

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 758

INTRODUCER: Committee on Environmental Preservation and Conservation, Senator Bennett and others

SUBJECT: Inland navigation

DATE: March 12, 2008 REVISED: 3/18/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	Fav/CS
2.	Pugh	Cooper	CM	Favorable
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 758 makes a number of changes to existing statutes relating to inland navigation districts and to exemptions from dredging permits for certain projects. Briefly, the bill:

- Provides that it is in the public interest for inland navigation districts to operate and maintain the Intracoastal Waterway and any other public navigation channels authorized by the Board of Trustees of the Internal Improvement Trust Fund.
- Allows the inland navigation districts to aid and cooperate with nonmember counties that contain any part of the intracoastal waterway within their boundaries, inland navigation districts, and the seaports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina for certain waterway activities.
- Specifies that the Fish and Wildlife Conservation Commission (FWC) instead of the inland navigation districts will be responsible for posting and maintaining manatee protection speed zone signs.
- Clarifies that a permit from the Department of Environmental Protection (DEP) is not required for maintenance dredging by seaports and the inland navigation districts.
- Provides for mixing zones to address turbidity created by dredging projects.

- Authorizes DEP to develop and maintain a list of permitted flocculants.¹

CS/SB 758 substantially amends ss. 374.975, 374.976, 380.061, 374.977, and 403.813, of the Florida Statutes.

II. Present Situation:

Section 374.975(3), F.S., directs the Florida Inland Navigation District (FIND) and the West Coast Inland Navigation District (WCIND) to develop long-range plans for maintenance of the intracoastal waterway and for spoil disposal.

The FIND, a multi-county independent special district, was created in 1927 when the Legislature enacted ch. 12026, Laws of Florida (L.O.F.). All applicable laws and acts relating to the district were codified in statute in 1996 by the enactment of ch. 96-425, L.O.F.

The primary purpose of the district 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 district comprises Nassau, Dade, Broward, Palm Beach, Flagler, Martin, Brevard, Indian River, St. Lucie, St. Johns, Volusia and Duval counties, and has the power of eminent domain.

The WCIND was established by the Legislature in 1947 (ch. 23370, L.O.F.) to perform the duties as 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.² In 1989, the district 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 district also has initiated programs to encourage boating safety and environmental stewardship through the dissemination of boater and waterway guides and resource maps. Recent legislation now allows for the district to partner with counties adjacent to its four-county region.

The counties that make up the WCIND are Manatee, Sarasota, Charlotte, and Lee. District programs include maintaining and enhancing public navigation channels and inlets, boating access facilities, waterfront parks, and piers.

Section 258.40(2), F.S., provides that any publicly owned and maintained navigation channel or other public works project authorized by the U.S. Congress designed to improve or maintain commerce and navigation is deemed excluded from the aquatic preserves established in ch. 258, F.S. Pursuant to s. 258.42, F.S., the Board of Trustees of the Internal Improvement Trust Fund maintains the aquatic preserves. Subsection (3) of s. 258.42, F.S., provides that no further dredging or filling of submerged lands shall be approved by the trustees with certain

¹ Flocculants are chemicals that are used to promote flocculation, or the process by which fine particulates are caused to clump together and settle under gravity. They are used to improve the sedimentation or filterability of small particles.

² <http://www.wcind.net/History.htm>.

exceptions. One exception is for minimum dredging and deposit of spoil material that may be authorized for public navigation projects.

The authority to use sovereign submerged lands rests with the Board of Trustees of the Internal Improvement Trust Fund. The responsibility of environmental permitting of activities and water quality protection on sovereign and other lands is vested with DEP. While the water management districts are the lead entities for issuing environmental resource permits, DEP retains jurisdiction on large projects and those issues relating to sovereign submerged lands.³

Section 374.977, F.S., provides that each inland navigation district has the responsibility for posting and maintaining regulatory markers, as approved by the FWC, for manatee protection speed zones. This responsibility is not limited to the Intracoastal Waterway, but also includes waters within each member county for which regulatory markers must be posted. If an inland navigation district lacks the resources or is otherwise unable to carry out its sign posting and maintenance duties, this responsibility is then assumed by the FWC.

Section 20.331(7)(e), F.S., gives the Boating and Waterways Section of FWC's Division of Law Enforcement the responsibility to oversee and coordinate waterway markers on state waters. The Boating and Waterways Section is responsible for maintaining approximately 1,200 waterway markers within state waters, posting state-adopted manatee protection regulations, and ensuring that these markers adhere to state and federal requirements. In addition to the number of markers currently under FWC ownership, the FWC accepted maintenance responsibility for manatee protection regulatory markers on the east coast through an agreement with FIND. That agreement was a Memorandum of Understanding executed in FY 2005-2006 whereby the FWC receives \$100,000 annually from FIND for marker maintenance. There is currently no such agreement with the WCIND.

There are approximately 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 markers mark state manatee protection zones and are maintained by the FWC and WCIND.

There are approximately 2,980 markers on the Atlantic coast currently under the jurisdiction of FIND and approximately 1,833 markers on the Gulf of Mexico coast that are currently under the jurisdiction of WCIND. The FWC has estimated that the cost to maintain each waterway marker is \$108 based on historical figures obtained from the inland navigation districts.

The FWC has indicated that the Boating and Waterways Section has insufficient staff and funds to manage its administrative and programmatic responsibilities which include marker maintenance.

³ Section 253.77, F.S.; rule 18-21.002, F.A.C.

III. Effect of Proposed Changes:

Section 1 amends s. 374.975, F.S., to specify that it is in the public interest for inland navigation districts to operate and maintain the Intracoastal Waterway and any other public navigation channels authorized by the Board of Trustees of the Internal Improvement Trust Fund.

Section 2 amends s. 374.976, F.S., to allow inland navigation districts to aid and cooperate with nonmember counties that contain any part of the Intracoastal Waterway within their boundaries, navigation districts, the seaports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina for certain waterway activities. Currently, the inland navigation districts may aid and cooperate with the Federal Government, the state, member counties, and local governments within the district in planning and carrying out public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, and boating safety projects, directly related to the waterways.

The FIND is currently authorized to furnish assistance and support to seaports for the purpose of planning and carrying out dredge material management projects and other environmental mitigation projects. This section allows FIND to provide assistance for other projects concerning waterway-related access.

Section 3 amends s. 374.977, F.S., to provide that the FWC, instead of the inland navigation districts, is responsible for posting and maintaining regulatory markers for manatee protection speed zones as posted by the inland navigation district pursuant to a rule adopted by the FWC under s. 370.12(2), F.S., the Florida Manatee Sanctuary Act. The FWC may apply to inland navigation districts for funding under s. 374.976, F.S., to assist with implementing its responsibility for maintaining regulatory markers for manatee protection speed zones.

Section 4 amends s. 403.813, F.S., to provide that a DEP permit is not required for maintenance dredging by the seaports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina or by inland navigation districts. For these entities:

- A mixing zone for turbidity is granted within a 100-meter radius from the point of dredging while dredging is ongoing, except that the mixing zone does not extend into areas supporting submerged aquatic vegetation or hardbottom communities.
- The discharge of the return water from the site used for the disposal of dredged material shall be allowed only if such discharge does not result in a violation of water quality standards in the receiving waters. However, any such return-water discharge into manmade waters that is not in Monroe County is granted a mixing zone for turbidity within a 150-meter radius from the point of discharge during and immediately after the discharge while dredging is ongoing, except that the mixing zone does not extend outside the manmade waters.
- The state may not exact a charge for material that a public port or an inland navigation district is allowed to remove.

- The use of flocculants at the site used for disposal of the dredged material is allowed if the use, including supporting documentation, is coordinated in advance with DEP and the agency has determined that the use is not harmful to water resources.
- Nothing in the new section prohibits maintenance dredging of areas where the loss of original design function and construction configuration has been caused by a storm event, provided that the dredging is performed as soon as practical after the storm event. Maintenance dredging that commences within 2 years of the storm event is presumed to satisfy this provision. If more than 2 years are needed to commence the maintenance dredging after the storm event, a request for a specific time extension shall be submitted to the DEP, prior to the end of the 2-year period. This request must include a statement, including supporting documentation, demonstrating that contractors are not available or that additional time is needed to obtain authorization to maintenance dredge from the U.S. Army Corps of Engineers.

This section also repeals subsection (1) of s. 403.813, F.S., related to different permit application forms available at DEP's headquarters and at the agency's district offices. The forms language is obsolete, and deleting it does not repeal the requirements elsewhere in statute for the permits themselves.

Section 5 gives DEP the discretion to develop and maintain a list of flocculants that may be permitted under part IV of ch. 373, F.S. The list may include information concerning any associated testing to determine compliance with state permitting standards and information on application rates and methods. Publication of this list is not a rule under the provisions of ch. 120, F.S. An entity is not precluded from proposing, or DEP from approving, the use of a flocculant that is not on the list, subject to the entity providing the necessary documentation required by DEP to ensure that the chemical's use will not harm the water resources of the state.

Section 6 specifies an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:Maintenance dredging issues

Currently, there are instances where the inland navigation districts and seaports have been fined by DEP for degradation and turbidity issues involving maintenance dredging of the intracoastal water near aquatic preserves and Outstanding Florida Waters. CS/SB 758 would provide for a mixing zone to address turbidity issues, which may result in fewer fines for these public entities.

Signage in manatee protection speed zones

CS/SB 758 shifts the responsibility for posting and maintaining manatee protection speed zone signs from the inland navigation districts to the FWC. This could significantly increase FWC's duties with regard to signage maintenance; however, the FWC has a general obligation pursuant to s. 20.331, F.S., to oversee and coordinate waterway markers on state waters. The FWC already maintains a statewide Marker On-Call Program to respond to damaged markers that may pose a navigation hazard. The public benefits from properly maintained markers for navigational and informational purposes. During FY 2006-2007, the FWC made emergency repairs to 75 damaged markers at a total cost of \$159,196. Of this amount, \$97,000 was attributable to manatee protection zone markers.

The FWC has indicated that two additional full-time equivalency (FTE) positions may be needed to offset the additional expense that would result from the FWC assuming responsibility for inland navigation district manatee protection zone markers. The FWC has previously submitted legislative budget requests for these positions, to be funded from the Federal Grants Trust Fund because of the overall increased responsibilities for Boating and Waterways Section.

The FWC, under an MOU with FIND, currently receives \$100,000 for the maintenance of manatee speed zone markers in that district. The commission has indicated that this amount does not fully cover the maintenance costs. The revenues received by the FWC from the Marine Fuel Tax are used to offset the recurring expenses of sign maintenance. CS/SB 758 would allow the FWC to apply for funding assistance from the inland navigation districts for the maintenance of manatee protection speed zone markers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation Committee on March 6, 2008:

The committee substitute does not delete the provisions in s. 377.977, F.S., but instead provides that the responsibility is shifted from the inland navigation districts to the FWC.

The provisions for mixing zones for turbidity are limited to maintenance dredging by specified seaports and the inland navigation districts. The discharge of the return water from the site used for the disposal of dredged material is allowed if the discharge does not result in a violation of water quality standards in the receiving waters. For return-water discharge into manmade waters not in Monroe County, there is granted a mixing zone for turbidity within a 150-meter radius from the point of discharge.

B. Amendments:

None.