

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 635 Water Management
SPONSOR(S): Needelman
TIED BILLS: **IDEN./SIM. BILLS:** SB 758

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environment & Natural Resources Council		Michael Kliner	Michael Kliner
2) Policy & Budget Council			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill revises various statutes associated with the authority and responsibilities of inland navigation districts and revises several statutory provisions governing dredge and fill projects.

The bill provides legislative intent that it is in the public interest for inland navigation districts to operate and maintain the Intracoastal Waterway (ICW) and any other public navigation channels authorized by the Board of Trustees of the Internal Improvement Trust Fund. The bill also expands the number of entities that inland navigation districts may aid and cooperate with in planning and carrying out specified activities, and repeals the statutory provision that mandates inland navigation districts post and maintain manatee protection speed zone regulatory markers. In addition, the bill:

- Deletes obsolete provisions requiring the Secretary of the Department of Environmental Protection (DEP) to adopt procedural rules for a short form application and the issuance of permits for certain dredge and fill permits.
- Provides for maintenance dredging of certain areas that have been previously dredged and specifies conditions for such dredging.
- Authorizes the DEP to develop and maintain a list of flocculants that may be used at a disposal site of dredged materials.

The bill is revenue neutral as it affects DEP. The Florida Fish and Wildlife Conservation Commission (FWC) estimates that a total of 2 positions and \$520,000 is needed for the maintenance and posting of additional markers on the ICW, based upon the assumption that the FWC may be assigned the responsibility for these markers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. The bill allows persons and entities to maintenance dredge certain areas that have been previously dredged without seeking a permit from the DEP, under certain conditions. In addition, the two inland navigation districts are relieved of the responsibility to post and maintain manatee protection speed zone regulatory markers along the intercoastal waterways.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Inland Navigation

Chapter 374, F.S., establishes Inland Navigation Districts (INDs) as independent special taxing districts empowered and authorized to undertake programs intended to alleviate problems associated with waterways within the district's jurisdiction. Specifically, the INDs are to improve and maintain the Intercoastal Waterway (ICW), public channels connected to the ICW, and waters that make a significant contribution to waterway traffic or commerce.

Currently, there are two authorized INDs. The Florida Inland Navigation District (FIND), a multi-county independent special district, was created in 1927 when the Legislature enacted ch. 12026, Laws of Florida. All applicable laws and acts relating to the FIND were codified in statute in 1996 by the enactment of ch. 96-425, Laws of Florida. The primary purpose of the FIND is to serve as the "local sponsor" for the Atlantic Intracoastal Waterway project in Florida, which is a state/federal navigation project. Primary responsibilities include the acquisition of lands necessary for the creation of the waterway and for use as spoil deposit sites for materials removed from the waterway channel during dredging activities. The FIND is composed of Nassau, Dade, Broward, Palm Beach, Flagler, Martin, Brevard, Indian River, St. Lucie, St. Johns, Volusia and Duval counties.

The West Coast Inland Navigation District (WCIND) was established by the Legislature in 1947 (ch. 23370, Laws of Florida) to perform the duties of local sponsor to the U.S. Army Corps of Engineers for sharing the cost of the planning, construction, and maintenance of a 152-mile long, 100-foot wide, and 9-foot deep Gulf Intracoastal Waterway between the mouth of the Caloosahatchee River, Near Ft. Myers, and the Anclote River, north of Tampa. In 1989, the WCIND was authorized to participate in a greater diversity of waterway-related activities, including the promotion of inlet management, and the posting and maintenance of channel markers and manatee protection speed zone signs. The WCIND has also initiated programs to encourage boating safety and environmental stewardship through the dissemination of boater and waterway guides and resource maps. The counties that make up the WCIND are Manatee, Sarasota, Charlotte, and Lee. The WCIND's programs include maintaining and enhancing public navigation channels and inlets, boating access facilities, waterfront parks, and piers.

The INDs are authorized to aid and cooperate with the federal and state government, member counties, and local governments within the district in planning and carrying out public navigation, local and regional anchorage management, beach nourishment, public recreation, inlet management, environmental education, and boating safety projects, directly related to the waterways in their jurisdictions. The INDs are also authorized to enter into cooperative agreements with these agencies

and to covenant in any such cooperative agreement to pay part of the costs of acquisition, planning, development, construction, reconstruction, extension, improvement, operation, and maintenance of such projects. An IND may act as a local interest sponsor for any project designated as a "Section 107, River and Harbor Act of 1960" project (33 U.S.C. section 577) authorized and undertaken by the U.S. Army Corps of Engineers.

