

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The 1957 Legislature expressly repealed the Butler Act, after 36 years of development on Florida's coastline, with ch. 57-362, L.O.F., known as the "Bulkhead Act of 1957."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 registered as "grandfathered structures" 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.

Effect of Proposed Changes

This act amends ch. 65-2381, L.O.F., the act establishing the charter for the City of West Palm Beach in Palm Beach County. It adds language to the enumerated powers of the city which provides for the conveyance of title of certain submerged lands from the Board of Trustees of the Internal Improvement Trust Fund to the City of West Palm Beach, subject to the riparian rights of the respective owners of adjacent uplands. The city may not sell or otherwise dispose of the submerged lands which may only be used for proper public and marina purposes. The bill provides a legal description for the territorial boundaries of the submerged lands, and for an effective date of upon becoming law. Apparently, the submerged lands at issue consist of approximately 26 acres that the city unsuccessfully attempted to obtain from the Board of Trustees via litigation. See, the Florida Supreme Court case, City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund, 746 So. 2d. 1085 (1999), where the court found that title for the subject submerged lands did not vest with the City through the Butler Act because the City's periodic dredging of the land did not constitute a permanent improvement.

The legislative intent language of the bill states that there is an important state interest in facilitating boating access to the state's navigable waters, and in maintaining viable water-dependent support facilities, such as boat hauling and repairing and commercial fishing facilities, and in maintaining the availability of public access to the navigable waters of the state. The bill also notes that the City of West Palm Beach is expanding its city-owned Palm Harbor Marina into an aesthetically pleasing and accessible working waterfront, and that West Palm Beach residents and visitors will have access to the downtown waterfront community, including waterfront concerts and other events, restaurants, shopping, parks, educational water-related children's activities, canoe and kayak activities, and mooring locations. Finally, the bill provides that the City of West Palm Beach erected four piers and dredged a boat basin between the piers and a channel from the boat basin to the Intracoastal Waterway, and the Board of Trustees granted ownership of the submerged lands directly under the piers to the City of West Palm Beach but denied ownership of the surrounding dredged areas, and that the city and its citizens will benefit from integrated management of the identified submerged lands in order to complete and sustain the City Waterfront Commons for the general public.

The bill is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends ss. (1) of section 1.04 of section 2 of ch. 65-2381, L.O.F., as amended, relating to the powers of the City of West Palm Beach, and conveying submerged lands to the city.

Section 2: Provides for an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 21, 2007

WHERE? *The Palm Beach Post*, a daily newspaper of general circulation, published in Palm Beach 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

According to the Economic Impact Statement, this bill will eliminate "piecemeal regulation" by the State of the sovereign lands leasing program, and save the city substantial time and money. The Statement does not discuss the impact that this transfer of property would have on the State.

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.

The conveyance of sovereign submerged lands held in public trust for the benefit of all Florida citizens to a city may be subject to challenge under this provision.

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.⁶

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.

D. STATEMENT OF THE SPONSOR

This bill conveys title to submerged lands within the City of West Palm Beach marina to the City of West Palm Beach. Right now, the City has title only to the land directly under the docks, and the State has title to the rest. The City would like to be able to maintain all of the marina, both routinely and after storms. The City could care for the submerged lands quickly and efficiently, and could maintain the area at a high standard.

The City's marina is on the downtown waterfront, and lies within Brelsford's Cove in the Lake Worth Lagoon. This is a half-mile-wide area of the Intracoastal Waterway. The marina area includes a popular bike path and promenade, and is the location of major local events such as Independence Day fireworks, boat shows, music festivals, and art/craft shows.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁶ Ryder Rudd, Legislative Affairs, Department of Environmental Protection, March 8, 2005.