 1, 2012. Sec. 201.15, Fl. Stat. clearly states "All taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1)." The proposed initiative on its face clearly intends to not impact the "service charge" and other administrative charges set forth in the introductory paragraph of Sec. 201.15, Fl. Stat. The amount of funds dedicated for conservation purposes should be based on net available for distribution as those funds are ordinarily calculated.

May dedicated revenues under the initiative be used to pay Save Our Everglades bonds?

Current language in the Constitution authorizes bonding for environmental restoration which is the purpose of the Save Our Everglades bonds. Currently, Art VII Sec. 11 Fla. Const. provides in part:

(e) Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation. (emphasis supplied)

This current authorization has provided basis for Florida Forever Bonds as well as Save Our Everglades Bonds. Language in the proposed Initiative clearly authorizes payment of bonds for Everglades Restoration. To paraphrase the initiative:

Funds in the Land Acquisition Trust Fund shall be expended only..... to finance or refinance: lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b);.....together with management, restoration of natural systems.....

A question was raised as to whether the dedication could jeopardize the Save Our Everglades Bonds. Sec. 215.619, Fl. Stat clearly provides:

(2) The state covenants with the holders of Everglades restoration bonds that it will not take any action that will materially and adversely affect the rights of the holders so long as the bonds are outstanding, including, but not limited to, a reduction in the portion of documentary stamp taxes distributable under s. 201.15(1) for payment of debt service on Preservation 2000 bonds, Florida Forever bonds, or Everglades restoration bonds.

Our position is that having a constitutional dedication of documentary stamp tax revenue for environmental bonds is a far stronger protection to bond holders than annual appropriations.

There is also no question but that revenues from the Land Acquisition Trust Fund may be distributed to the Save Our Everglades Trust Fund. It has been done in many Appropriations Acts including SB 1500 as passed by the Legislature this year. It provides as follows:

SECTION 52. The Department of Environmental Protection is authorized to transfer \$10,000,000 from the Water Management Lands Trust Fund, \$18,000,000 from the Land Acquisition Trust Fund, \$5,000,000 from the Internal Improvement Trust Fund and \$5,000,000 from the Solid Waste Management Trust Fund to the Save Our Everglades Trust Fund for the Comprehensive Everglades Restoration Plan pursuant to section 216.181(12) Florida Statutes.

May dedicated funds from the proposed initiative be used for other environmental program related trust funds?

Currently, the documentary stamp tax is used for a wide variety of payments for various other environmental related programs as set forth in Sec. 201.15, Fl. Stat. These include payments to the following trusts funds: Ecosystem Management and Restoration Trust Fund, Water Management Lands Trust Fund, Coastal Lands Acquisition Debt Service, Invasive Plant Control Trust Fund, Lake Restoration 2020 Program, Water Quality Assurance Trust Fund, Conservation and Recreational Land Trust Fund, and State Game Trust Fund. To the extent that each of these trust funds relate to programmatic goals consistent with the purposes set forth in the Initiative, the sponsors see no legal reason why dedicated revenues could not be used to fund these trust funds from grants from the Land Acquisition Trust Fund.

May dedicated funds from the proposed initiative be used for salaries and fixed capital outlay and non-operating expenses?

As should be obvious, government cannot undertake essential government services without employees to carry out such programs. Accordingly, the finance of acquisition and improvement of land, together with management of and restoration of natural systems, requires people, capital outlay and operating expenses and to carry out those programs. The current Appropriations Act (SB 1500) would appropriate millions of dollars for salaries from the Land Acquisition Trust to carry out programs consistent with its conservation purpose. SB 1500 also appropriates funds from the LATF for capital outlay and non-operating expenses. The proponents of the initiative see no legal reason why dedicated funds could not be used for capital outlay, operating expenses and salaries for program purposes associated with the conservation purposes set forth in the initiative.

Is there any distinction between payment priorities of paragraphs (b) 1 and (b) 2 of the initiative?

The proposed initiative authorizes funds to be used for various program purposes as set forth in paragraph (b) 1 and for payment of debt service in paragraph (b) 2. As a matter of constitutional construction, there is no other place in the constitution where priority of payment is set forth and the proposed Initiative does not state one is more important than the other. As a practical matter, Art. VII Sec 11 Fla. Const. currently provides "Moneys sufficient to pay debt service on state bonds as the same becomes due shall be appropriated by law." This provides a sufficient command to the Legislature to pay debt service first.

Does the proposed initiative have any fiscal impact on local governments?

This question has been raised many times over the last 30 years and the general conclusion is that it is a *de minimis* impact. Beginning in 1986, over 20 county governments have passed voter approved bond issues to acquire conservation lands within their jurisdictions. One hundred Florida city and county land conservation measures have been on local ballots since 1988 including bonds, millage increases and sales taxes; 82 have been approved – an 82 percent passage rate. These elections in primarily urban counties represent well over half of the population of the state. The impact is small for the following reasons. First, most lands acquired have greenbelt status

and their assessed values are low. Next, there is some evidence that lands adjacent to conservation areas actually see increases in value. Lastly, there has been some analysis to the effect that the cost to acquire conservation lands is offset but the reduction in funds required for essential public services to the property. Historically, the Florida League of Cities and Florida Association of Counties have supported reauthorization of Florida Forever, and funding of the Florida Communities Trust, the Florida Recreation Development and Assistance Program, Historic Preservation Grants, and similar programs that have been cut dramatically since 2009.

Summary

The proposed Initiative does simply one thing: it dedicates a portion of an existing source of revenue historically used for conservation purposes for programs currently authorized by the constitution and by law. The proposal does not alter or affect the documentary stamp service charge and does not affect parity of existing Save Our Everglades Bonds. The proposal gives the Legislature the ability to fund a wide range of existing trust funds and programs associated with land and water conservation. The proposal does not increase or decrease revenue or costs to the state. The proposal does not increase any tax and has no adverse impact on local governments.