Chapter 374, F.S., recognizes the continuing need for the INDs to undertake programs necessary to accomplish the purposes of construction, maintenance, and operation of Florida's inland waterways. With the exception of Broward, Manatee, and Sarasota Counties, all of the submerged lands in the counties within the jurisdiction of the INDs are designated as aquatic preserves (s. 258.39, F.S.). Furthermore, portions of Manatee and Sarasota, Counties are also designated as aquatic preserves. An aquatic preserve, as defined in s. 258.37, F.S., is an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition. To avoid conflict between these statutes, s. 258.40, F.S., specifically exempts from inclusion in any aquatic preserve designation any publicly owned and maintained navigation channel or other public works project authorized by the United States Congress which is designed to improve or maintain commerce and navigation. Furthermore, s. 258.42, F.S., requires the Board of Trustees of the Internal Improvement Trust Fund (trustees) to maintain aquatic preserves such that no further dredging or filling of submerged lands be authorized except that the following activities may be authorized pursuant to a permit: such minimum dredging and spoiling as may be authorized for public navigation projects; such minimum dredging and spoiling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels; such other alteration of physical conditions as may, in the opinion of the trustees, be necessary to enhance the quality or utility of the preserve or the public health generally; and such other maintenance dredging as may be required for existing navigation channels. The required permit, which is issued by the DEP and subject to approval by the trustees, sets conditions for allowable activities based on the impacts the waterway project will have on the water body. To address the issue of impacts of waterway projects, s. 374.976, F.S., authorizes the INDs, pursuant to s. 403.075, F.S., to enter into ecosystem management agreements with the DEP. The DEP permits are based on these agreements and the designated standards and criteria set by statute or rule for the water body.

Waterway Markers

The Boating and Waterways Section within the FWC Division of Law Enforcement executes statutory duties and responsibilities that include management and promotion of the use of state waterways for safe and enjoyable boating. This includes oversight and coordination of uniform waterway marker placement on the waters of the state. This Section also promulgates rules pertaining to boating restricted areas, reviews local government uniform waterway marker requests, and provides advice to federal, state, and local governmental entities and members of the public seeking to enhance waterway service levels and/or waterway regulations, boating safety, or manatee protection.

The FWC, through the Boating and Waterways Section, is currently responsible for maintaining approximately 1,220 waterway markers within state waters, posting state-adopted manatee protection regulations, and ensuring that these markers adhere to state and federal requirements. Additionally, posting certain waterway markers and maintaining them is currently the statutory responsibility of the inland navigation districts.

In addition to the numerous markers currently under the FWC's ownership, the FWC accepted maintenance responsibility for manatee protection regulatory markers through an agreement with the FIND in 2005-06. The FWC has executed a Memorandum of Understanding with the FIND and receives \$100,000 annually from the FIND for marker maintenance.

There are an estimated 17,000 markers statewide used to delineate boating safety, manatee protection, and locally established regulatory zones throughout Florida's coastal and inland waterways. Of these, approximately 6,000 mark state manatee protection zones and are maintained by the FWC and WCIND. The markers are of different types, utilize different mooring features, contain different regulatory messages, and are uniquely positioned at individual sites.

Recent field-based surveys of waterway markers have revealed many instances of discrepant markers within the inland navigation district jurisdictions. Although information has not been gathered by which to make valid estimations of how many problem markers may exist, findings suggest that considerable work will be necessary to complete an accurate inventory of existing markers, compare that inventory with permits issued and the accompanying sign-plans, and take corrective action to ensure that markers are properly posted and geographically correct.

The Use of Flocculents in Dredging Projects

Typically, maintenance dredging is performed to deepen or maintain navigable waterways or channels which are threatened to become silted with the passage of time, due to sedimented sand and mud, possibly making them too shallow for navigation. Dredging is often accomplished with a trailing suction hopper dredge that removes the sediment and transports it to offsite locations upland for storage and dewatering in large settling pits. If available, salvageable beach sand may be harvested and used for beach nourishment projects. Dredging can create disturbance to aquatic ecosystems if the dredge spoils contain toxic chemicals that may have an adverse effect on the disposal area; furthermore, the process of dredging often dislodges chemicals residing in benthic substrates and injects them into the water column. Flocculants, which are chemicals that are used to cause fine particulates to lump together and settle under gravity, are used in the process to reduce contaminating impacts. There are different flocculant compounds for each dredging situation; therefore the flocculant used by the dredging contractor must be approved by the DEP prior to usage.

