

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 847 Manatee County Port Authority
SPONSOR(S): Government Efficiency & Accountability Council and Reagan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u>7 Y, 0 N</u>	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>10 Y, 0 N, As CS</u>	<u>Nelson</u>	<u>Cooper</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill amends a special act relating to the Manatee County Port Authority. It provides for the conveyance of submerged lands from the Board of Trustees of the Internal Improvement Trust Fund to the Port Authority, and defines the territorial boundaries of these submerged lands.

The bill provides an effective date of upon becoming law.

The bill requires a transfer of property which may not comply with the standards articulated in s. 11 of Art. X of the State Constitution. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES.

Also, see, III. COMMENTS, C. DRAFTING ISSUES OR OTHER COMMENTS, of this analysis for a discussion of the classification of this bill.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

This bill would transfer ownership of submerged lands from the Board of Trustees of the Internal Improvement Trust Fund to a local governmental entity.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Submerged Lands

The federal government granted Florida title to all lands beneath its navigable waters, up to the ordinary high water mark, when it became a state in 1845. No surveys were required to delineate the boundaries of these sovereign lands, and the title vested in the State to be held as a public trust.¹ The Florida Constitution currently reflects the State's ownership of such lands:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.²

In 1856, the Legislature adopted the "Riparian Rights Act of 1856." This act divested the State of fee simple title to submerged lands upon which upland owners constructed certain improvements in the interest of encouraging commerce by the development of waterfront property.

The Legislature enacted ch. 8537, L.O.F., known as the "Butler Act," in 1921 with the express purpose of improving and developing Florida's waterfront. Such development was to be encouraged by permitting upland riparian owners to obtain title to submerged lands abutting land owned by them with the added condition that the submerged land was bulkheaded or filled in or permanently improved continuously from the high water mark in the direction of the channel.³

The 1957 Legislature expressly repealed the Butler Act, after 36 years of development on Florida's coastline, with ch. 57-362, L.O.F, known as the "Bulkhead Act of 1957." This action was the result of a change in public policy and the concern for citizen rights in submerged state lands.⁴ Upon repeal, the title to all submerged lands was vested to the Board of Trustees of the Internal Improvement Trust Fund. However, the Legislature confirmed title to submerged lands for those upland riparian owners who had filled or developed such lands prior to the repeal of the Butler Act. In the 1970s, the Board began requiring compensation to the State for public and private activities on submerged lands that generated revenues or excluded traditional public uses. Preexisting structures were given the option to be "grandfathered" and avoid lease fees until 1998.⁵

¹ Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339 (Fla. 1986).

² Section 11 of Art. X of the State Constitution.

³ City of West Palm Beach v. Board of Trustees of Internal Improvement Trust Fund, 746 So. 2d 1085 (Fla. 1999).

⁴ Board of Trustees of the Internal Improvement Trust Fund v. Sand Key Associates, 512 So. 2d 934 (Fla. 1987).

⁵ City of West Palm Beach v. Board of Trustees of Internal Improvement Trust Fund, 746 So. 2d 1085 (Fla. 1999).

Board of Trustees of the Internal Improvement Trust Fund

Section 4 of Art. IV of the State Constitution establishes the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture as the Board of Trustees of the Internal Improvement Trust Fund. The Board 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. The Department of Environmental Protection (DEP) is directed to provide administrative staffing to the Board pursuant to s. 253.002, F.S., and the Division of State Lands within DEP performs duties and functions related to the lands which are titled in the name of the Board.

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 Board except by a vote of at least three of the four trustees. That section also provides that in the event submerged land is to be sold and transferred by said Board of Trustees, that the Board first require the Department of Environmental Protection to inspect the lands and to file a written report with the Board.

Pursuant to s. 253.12, F.S., the Board of Trustees may sell submerged land if it is determined by the Board to be in the public interest, upon such prices, terms and conditions as the Board sees fit. Prior to any such sale, the Board must determine to what extent the sale and ownership by private persons or the conveyance to political subdivisions or public agencies would interfere with the conservation of fish, marine and other wildlife, or other natural resources. The Board may not sell or convey an interest in these lands to any applicant who does not also have specified applications before the Board.

The Manatee County Port Authority

The Manatee County Port Authority is a dependent special district which initially was established pursuant to ch. 67-1681, L.O.F. The Board of County Commissioners of Manatee County acts as the Port Authority. The port annually shuttles 9.4 million tons of commodities to markets and consumers, provides in excess of \$2.3 billion in economic impact, and supports more than 22,000 jobs in Manatee County. In 1997, the Authority purchased 412 acres for expansion purposes.

