

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 955 Marion County
SPONSOR(S): Military & Local Affairs Policy Committee and Chestnut
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	13 Y, 0 N, As CS	Nelson	Hoagland
2)	Finance & Tax Council			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 955 repeals two 1985 chapter laws relating to special assessments in Marion County. These special acts authorized the board of county commissioners to levy special assessments against real property located in an unrecorded subdivision within the unincorporated area of the county for the purpose of making road and drainage improvements.

According to the Economic Impact Statement, the bill will have no fiscal effect.

The bill has an effective date of upon becoming 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

Marion County

Chapter 85-466, L.O.F., relates to special assessments in Marion County. The Legislature made a finding in this special act that there was an immediate threat to the health, safety and welfare of the citizens of Marion County who resided in unrecorded subdivisions because essential services such as fire protection, ambulance, school bus, and postal services were not available because of impassable roads and related drainage problems.

Specifically, the act provides that the board of county commissioners has the right, power and authority to levy special assessments against all real property located in an unrecorded subdivision within the unincorporated area of Marion County for the purpose of making road and drainage improvements.

Originally, this authority only could be exercised upon receipt of a petition signed by at least 51 percent of the land owners in an unrecorded subdivision requesting road and drainage improvements. This requirement was subsequently removed and replaced pursuant to ch. 88-459, L.O.F., by language which provided that such authority could be exercised in accordance with procedures established by county ordinance, which provided for published notice and hearing before any improvements were commenced.

Chapter 85-466, L.O.F., also authorized the board to enter roads and easements in unrecorded subdivisions in order to make the road and drainage improvements authorized by the act. The method of making road and drainage improvements, and of levying and collecting the special assessments, was to be authorized by county ordinance. Such ordinance was required to provide that the special assessments could be paid in equal annual installments of up to 10 years as determined by the board.

According to the Office of the Marion County Attorney,¹ the county undertook road assessment projects in 1985. Marion County has significant rural property and had numerous unpaved roads, and both the

¹ March 15, 2010, memorandum from Robert J. Fowler, Assistant County Attorney, to the Marion County Delegation, and March 19, 2010, telephone conversation.

county and the residents wanted to remedy this situation. The special acts at issue were sought because the county believed that it needed specific legal authorization to levy special assessments in unrecorded subdivisions.² The county now maintains that it does not need the authority provided by the special acts, and contends that the requirements of the special acts are unnecessarily restrictive.

Special Assessments

The legislative and governing body of a county has the authority pursuant to s. 125.01(1)(r), F.S., to levy and collect special assessments in such manner and subject to such limitations as may be provided by general law. For a special assessment to be valid and enforceable, it must be made pursuant to legislative authority and the method prescribed by the legislature must be substantially followed. *Madison County v. Foxx*, 636 So.2d 39 (1994). To be valid as a special assessment, the assessed property must derive a direct, special benefit from the service provided and the assessment must be fairly and reasonably apportioned among properties. *Donnelly v. Marion County*, 851 So. 2d 256 (2003).

Effect of Proposed Changes

HB 955 repeals chs.85-466 and 88-459, L.O.F., relating to the authority of the Marion County Board of County Commissioners to levy special assessments against real property located in an unrecorded subdivision within the unincorporated area of the county for the purpose of making road and drainage improvements.

The act has an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Repeals chs. 85-466 and 88-459, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 8, 2010.

WHERE? The *Star-Banner*, a daily newspaper published in Marion County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

² It is noted that in October of 1985, the Marion County Attorney was issued an opinion from the Florida Attorney General which provided that "a county is not authorized to levy special assessments on all taxable real property located in an unrecorded subdivision in which access to all or portions of the lots or parcels of land is by roads or easements not owned by or dedicated to the public or to Marion County for the purpose of making road and drainage improvements to such private roads. However, if the county determines that a drainage project is necessary or expedient, for sanitary or agricultural purposes or conducive to public health, convenience or welfare, or public utility, or for the benefit of lands that are low, wet, submerged or liable to become submerged, the county may utilize the provisions of Ch. 157, F.S....."

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, this bill will have no effect on individuals, business or governments. The adoption of this local bill will place Marion County in the same position as all other local governments with regard to their ability to impose non-ad valorem assessments for road improvements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Military & Local Affairs Policy Committee approved a Proposed Committee Substitute for HB 955. The PCS departs from HB 955 in the following area:

- The PCS removes language which ratified, validated and confirmed special assessments levied by the board of county commissioners that were invalidated or subject to invalidation for failure to follow the requirements of chs. 85-466 and 88-459, L.O.F., prior to their repeal by HB 955.

This analysis is drafted to the Committee Substitute.