Short Form Applications and Permit Exemptions

Section 403.813, F.S., requires the Secretary of the DEP to adopt rules providing for "short form" applications at the water management district offices for projects:

- That affect less than 10 acres of jurisdictional area and are within the landward extent of waters of the state that are directly impacted by dredging or filling, including other areas severed from or connected to waters of the state as a result of dredge and fill activities;
- For docking facilities of less than 10 wet slips, which facilities do not provide commercial or marine supplies or services;
- For new seawalls or similar structures which do not exceed 500 linear feet of shoreline;
- For the installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state carrying water, electricity, communication cables, oil, and gas, except as exempted by paragraph (2)(m) or paragraph (2)(n); and,
- For other similar projects that are limited in scope as specified by rule.

Section 403.813, F.S., also provides statutory exemptions from the requirement to obtain specified permits for several project types, including the maintenance dredging of existing man made canals, channels, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights of way or drainage easements which have been recorded in the public records office of the county.

To be eligible for the exemption, the spoil material must be removed and deposited on a self-contained, upland spoil site, and no more dredging is to be performed than is necessary to restore the structure to the original design specifications. Work performed must be in compliance with the Florida Manatee Sanctuary Act, and no significant impacts occur to previously undisturbed natural areas. In addition, control devices for return flow and best management practices for erosion and sediment control are utilized to prevent bank erosion and scouring, and to prevent turbidity, dredged material, and toxic substances from discharging into adjacent waters. An entity seeking an exemption must notify the DEP at least 30 days prior to dredging and provide documentation of original design specifications or configurations where such exist. The exemption does not apply to the removal of a natural or man-made barrier separating a canal or canal system from adjacent waters.

When no previous permit has been issued by the Board of Trustees for the Internal Improvement Trust Fund (BOT), or the US Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to no more than five feet below mean low water. The BOT may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed (severed materials) during such maintenance dredging.¹ The removing party may sell the severed materials, however, the proceeds from the sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

Effect of Proposed Changes

Inland Navigation

The bill amends s. 374.975, F.S., to provide legislative intent that it is in the public interest for inland navigation districts to operate and maintain the ICW and any other public navigation channels authorized by the Board of Trustees of the Internal Improvement Trust Fund for the purposes of construction, maintenance, and operation of Florida's inland waterways pursuant to Section 107 of the federal River and Harbor Act of 1960 (33USC s. 577). In addition, the bill provides authority to the INDs to aid and cooperate with nonmember counties that contain any part of the ICW within their boundaries, and with navigation districts in planning and carrying out public navigation, local and regional anchorage management, beach re-nourishment, public recreation, inlet management, environmental education, and boating safety projects directly related to the waterways.

Waterway Markers

The bill repeals s.374.977, F.S., which provides that each inland navigation district shall be responsible for posting and maintaining regulatory markers for manatee protection speed zones. Section 374.977, F.S., provides that inland navigation district responsibility shall not be limited just to the ICW, but shall include all waters within each member county for which regulatory markers must be posted. The current section provides that should an inland navigation district lack the resources or otherwise be unable to carry out its sign posting and maintenance duties, this responsibility shall then be assumed by the FWC. According to the FWC, the repeal of the section appears to effectively remove the responsibility from both the inland navigation district and the FWC, leaving a question as to who would

¹ No charge for severed materials shall be exacted by the state during maintenance dredging by a public port authority.

be responsible for marker posting and maintenance within these areas of responsibility. ²The markers in question are in the following areas:

- The Atlantic Coast (Nassau County to Dade County, excluding St. Johns County), consisting of approximately 2,980 markers, currently under the jurisdiction of the Florida Inland Navigation District (FIND), and
- The Gulf of Mexico Coast (Charlotte, Lee, Sarasota, and Manatee Counties), consisting of approximately 1,833 markers, currently under the jurisdiction of the West Coast Inland Navigation District (WCIND).

The Use of Flocculents in Dredging Projects

The bill authorizes the DEP to develop and maintain a list of flocculants that may be used at a disposal site of dredged material. The bill provides that such list does not prevent an entity from proposing, or the DEP from approving, the use of a flocculant that is not on the DEP's list subject to the entity providing the necessary documentation required by the DEP to ensure that its use will not cause harm to the water resources of the state.

