

Article X, Section 28

(a/k/a Amendment One)



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Constitutional Requirement

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

Measuring Up, Part One

- Legislative Discretion: “Should any doubt exist that an act is in violation ... of any constitutional provision, the presumption is in favor of constitutionality. To overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law.” Crist v. Florida Ass'n of Criminal Def. Lawyers, Inc., 978 So. 2d 134, 139 (Fla. 2008), quoting Franklin v. State, 887 So.2d 1063, 1073 (Fla. 2004).
- Am. 1 Sponsor Brief:
 - The Legislature has complete discretion as to the allocation among the broad conservation purposes defined in the Conservation Amendment. ... While the proposed Conservation Amendment does therefore have an impact on the legislative function of state government, this impact is limited and hardly substantial.
 - The Legislature retains complete discretion as to how to appropriate those funds dedicated to the Land Acquisition Trust Fund. Essentially, the Legislature can appropriate those funds for any program that furtheres the very broad purposes defined in the Conservation Amendment.

Measuring Up, Part Two

- Memo from Land and Water Legacy Committee to Financial Impact Estimating Committee (May 13, 2013):
 - **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 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.
- Am. 1 Sponsor Brief: The Conservation Amendment does not prevent the Legislature from transferring many of those programs currently funded from other sources to the Land Acquisition Trust Fund.

Expenditures, Part One

- Springs Protection: \$43.6M (\$50M)
- Land Management: \$67.8M (\$77.4M)
- Everglades Restoration \$58.9M (\$81.8M)
- Beaches: \$25M (\$32.1M)
- Land Acquisition:
 - Kissimmee River: \$20M
 - Florida Forever: \$32.4M
 - Rural and Family Lands: \$15M
 - Other: \$2.6M
- Local Parks/FRDAP: \$6M
 - Visitor's Center, Lover's Key SP: \$300k
- Water and WW Revolving Loan: \$93.4M

Expenditures, Part Two

- Existing Programs: \$482Mish
 - Existing Debt: \$200Mish
 - Program Base Operations: \$282Mish
 - Invasive Plant Control
 - Land Management (DEP State Parks, DOACS Div. of Forestry, WMA/Lake Restoration)
 - Water Resource Protection (DEP)
 - Springs Protection
 - TMDL/MFLs
 - Everglades
 - Office of Water Policy Vehicles: \$56k

Expenditures, Part Three

- Miscellaneous Projects:
 - Lake Apopka Restoration: \$2M (\$8M)
 - Brevard County (IRL) Muck Dredging: \$425k (\$9.6M)*
 - Study of historical artifact amnesty: \$1.1M
 - Restoration of St. Mark's Lighthouse: \$250k
 - Ponce de Leon Hotel Restoration: \$2M
 - Passive Dispersed Water Storage: \$4.5M
 - Dispersed Water Management: \$13.65M
 - Monroe County sewage pilot program: \$9k (100k)

*County to fund study of environmental benefits

Florida Wildlife Federation v. Gardiner

- Declaratory and Injunctive Relief:
Everything not listed in Complaint,
violates Am. 1
 - Relies on Chapter laws for
permissible uses of LATF
 - Alleges uses must be consistent
with LATF historical uses to meet
constitutional requirement
- No Preliminary Injunction sought

FWF v. Gardiner

Following Spending Not Challenged:

- Florida Forever (\$15M)
- Springs Restoration (\$38.5M)
- Rural Lands (\$15M)
- Kissimmee River (\$20M)
- Everglades, Lake O, IRL, Beaches, Helena Run Preserve (\$100M)
- Land Management (\$33M)
- State Parks (\$20M)
- Debt Service (\$190M)

Everything Else: Challenged