

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 665 Gasparilla Island Bridge Authority, Charlotte and Lee Counties

SPONSOR(S): Roberson

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Duncan	Hoagland
2) Economic Affairs Committee	15 Y, 0 N	Duncan	Tinker

SUMMARY ANALYSIS

The Gasparilla Island Bridge Authority (Authority) was created in 1996 and is an independent special district situated in Charlotte and Lee Counties. The Authority was created for the purpose of acquiring, constructing, reconstructing, financing, owning, managing, promoting, improving, maintaining, operating, regulating, and having complete authority, with respect to the Gasparilla Island bridge and causeway.

The bill provides that the Authority's board of supervisors must be elected by a *plurality*, rather than a majority, of the electors of the authority. The fiscal year of the Authority is changed from July 1 to June 30, to October 1 to September 30, so that its fiscal year is the same as county and municipal governments.

The bill provides that notwithstanding the provision requiring the Authority to file the *detailed financial disclosure forms* required pursuant to s. 348.0003(4)(c), F.S., the members of the Board of Supervisors are permitted to file the *limited financial disclosure forms* required prior to the enactment of ch. 2009-85, L.O.F.

The bill also provides that the definition of "Lee County Commission" means the Lee County Board of Commissioners. The current charter defines the term as the Charlotte County Board of Commissioners.

This bill has an effective date of upon becoming law.

According to the Economic Impact Statement, this bill has no fiscal impact.

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 of local bills. This bill appears to provide an exemption from s. 348.003(4)(c), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Gasparilla Island Bridge Authority

The Gasparilla Island Bridge Authority (Authority) was created in 1996¹ and is an independent special district situated in Charlotte and Lee Counties. The Authority was created for the purpose of acquiring, constructing, reconstructing, financing, owning, managing, promoting, improving, maintaining, operating, regulating, and having complete authority, with respect to the Gasparilla Island bridge and causeway.

In its charter, the authority is granted the power to set bridge toll rates and collect bridge tolls. The Authority's revenue is generated from tolls collected based on traffic flow to and from Gasparilla Island. The authority operates the Boca Grande Swing Bridge and causeway, which is the link to the three barrier islands: North, Cole, and Gasparilla Island.²

The Authority is governed by nine members acting as the Board of Supervisors. Five of these members are voting members with full power to conduct the business of the Authority by majority vote of the voting members. The other four members serve as ex officio, nonvoting members who participate in board discussions as representatives of the taxpayers who are not qualified as electors of the Authority. Each member serves four-year terms.³

The voting members of the Board of Supervisors must be elected by a majority of the electors of the authority voting in the general election in November of each even numbered year. Each elector may exercise one vote. Those members duly elected to serve will take office on November 15 following the election. The Authority may conduct its elections independently or through the Lee County or Charlotte County Supervisor of Elections. Should the Authority elect to conduct its own elections, its election procedures must be consistent with the Florida Election Code.⁴

The Authority is directed to appoint an executive director who serves at the pleasure of the authority. In addition to the appointment of an executive director, the Authority may contract for all or part of such services with any third party, including the clerk. Each member of the Board of Supervisors must serve without compensation; however, supervisors must receive travel and per diem expenses⁵ when traveling on official business for the Authority.

The Authority is not considered to be an agency within the meaning of ch. 120, F. S. The Authority is considered to be an agency within the meaning of ch. 119, F. S., and all records of the Authority must be open to the public. The Authority is also considered an agency or authority of the county for purposes of the "Government in the Sunshine"⁶ law. Voting members of the Board of Supervisors are considered to be local officers for the purposes of section the disclosure⁷ of their financial interests.

The executive director is required to prepare a proposed budget for the ensuing fiscal year for submission to the board for approval as proposed or modify the budget in part or whole. The Authority's fiscal year begins July 1 of each calendar year and ends June 30 of each calendar year.

¹ Chapter 96-507, L.O.F., subsequently codified under ch. 2000-425, L.O.F.

² Gasparilla Island Bridge Authority, History, available at <http://www.giba.us/about.php> (last visited January 12, 2012).

³ Section 5, Governing Body, ch. 2000-425, L.O.F.

⁴ *Id.* The Florida Election Code is comprised of chapters 97-106, F.S.

⁵ Section 112.061, F.S.

⁶ Section 286.011, F.S.

⁷ Section 112.3145(3), F.S.

Financial Disclosure Requirements

Prior to 2009, state law required the members of the Authority's Board of Supervisors to meet the financial disclosure requirements under ch. 112, F.S., related to the financial interests and clients represented before agencies,⁸ which is considered Limited Financial Disclosure⁹ or FORM 1. In 2009,¹⁰ the Legislature amended the Florida Expressway Authority Act to require members of each expressway authority, transportation authority, bridge authority, or toll authority created pursuant to general law or *any other legislative enactment* to comply with the applicable financial disclosure requirements under s. 8, Article II of the State Constitution.¹¹ The provisions under s. 8, Article II of the State Constitution require full and public disclosure of financial interests or FORM 6.¹²

The Florida Commission on Ethics (Commission) is the independent commission required in the state Constitution to conduct investigations and make public reports on all complaints concerning breach of trust by public officers or employees. Financial disclosure forms are required to be filed with the Commission and the Commission is directed to prescribe the financial disclosure forms.

In 2010, the Authority posed the following question to the Commission:

Are all members of the Gasparilla Island Bridge Authority required to comply with the financial disclosure requirements of Section 348.0003(4)(c), Florida Statutes, which was amended by Section 20 of Chapter 2009-85, Laws of Florida?

In part, the Commission responded as follows:¹³

Notwithstanding, you assert that the Gasparilla Island Bridge Authority is not subject to this 2009 enactment because it is an "independent special district" that was not created under Chapters 343, 348, or 349, Florida Statutes. We must disagree. As its name suggests, it is a "bridge authority," and there is no doubt that it was created pursuant to a "legislative enactment," viz., Chapters 96-507, 97-319, and 2000-425, Laws of Florida. The rules of statutory construction provide that the last adopted expression of the Legislature will generally prevail in the case of two statutory provisions that cannot be reconciled.

Here, with the enactment of Chapter 2009-85, Laws of Florida, the Legislature clearly intended for public officers who serve on specific types of boards dealing with transportation issues (and presumably significant sums of money) to file the more detailed financial disclosure rather than the limited disclosure required by Section 112.3145, Florida Statutes. We can find no basis to conclude that the Legislature intended to exclude the Gasparilla Island Bridge Authority from this requirement. Therefore, as the last expression of the Legislature's intent, we must give due deference to Section 20 of Chapter 2009-85, Laws of Florida.

We also believe that the Legislature intended for all members of the Authority's Board of Directors to file disclosure. In CEO 03-2, we opined that the "at-large" members of the board of directors of Enterprise Florida, Inc., were required to file full and public disclosure of financial interests. As in that situation, there is no distinction in Section 348.0003(4)(c) between voting members and non-voting or ex officio members.

⁸ *Id.*

⁹ FORM 1 requirements includes the reporting person's sources and types of financial interests, such as the names of employers and addresses of real property holders. No dollar values are required to be listed. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies. Florida Commission on Ethics, Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, at 8-10 (2012), available at http://www.ethics.state.fl.us/publications/2012%20Guide%20Booklet_Internet.pdf.

¹⁰ Section 20, ch. 2009-85, L.O.F.

¹¹ Section 348.003(4)(c), F.S.

¹² FORM 6 is a detailed disclosure of assets, liabilities, and sources of income over \$1,000 and their values, as well as net worth. Officials may opt to file their most recent income tax return in lieu of listing sources of income but still must disclose their assets, liabilities, and net worth. In addition, the form requires disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

¹³ Florida Commission on Ethics, Financial Disclosure, *Applicability of Law Requiring Bridge Authorities to File Full and Public Disclosure*, CEO 10-18—September 8, 2010, <http://www.ethics.state.fl.us/opinions/10/ceo%2010-018.htm> (last visited January 12, 2012).

Accordingly, we find that all members of the Board of Supervisors for the Gasparilla Island Bridge Authority are required to comply with the financial disclosure requirements of Section 348.0003(4)(c), Florida Statutes (2009), and file the 2009 CE Form 6-Full and Public Disclosure of Financial Interests. As we have no jurisdiction over the election laws, we have no authority to determine which disclosure form must be filed by candidates when qualifying for election as a member of the Board of Supervisors.

Effect of Proposed Changes

The bill provides that the Authority's board of supervisors must be elected by a *plurality*, rather than a majority, of the electors of the Authority. The fiscal year of the Authority is changed from July 1 to June 30, to October 1 to September 30, so that its fiscal year is the same as county and municipal governments.

The bill provides that notwithstanding the provision requiring the Authority to file the *detailed financial disclosure forms* required pursuant to s. 348.0003(4)(c), F.S., the members of the Board of Supervisors are permitted to file the *limited financial disclosure forms* required prior to the enactment of ch. 2009-85, L.O.F.

The bill also provides that the definition of "Lee County Commission" means the Lee County Board of Commissioners. The current charter defines the term as the Charlotte County Board of Commissioners.

B. SECTION DIRECTORY:

Section 1 Amends ss. 4, 5, and 12 of s. 2 of ch. 2000-425, L.O.F., relating to the Gasparilla Island Bridge Authority, correcting a scrivener's error, revising the requirements for electing voting members of the board of supervisors, revising the financial disclosure requirements for members of the board of supervisors, and revising the authority's fiscal year.

Section 2 Provides that the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? September 23, 2011

WHERE? The notices were published in the Charlotte Sun, Englewood Sun, The Arcadian, North Port Sun, and the Venice Gondolier Sun located in Charlotte, Sarasota, and DeSoto Counties, Florida.

News-Press, a daily newspaper, published at Fort Myers, FL

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, no fiscal impacts are anticipated for either fiscal year 2011-12 or 2012-2013.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

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. The provisions of House Rule 5.5(b) appear to apply to this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.