Short Form Applications and Permit Exemptions

The bill deletes the requirement that the Secretary of the DEP adopt rules providing for "short form" applications at the water management district offices. The practice of issuing short form applications is obsolete and has been replaced by the Environmental Resource Permit program.

The bill provides a list of projects that do not require certain state permits. The list includes maintenance dredging of the following areas that have been previously dredged or excavated:

- Boat basins;
- Boat slips;
- Intake and discharge structures;
- Navigation channels;
- Portions of natural water bodies within drainage rights-of-way or drainage easements that have been recorded in the public records of the county;
- Port facilities;
- Predominantly residential canals and canal systems; or
- Manmade waters that were wholly excavated from lands other than wetlands and other surface waters such as canals, irrigation ditches, drainage ditches, and semi-enclosed port berths.

Current law provides that "no more dredging is to be performed than is necessary to *restore* the canals, channels ... to original design specifications or configurations..." The bill, however, provides that the

² The FWC estimated that it would require two FTEs and an appropriation of \$520,000, related to this issue. The FTE's and the appropriation is an estimate based on the assumption that the FWC would be required to assume these responsibilities.

proposed work must be for purposes of *maintenance* rather than *restoration*.³ While “maintenance” is not defined in the bill, the bill provides examples of when the proposed work is “not maintenance,” to wit:

- When the area to be dredged fails to reasonably fulfill its original design function; or
- The needed repairs would cause more than a minimal individual or cumulative adverse environmental impact.

The bill provides an exception for when the loss of design function was caused by a storm event. In such cases maintenance dredging must be commenced within two years of the storm event, unless an extension is filed with the DEP.

Other conditions for non-permitted, routine maintenance dredging include the following:

- When originally constructed the area must have been lawfully dredged and permitted;
- No more dredging than is necessary to maintain the original design or specification is permitted;
- No significant impacts to previously undisturbed areas;
- All severed dredged material must be deposited to a lawful upland storage site or an approved offshore site;
- Turbidity curtains or other best management practices must be used to minimize adverse impacts;
- A mixing zone for turbidity is granted within a 100 meter radius from the point of dredging provided the mixing zone does not extend into areas supporting submerged aquatic vegetation or hardbottom communities
- The discharge of return water is allowed so long as the discharge does not result in a violation of water quality standards in the receiving waters. For return water discharges into man-made waters (other than those in Monroe County), a mixing zone for turbidity within a 150 meter radius from the point of discharge is permitted. Such a mixing zone is not permitted outside man-made waters.
- The project must comply with applicable sections of the Florida Manatee Sanctuary Act;⁴
- State fees for severed materials are waived for inland navigation districts, as well as public port authorities as under current law;
- No alteration of a natural or man-made barrier separating man-made waters;
- Notice must be given to the DEP at least 30 days prior to commencement of the project; and
- The use of flocculants is allowed but must be coordinated first with the DEP.

³ While negotiating the drafting of the bill’s language, the stakeholders took care to avoid using the word “restore” as that word implies something greater in scope than custodial maintenance, which is exempt. Restoration should require a permit.

⁴ Specifically, s. 370.12(2)(d), F.S.

The bill provides several statutory cross reference corrections, and removes the general exemption from permitting for routine maintenance of irrigation and drainage ditches.

C. SECTION DIRECTORY:

Section 1 amends s. 374.975, F.S., adding to existing legislative intent language that operation and maintenance of certain public channels by an inland navigation district is in the public interest.

Section 2 amends s. 374.976, F.S., to provide that an inland navigation district may aid and cooperate with nonmember counties and navigation districts in planning and carrying out statutorily authorized activities.

Section 3 amends s. 403.813, F.S., to delete obsolete provisions requiring the Secretary of the DEP to adopt procedural rules for the issuance of short form permits, and adds projects to the list of projects that do not require certain state permits, including maintenance dredging of areas that have been previously dredged or excavated.

Section 4-6. Sections 253.03, 373.4145, and 380.061, F.S., are amended to correct cross-references.

Section 7 authorizes the DEP to develop and maintain a list of flocculants that have been permitted for use at a disposal site of dredged material.

Section 8 repeals s. 374.977, F.S., relating to manatee protection speed zones and responsibility for sign posting.

Section 9 provides and effective date as of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill deletes statutory requirements relating to the sale of dredge material proceeds that exceed the costs of maintenance dredging, which are to be deposited into the Internal Improvement Trust Fund. Therefore, any proceeds from the sale of dredge material would be retained by the permittee.

