

STORAGE NAME: h0951.ca
DATE: March 18, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 951

RELATING TO: Hillsborough County, Tampa Port Authority

SPONSOR(S): Representative Miller and Others

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
 - (2) WATER AND RESOURCE MANAGEMENT
 - (3) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
 - (4)
 - (5)
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I. SUMMARY:

The bill grants the Tampa Port Authority (TPA) the authority to delegate control and regulation of submerged lands, including the issuance of minor work permits and other permits, through contract or interlocal agreement.

The fiscal impact of the bill is that TPA currently collects \$10,000 from processing applications for docks. If another entity takes over the permitting function, that entity would establish their own fee schedule, and TPA would no longer be collecting those revenues.

As written, the bill violates Article 8, Section 4 of the Florida Constitution, which states: "By law or by resolution, of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote or the electors of the transferee, or as otherwise provided by law."

Furthermore, the bill does not comply with extensive case law interpreting the Florida Constitution delegation of authority provision. Case law specifies that a delegation of authority must be accompanied by proper standards and guidelines.

[Amendment 1 to this bill corrects all constitutional and case law problems.]

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article 8, Section 4 of the Florida Constitution allows the governing bodies of counties, municipalities or special districts to transfer any function or power to another governing body after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Extensive case law interpreting the Florida Constitution delegation of authority provision specifies that the legislature may delegate authority, but, to be constitutional, the delegation must be accompanied by proper standards and guidelines. Florida Gas Transmission Co. v. Public Service Com'n, 635 So.2d 941 (Fla. 1994); Smith v. Portante, 212 So.2d 298 (Fla. 1968) (unconstitutional as an unlawful delegation of authority where objective guidelines and standards are lacking.); Marine Industries Ass'n of South Florida v. Florida Dept. of Environmental Protection, 672 So.2d 878 (4th DCA, 1996); State v. Thayer, 528 So.2d 67 (4th DCA, 1988).

Case law further states that where authority has been delegated, the authority is governed by the provisions of law that govern the delegating authority. Furnams v. Santa Rosa Island Authority, 377 So.2d 983 (1st DCA, 1980) (County to which authority to carry out the purposes of act authorizing county to use, lease or develop island property owned by the county was delegated, such delegation was controlled by provisions of special act which controlled county.)

Tampa Port Authority (TPA), is an independent special district. Originally known as the Hillsborough County Port District, the district was created pursuant to chapter 23338, Laws of Florida, 1945, with powers and responsibilities which are little different from those exercised today. Chapter 63-1400, Laws of Florida, changed the name of the district to the TPA. The charter of the district was codified in chapter 84-447, Laws of Florida. Section 27 of chapter 84-447, Laws of Florida, provides for review of the charter by the Hillsborough County Legislative Delegation prior to July 1, 1994, and every 10 years thereafter. If the Delegation determines that recodification of the act and all subsequent amendments is needed, it may require TPA to prepare appropriate legislation.

The operation of the port district is governed by TPA, which includes all of the territory within Hillsborough County. Among other things, TPA has the specific responsibility of planning and carrying out plans for the long-range development of facilities of and traffic through the port in the port district; has eminent domain power; may issue bonds; establish rates and charge for use of all port facilities; construct, repair, and operate projects; enter into contracts as well as franchising and licensing agreements; keep track of vessels; exercise police powers; and establish safety regulations. Further responsibilities include "all customary port services, including lighterage, stevedoring, handling, inspecting, conditioning, and reconditioning of all commodities and cargo handled, received, or shipped through the facilities and port district of the port authority."

B. EFFECT OF PROPOSED CHANGES:

The bill will allow the TPA to delegate its authority to control and regulate submerged lands within its jurisdiction, and to issue minor work permits and other permits, through contract and interlocal agreement.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 95-488, Laws of Florida

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. It allows the TPA to delegate its responsibilities of control and regulation of submerged lands within its jurisdiction, and its authority to issue of minor work permits and other permits, by entering into contracts and interlocal agreements.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Only through voluntary interlocal agreement or contract.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The responsibilities bargained for through contract or interlocal agreement.

(2) what is the cost of such responsibility at the new level/agency?

It depends upon the terms of the contract or interlocal agreement.

(3) how is the new agency accountable to the people governed?

It depends upon the terms of the contract or interlocal agreement.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends Section 7 of chapter 95-488, Laws of Florida as follows:

Section 7. TPA is granted the power to delegate its control and regulation of submerged lands, and its authority to issue minor work permits and other permits through contract and interlocal agreement.

Section 2. Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 31, 1997

WHERE? The Tampa Tribune, Tampa, Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The bill, as written, does not meet the Article 8, Section 4, Florida Constitution requirements which provide that governmental functions or powers may be transferred only after approval by vote of the electors of the transferor and of the transferee. To meet constitutional requirements, the bill should specify that before TPA's authority may be transferred, referendums must be held requiring approval of the electors of the transferor and transferee.

Furthermore, the bill does not meet case law interpretations of the constitutional delegation of authority provision, which require proper standards and guidelines for a lawful delegation of authority.

The bill does not explicitly specify who will be eligible to enter into contracts or interlocal agreements with TPA. The TPA's Economic Impact Statement provides examples of intended parties which include Hillsborough County, the City of Tampa, and the Environmental Protection Commission. Discussion with the drafter of the bill revealed the intent to include non-profit organizations who have an interest in preserving estuaries. However, because the language of the bill does not specifically express either intent, the bill as written would be an unconstitutional delegation of TPAs authority.

To be a constitutional delegation of authority, the bill should specify the types of entities with which TPA intends to contract or enter into interlocal agreements, detail the kinds of authority to be delegated, provide explicit standards and guidelines for these entities to follow in carrying out the delegated authority, and provide for referendums.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment to the bill corrects all constitutional and case law conflicts by omitting the language delegating control and regulatory authority. This change eliminates the Constitutionally required referenda which accompany a delegation of authority. Further, the amendment allows the TPA to enter into contracts and interlocal agreements pursuant to

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applicable law. This change implicitly addresses the "proper standards and guidelines" criteria required by case law.

VI. SIGNATURES:

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