Presently, the Port Authority is investing port revenues into new facilities and infrastructure for current and prospective customers. Port Manatee has devoted more than \$119 million to improve its docks and warehouses. In 2007, "phase one" of the port's \$125 million expansion project will be nearing completion. Key components of the expansion include one-half mile of deepwater berthing and modern docks. New navigational safety features include a 1,300-foot diameter turning basin and improved turning configuration where the port's channel intersects the main Tampa Bay shipping channel.⁶ To date, the port has 6,702 linear feet of dedicated dock space; 1,100 acres; an estimated 500 acres available for development; eight miles of port-owned railroad track; 937,000 total square feet of warehouse space; 202,000 square feet of chill space; 30,000 square feet of frozen space; and a container lot size of 20 acres.⁷

The Port Authority's special act, ch. 2003-351, L.O.F., declares that all of the powers conferred by the charter and the exercise thereof are a proper public purpose.

⁶ <http://www.portmanatee.com/history.asp>.

⁷ <http://www.portmanatee.com/portfacts.asp>.

Effect of Proposed Changes

This bill amends ch. 2003-351, L.O.F., to allow the Port Authority receive title to, right of entry upon, and the right to regulate the improvement of any and all submerged lands belonging to the State contained within a described area. The bill also conveys these submerged lands from the Board of Trustees of the Internal Improvement Fund to the Port Authority for consideration of \$1, subject to the riparian rights of the respective owners of adjacent uplands.

The Port Authority may not sell or otherwise dispose of the submerged lands, and these lands are to be used only for proper public and Port Authority purposes. Representatives of the Port Authority have indicated that the area at issue consists of 585.32 acres which currently are being used as a "non-combustion engine zone" and that the Authority is seeking this legislation to eliminate the need for obtaining leases from the Board.⁸

The bill provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Subsection (15) is added to s. 6 of section 3 of ch. 2003-351, L.O.F., relating to the conveyance of title to submerged lands to the Manatee County Port Authority.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 9, 2007

WHERE?

The *Bradenton Herald*, a daily newspaper of general circulation, published in Manatee County.

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

The Economic Impact Statement indicates that the transfer of adjacent submerged lands integral to port operations will "eliminate a substantial administrative burden and related costs" of the Port Authority relating to applying for and obtaining a sovereign lands lease from the Board of Trustees of the Internal Improvement Trust Fund each time the Authority modifies or amends its operational area. The Statement does not discuss the impact that this transfer of property would have on the State.

⁸ March 8, 2007, telephone conversation with Steve Lewis and March 9, 2007, e-mail from Linda Cox of Lewis, Longman and Walker, P.A.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 11 of Art. X of the State Constitution provides:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

It is unclear whether the conveyance of sovereign submerged lands held in public trust for the benefit of all Florida citizens to a port authority is in the public interest. The bill provides that the land at issue only be used for proper public and Port Authority purposes, and the port's special act declares the exercise of its powers to be a proper public purpose. Nonetheless, it is debatable whether such a transfer would serve to benefit the general public. The only rationale that has been articulated by the port is that the transfer will eliminate its substantial administrative burden and cost to obtain a sovereign lands lease from the Board.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The Department of Environmental Protection

The Department of Environmental Protection, which acts as administrative staff for the Board of Trustees of the Internal Improvement Trust Fund, has indicated that it opposes this bill.⁹

Exemptions from General Law

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. As this bill provides for numerous exemptions from ch. 253, F.S., the provisions of House Rule 5.5(b) appear to apply.

Classification of Bill

A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality. State ex rel. Landis v. Harris, 163 So. 237 (1934). Because this bill conveys state property, it could be found to be properly classified as a general, rather than a special, law.

Arguably, such classification is important because special acts are treated uniquely within the legislative process (generally, they do not have companion bills in the Senate and are placed on an expedited calendar) and as such these bills may not receive the same exhaustive review by the

⁹ Ryder Rudd, Legislative Affairs, Department of Environmental Protection, March 8, 2005.

legislature as would a general bill. Also, House Rule 5.3 provides that members may file only six general bills in each regular session.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Government Efficiency & Accountability Council reported HB 847 favorably with a council substitute to incorporate the amendment adopted by the Committee on Urban & Local Affairs which provides for consideration of \$1 from the Port of Manatee to the Board of Trustees of the Internal Improvement Trust Fund. This analysis has been updated to reflect the council substitute.