D. FISCAL COMMENTS:

State

The bill deletes the statutory requirements relating to the sale of dredge material proceeds that exceed the costs of maintenance dredging, which are to be deposited into the Internal Improvement Trust Fund. DEP reports the deletion of this provision of statute will not create any fiscal loss to the Department.

The FWC estimates that a total of 2 positions and \$520,000 is needed for the maintenance and posting of additional markers. This estimate is based upon the FWC assuming that it would be required to assume responsibility for these markers. Florida Statutes provides authority for the FWC to assume responsibility for these markers, however, this bill does not assign responsibility to the FWC.

Local

The bill expands the role of inland navigation districts to aid and cooperate with “nonmember counties” that contain any part of the intercoastal waterway within their boundaries. This expansion may result in financial assistance and additional expenditures, which are indeterminate at such time and project specific. Currently, “member counties” and local governments are required to provide matching funds if financial assistance is provided by inland navigation districts for a project within their jurisdiction.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other: None noted.

B. RULE-MAKING AUTHORITY: None provided in bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FWC provided comments that staff included within the analysis, and the following:

Section 20.331, Florida Statutes, assigns the duties and responsibilities of oversight and coordination of waterway markers on state waters to the FWC's Boating and Waterways Section. Oversight and coordination duties performed by the FWC include, but are not limited to, working with other agencies and local governments in the development of marker posting plans, permitting waterway markers, and coordinating comments and holding public meetings/hearings related to marker proposals. Posting and maintenance of waterway markers is not specifically addressed.

The responsibility of posting and maintenance of manatee protection speed zones by FWC would be best delineated by changing the statutory language of section 374.977, Florida Statutes, rather than totally repealing the section. It is recommended that the language be changed as follows:

Section 8.

374.977 – Inland navigation districts; manatee protection speed zones, responsibility for sign posting. --

~~Each inland navigation district shall be responsible for posting and maintaining regulatory markers, as approved by the Fish and Wildlife Conservation Commission, for manatee protection speed zones. Such responsibility shall not be limited to the intracoastal waterway, but shall include all waters within each member county for which regulatory markers must be posted. Sign locations shall be jointly selected by the Fish and Wildlife Conservation Commission and the appropriate inland navigation district, pending necessary federal, state, and local approvals. Should an inland navigation district lack the resources or otherwise be unable to carry out its sign posting and maintenance duties, this~~ The responsibility for posting and maintenance of manatee protection speed zone regulatory markers formerly under the management of the inland navigation districts shall then be assumed by the Fish and Wildlife Conservation Commission and \$100,000 will be transferred annually from each inland navigation district to the Marine Resources Conservation Trust Fund for this purpose.

FWC is committed to ensuring that all markers posting state manatee protection zones throughout the state comply with state and federal standards. All markers on or over the waters of the state or shores must conform to the United States Aids to Navigation System. Since damaged or missing markers do not conform to posting standards and create boating safety hazards, FWC must also maintain a system to provide quick response to reports of problem markers. Therefore, upon accepting responsibility for these additional markers, periodic on-site inspections will be needed to assess conformance with federal regulations and ensure safety for boats using our waterways. FWC will also need to ensure that each regulatory area is posted in a manner that meets legal standards established by the courts.

Current staffing levels within FWC remain insufficient to adequately and efficiently manage the administrative and programmatic responsibilities related to the Boating and Waterways Section. The demands placed upon this section within the FWC have increased significantly since its creation and will increase even more with either a full repeal of Section 374.977, Florida Statutes or the FWC proposal above. Additional duties directly affect the FWC's ability to operate proactively on waterway management, boating access, and boating safety issues. In addition to pursuing the recommended proposed revision to Section 374.977, Florida Statutes, it is recommended that two additional full-time FTE positions be funded through general revenue to offset the additional expense that would result from the FWC assuming responsibility for inland navigation district manatee protection zone markers.

A minimum of \$100,000 should be transferred annually from each inland navigation district to the Marine Resources Conservation Trust Fund for the posting and maintenance of the additional markers which will fall under the responsibility of FWC. Based on the addition of at least 4,800 markers, annual additional marker maintenance costs are estimated to be \$520,000. State funding would be necessary for both the

required full-time FTE positions and a total of approximately \$320,000 annually to offset the balance of the maintenance costs not provided by the inland navigation districts.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES