

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 423 Seminole County Port Authority, Seminole County
SPONSOR(S): Military & Local Affairs Policy Committee and Dorworth
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	14 Y, 0 N, As CS	Noriega	Hoagland
2)	Economic Development & Community Affairs Policy Council		Noriega	Tinker
3)				
4)				
5)				

SUMMARY ANALYSIS

The Seminole County Port Authority (Authority) is a dependent special district of Seminole County created in 1965 by chapter 65-2270, Laws of Florida, to establish, construct, and manage the Port of Sanford. The Port of Sanford is comprised of approximately 120 acres located on the St. Johns River in Seminole County.

This bill repeals chs. 65-2270, 67-2073, 67-2074, 67-2078, 70-946, 71-923, 72-695, 72-696, 75-504, 76-487, and 88-447, L.O.F., and constitutes the codification of all special acts relating to the Authority's charter into a single, logically organized act, as required by section 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill deletes outdated language and organizes previously authorized powers of the Authority, and makes minor, stylistic changes to some of the language of the charter.

In addition to codifying existing law, this bill also amends the Authority's charter in the following ways:

- authorizes the Board of Directors to designate authority to sign checks;
- eliminates outdated language pertaining to the provision of immediate funds; and
- eliminates the existing procurement methods for construction and supplies and directs the Board of Directors to establish a purchasing policy to address these procurement methods in accordance with Florida Statutes.

The attached Economic Impact Statement indicates that there is no economic impact as a result of this bill.

This bill provides an effective date of upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

The Seminole County Port Authority (Authority) is a dependent special district¹ of Seminole County created in 1965 by ch. 65-2270, Laws of Florida, to establish, construct, and manage the Port of Sanford, a barge port and industrial complex on the St. John's River. The Port of Sanford is comprised of approximately 120 acres of land and associated infrastructure (roads, signs, utilities, etc.), a 250 slip full-service marina, nearly 500,000 square feet of industrial and manufacturing space, a small business incubator, and other revenue-generating facilities.

According to Mr. Andrew Van Gaale, Administrator for the Authority, "the Port of Sanford was initially created to handle barge traffic via the 'Cross Florida Barge Canal,' which was planned to link the Port of Sanford with other ports throughout Florida. However, in 1970 the project was halted by Presidential decree and was never completed. Since then, the Port of Sanford has become a very successful public enterprise."

The Authority is governed by a nine-member Board of Directors appointed by the Seminole County Commission. The charter also directs certain operational duties such as membership, public meetings, and agency jurisdiction.

The Authority's goals and objectives are determined by the Board of Directors, and day-to-day activities are managed by an Administrator. Board of Directors' meetings are held monthly and are subject to Florida's Government-in-the-Sunshine Law. The Board of Directors submits the budget to the Seminole County Board of County Commissioners for approval.

The Board of County Commissioners may levy an annual tax on all taxable real and personal property, up to one-half mill, to enable the Authority to carry out its functions under the charter. Currently, no taxes are levied for these purposes.

¹ A dependent special district has at least one of the following characteristics: "(a) the membership of its governing body is identical to that of the governing body of a single county or a single municipality; (b) all members of its governing body are appointed by the governing body of a single county or a single municipality; (c) during their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality; (d) the district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality." § 189.403(2), F.S.

Also, according to Mr. Van Gaale, “public meetings are advertised and held monthly where all Port of Sanford business is handled. The Authority’s 2009-2010 total budget is \$2,754,644. Revenue is primarily generated from building and land leases. The Port is completely debt free and operates as an enterprise fund. Surplus funds from the operation are transferred to the Seminole County Board of County Commissioners for use in their General Fund. To date, the Authority has transferred approximately \$4,440,000 in surplus funds to Seminole County.”

Codification of Special District Charters

Codification is the process of compiling, updating and systematically arranging the special acts that comprise a special district’s charter. Original provisions may be amended by subsequent special acts after these charters are created by the Legislature. Because special act amendments are not automatically incorporated into one special act, it is necessary to locate all special acts amending an original charter in order to determine the current status of a special district’s charter. This can be a difficult and time-consuming process for persons interested in ascertaining the law governing a district. Codification of special district charters is important because it allows readers to refer to one special act to identify the charter of a district.

Codification of special district charters initially was authorized by the 1997 Legislature in ss. 189.429² and 191.015,³ F.S., both of which were amended in 1998. The laws currently provide for each district that has more than one special act to submit a draft codified charter, at its own expense, to the Legislature by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district, and be filed with the Department of Community Affairs within 30 days after adoption pursuant to s. 189.418(2), F.S. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend or alter any covenants, contracts or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district’s ability to levy and collect taxes, assessments, fees or charges for the purpose of redeeming or servicing the district’s bonded indebtedness.

Although the deadline for submission of codified special district charters was prior to the 2005 legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, it is anticipated that proposed codification bills will continue to be filed.

Status Statement Language

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district must contain and, as practical, must be amended to contain a reference to the status of the special district as dependent or independent. When necessary, the status statement must be amended to conform to the Department of Community Affairs’ determination or declaratory statement regarding the status of the district.

Authority to Sign Checks

The Authority’s charter provides that all warrants drawn for the disbursement of funds must be signed by the chairman and the treasurer.

Provision of Immediate Funds

Chapter 65-2270, L.O.F., authorized the Authority to borrow immediate funds for its administration and operations until the initial tax levy provided for is available. The total borrowed amount may not exceed \$60,000 for a period(s) of up to one year. Also, the Authority can issue its promissory notes, upon such terms, and at a rate of interest not exceeding 6 percent per year.

² Chapter 189, F.S., is known as the “Uniform Special District Accountability Act.”

³ Chapter 191, F.S., is known as the “Independent Special Fire Control District Act.”

Procurement Methods

Under its charter, the Authority is currently required to submit a Request For Proposals (RFP) for all construction, reconstruction, repairs, or work of any nature in excess of \$2,000, except for construction, reconstruction, repairs or work done by employees of the authority, or by labor supplied under agreement with federal or state governments. Also, the Authority is currently required to submit an RFP for all supplies, equipment, machinery, and materials in excess of \$1,000.

Florida Statutes contain several provisions regarding procurement, including provisions in chs. 255 and 287, F.S.

Section 255.20, F.S.,⁴ provides that “a county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$75,000.”

Chapter 287, F.S., provides guidelines for the procurement of personal property and services at the state level. In particular, the “Consultants’ Competitive Negotiation Act” (s. 287.055, F.S.), provides guidelines for competitive selection and negotiation based on five purchasing categories with specific threshold amounts as defined by s. 287.017, F.S.⁵

Effect of the Proposed Changes

This bill brings the Authority into compliance with the requirements of s. 189.429, F.S. In doing so, this bill repeals chs. 65-2270, 67-2073, 67-2074, 67-2078, 70-946, 71-923, 72-695, 72-696, 75-504, 76-487, and 88-447, L.O.F., and constitutes the codification of all special acts relating to the Authority’s charter into a single, logically organized act. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority. The statutory deadline for compliance with s. 189.429, F.S., was December 1, 2004.

The bill deletes outdated language and organizes previously authorized powers of the Authority, and makes minor, stylistic changes to some of the language of the charter.

In addition to codifying existing law, this bill also amends the Authority’s charter in the following ways:

- authorizes the Board of Directors to designate authority to sign checks;
- eliminates outdated language pertaining to the provision of immediate funds; and
- eliminates the existing procurement methods for construction and supplies and directs the Board of Directors to establish a purchasing policy to address these procurement methods in accordance with Florida Statutes.

Authority to Sign Checks

The bill adds language to provide that all warrants drawn for the disbursement of funds can also be signed by “such persons as set forth in the purchasing policy adopted by the authority in accordance with general law.”

⁴ Section 255.20, F.S., is titled “local bids and contracts for public construction works; specification of state-produced lumber.”

⁵ Section 287.017, F.S., provides for the following purchasing categories: Category One (\$15,000), Category Two (\$25,000), Category Three (\$50,000), Category Four (\$150,000), and Category Five (\$250,000).

Provision of Immediate Funds

This bill removes the language related to the provision of immediate funds. This language was necessary at the time of inception in 1965, but is now obsolete.

Procurement Methods/Purchasing Policy

The bill directs the Board of Directors to establish a purchasing policy to address procurement methods for construction and supplies in accordance with s. 255.20 and ch. 287, F.S., and eliminates specific chapter law requirements relating to expenditure amounts that would require an RFP. The bill also eliminates definitions that no longer apply to the "Award of contracts" section of the Authority's charter.

According to Mr. Van Gaale, "the Port operation requires various services and goods from electricians, plumbers, landscapers, heavy equipment operators, and excavation needs on any given day. These goods and services frequently exceed the Authority's \$2,000 limit, thus hindering the efficient operation of the Port by having to prepare an RFP package, advertise for two weeks, hold a bid opening, and award a contract that has to be approved by the Board of Directors during one of their monthly meetings. For example, if an air conditioning unit in one of the Authority's office leaseholds goes out in the middle of summer and the replacement cost exceeds \$2,000, the Authority would either have to begin the RFP process (which would take a month for approval and could disrupt business operations) or it would have to declare an emergency expenditure."

B. SECTION DIRECTORY:

Section 1: Provides guidelines for the reenactment of existing law.

Section 2: Amends, codifies, reenacts, and repeals chs. 65-2270, 67-2073, 67-2074, 67-2078, 70-946, 71-923, 72-695, 72-696, 75-504, 76-487, and 88-447, L.O.F.

Section 3: Recreates the Seminole County Port Authority, and reenacts the charter to include:

Section 1: Seminole County Port Authority.

- Governing board composition, terms, and quorum.
- Warrant signing authority and bonding of officers and employees.
- Meeting requirements.
- Prohibition on compensation; provision for reimbursements.
- Staffing.
- Fiscal year.

Section 2: Definitions.

Section 3: Powers.

- Projects.
- Waterways.
- Property acquisition.
- Borrowing money.
- Joint agreements.
- Contracts, leases, and agreements.
- Authority to fix, regulate, and collect rates and charges for services and facilities; project use guidelines; ability to impose sanctions.
- Authority to fix miscellaneous rates.
- Authority to solicit shipping and other business; promote commerce and increase tonnage through the Port of Sanford.
- Authority to receive and accept federal and state funds.
- Applications, agreements; foreign commerce.
- Authority to enter into contracts with the state, the United States government, or their agencies.
- Documents; authority to prepare and adopt a comprehensive plan.
- Franchising.
- Authority to enter into contracts with utility companies.

- Revenues; budgeting.
- Bonding authority.
- Authority for other necessary or proper actions.
- Authority for necessary or proper actions to be or to serve as a local governmental body within the meanings of the State Constitution and Florida Statutes.
- Authority to publicize, advertise, and promote the activities and projects authorized by the charter; authority to cooperate with other agencies, both public and private, to accomplish the purposes of the charter; ability to authorize reasonable expenditures for auditing purposes.
- Corporate seal.
- Legal rights.
- Eminent domain.
- Acceptance of grants, gifts, and donations.
- Entering into contracts, leases, or other transactions with any federal or state agency, the state, Seminole County, any incorporated area, or with any other public body of the state.

Section 4: Financial reports; audits; tax levy.

Section 5: Rules and regulations.

Section 6: Bonds eligible for legal investments.

Section 7: Rights of employees.

Section 8: Cooperation with other units, boards, agencies, and individuals.

Section 9: Award of contracts.

Section 10: Execution of documents; examination of claims.

Section 11: Records.

Section 12: Audits.

Section 13: Chapter 315, F.S., relating to port facilities financing, also applicable.

Section 14: Submerged lands.

Section 15: Declaration of purpose.

Section 16: Construction.

Section 17: Surplus funds.

Section 4: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 21, 2009.

WHERE? In the *Sanford Herald*, a daily newspaper published in Seminole County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

It appears that the provisions of this bill will not have an economic impact because this bill re-codifies the existing powers and operations of the Authority. The attached Economic Impact Statement indicates that there is no economic impact as a result of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill authorizes issuing bonds upon the approval of freeholders who are qualified electors owning land in the district, which is consistent with Article VII, s. 12 of the Florida Constitution. However, limiting the electorate in bond and millage elections to persons who are the owners of freeholds not wholly exempt from taxation has been found unconstitutional under the Equal Protection Clause of the United States Constitution when applied to residents of units of local government exercising general governmental power.⁶ Therefore, it may be advisable to amend the bill by replacing the word “freeholders” with “electors” in section 3 (“Powers”) of the bill.

In addition, sections 11 (“Records”) and 12 (“Audits”) of the bill include outdated language that refers to the “state auditor.” It may be advisable to amend these sections to include references to s. 218.39, F.S., which addresses guidelines for the filing of annual financial audit reports.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 3, 2010, the Military & Local Affairs Policy Committee adopted the following four amendments and reported the bill favorably as a Committee Substitute:

- Amendment #1 clarified that the Seminole County Port Authority is a dependent district;
- Amendment #2 removed several references to ch. 65-2270, L.O.F., which is being repealed by this bill, and combined section 5 (“Additional powers”) with section 3 (“Powers”);
- Amendment #3 removed section 5 (“Additional powers”) from the bill. This language became part of section 3 (“Powers”) once Amendment #2 was adopted; and
- Amendment #4 provided specific statutory guidelines for the authority’s procurement methods, including the amounts that would require the authority to do requests for proposals (RFPs).

⁶ See *Fair v. Fair*, 317 F.Supp. 859, 860 (D.C. Fla. 1970); see also *Tornillo v. Dade County School Board*, 458 F.2d 194 (U.S.C.A. 5th Cir. 1972) (finding unconstitutional Article VII, s. 9, Florida Constitution, limiting electorate in bond and millage elections to owners of freeholds not wholly exempt from taxation).

Also, this amendment removed definitions that no longer apply to the “Award of contracts” section of the Authority’s charter.

This analysis reflects the four amendments adopted by the Military & Local Affairs Policy Committee.