

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 Committee on Environment and Natural Resources

BILL: SB 1752

INTRODUCER: Senator Rodriguez

SUBJECT: Independent Special District Utilities

DATE: March 12, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------------------|
| 1. | Schreiber | Rogers | EN | Pre-meeting |
| 2. | | | CA | |
| 3. | | | RC | |

I. Summary:

SB 1752 directs the Department of Environmental Protection (DEP) to amend Rule 18-21.005 of the Florida Administrative Code, to provide an exception from authorization requirements under Chapter 18-21 of the Florida Administrative Code, for construction or maintenance of a water or sewer system in accordance with s. 153.04, F.S., by an independent special district utility, provided the required location map, plans, and drawings for such water or sewer system are submitted to the Board of Trustees of the Internal Improvement Trust Fund.

II. Present Situation:

Construction and Maintenance of Water and Sewer Systems

Chapter 153, F.S., authorizes a county government to purchase, construct, operate, and/or maintain water supply systems¹ or sewage disposal systems,² and improvements thereto, within such county or adjoining counties.³ Whenever a county commission chooses to exercise this authority it must make or cause to be made surveys, investigations, studies, borings, maps, plans,

¹ Section 153.02(3), F.S. "Water system" is defined to include "any plant, wells, pipes, tanks, reservoirs, system, facility, or property used or useful or having the present capacity for future use in connection with the obtaining and supplying water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, for human consumption, fire protection, irrigation, consumption by business, or consumption by industry, and, without limiting the generality of the foregoing definition shall embrace all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof."

² Section 153.02(5), F.S. "Sewage disposal system" is defined to include "any plant, system, facility, or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification, or disposal of sewage, or reuse of wastewater, and, without limiting the generality of the foregoing definition shall embrace treatment plants, pumping stations, intercepting sewers, pressure lines, mains, and all necessary appurtenances and equipment and shall include all property, rights, easements, and franchises relating to any such system and deemed necessary or convenient for the operation thereof."

³ Section 153.03, F.S. This authorization generally requires the consent of any municipality in which the facilities are located.

drawings, and estimates of costs and revenues that the county deems necessary in order to provide a comprehensive study and report to the county commission.⁴ Section 153.04, F.S., contains requirements for the report that must be made available to the county commission, including the type and estimated cost of each water supply or sewage disposal system, the location, and any necessary improvements. If the study and report for a sewage disposal plant or system reveals or it is a fact that any property served by the contemplated county-owned facilities is served by privately-owned facilities then the county may not serve such property without the written consent of the owner(s) of the privately owned facilities.⁵

Sovereignty Submerged Lands

Sovereignty submerged lands are lands that are landward of the ordinary or mean high water line,⁶ or beneath navigable fresh water or tidally-influenced waters, which are owned by the state.⁷ Under the State Constitution, the title to all sovereign submerged lands is held by the state in trust for the people.⁸ The Board of Trustees of the Internal Improvement Trust Fund,⁹ comprised of the Governor and Cabinet, generally holds title to all sovereign submerged lands in the state.¹⁰ Florida law authorizes the Board of Trustees to adopt rules to administer state-owned lands, including sovereign submerged lands.¹¹ The Department of Environmental Protection (DEP) and the Department of Agriculture and Consumer Services (DACS) generally act as staff to the Board of Trustees in the review of proposed uses of sovereign submerged lands.¹² Under Chapter 18-21 of the Florida Administrative Code, DEP is responsible for environmental permitting of activities and water quality protection on sovereign submerged lands, while DACS is responsible for managing aquacultural activities on sovereign submerged lands.¹³

Rule 18-21.005 of the Florida Administrative Code lists the various forms of authorization necessary for specified activities on sovereign submerged lands. The rule lists exceptions for activities that do not require authorization under Chapter 18-21 of the Florida Administrative Code.¹⁴ One such exception is provided for: “[c]onstruction or maintenance of a water or sewer

⁴ Section 153.04, F.S.

⁵ Section 153.04(2)(b), F.S.

⁶ See ss. 177.27(15), (16) and 177.28, F.S. The mean high water line is the point on the shore marking the average height of the high waters over a 19-year period, and it is the boundary between the state-owned foreshore (land alternately covered and uncovered by the tide) and the dry area above the mean high water line that is subject to private ownership.

⁷ Fla. Admin. Code R. 18-21.003(65). “Sovereignty submerged lands” are defined as “those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated. For the purposes of this chapter sovereignty submerged lands shall include all submerged lands title to which is held by the Board.”

⁸ FLA. CON., art. X, s. 11.

⁹ The Governor and Cabinet, *Structure of the Florida Cabinet*, <http://www.myflorida.com/myflorida/cabinet/structurehistory.html> (last visited Mar. 9, 2021).

¹⁰ See s. 253.03, F.S.

¹¹ Sections 253.03(7) and 253.73, F.S.

¹² DEP, *Sovereign Submerged Lands (SSL) - Proprietary Authority versus Regulatory Authority in Chapter 18-21, F.A.C.*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/sovereign-submerged-lands-ssl> (last visited Mar. 10, 2021); DACS, *Aquaculture Submerged Land Leasing*, <https://www.fdacs.gov/Agriculture-Industry/Aquaculture/Aquaculture-Submerged-Land-Leasing> (last visited Mar. 10, 2021).

¹³ Fla. Admin. Code R. 18-21.002.

¹⁴ Fla. Admin. Code R. 18-21.005(a).

system by a county in accordance with section 153.04, F.S., provided the required location map, plans and drawings are submitted to the Board.”¹⁵

Independent Special Districts

Chapter 189, F.S., provides general provisions for the definition, creation, and operation of special districts. A special district is a unit of local government created for a special purpose which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or rule of the Governor and Cabinet.¹⁶ A “dependent special district” meets at least one of the following criteria:

- The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- All members of its governing body are appointed by the governing body of a single county or a single municipality.
- 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.
- 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.¹⁷

An “independent special district” is a special district that is not a dependent special district.¹⁸ A district that includes more than one county is an independent special district unless it lies wholly within the boundaries of a single municipality.¹⁹ Independent special districts may be used by the private and public sectors, as authorized by state law, to manage, own, operate, construct, and finance basic capital infrastructure, facilities, and services.²⁰

The Department of Economic Opportunity’s website contains comprehensive information and resources on special districts.²¹ According to the website’s interactive list of special districts, there are 1161 active independent special districts in Florida.²²

III. Effect of Proposed Changes:

Section 1 directs the Department of Environmental Protection (DEP) to amend Rule 18-21.005 of the Florida Administrative Code to provide an exception from authorization requirements

¹⁵ Fla. Admin. Code R. 18-21.005(a)(1); Fla. Admin. Code R. 18-21.003(14). “Board” is defined as the “Board of Trustees of the Internal Improvement Trust Fund or delegate.”

¹⁶ See s. 189.012(6), F.S. The full definition of “special district” is “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.”

¹⁷ Section 189.012(2), F.S.

¹⁸ Section 189.012(3), F.S.

¹⁹ *Id.*

²⁰ Section 189.03, F.S.

²¹ DEO, *Official List of Special Districts*, <https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts> (last visited Mar. 10, 2021).

²² DEO, *Create a Customized List of Special Districts*, <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 10, 2021).

under Chapter 18-21 of the Florida Administrative Code for construction or maintenance of a water or sewer system in accordance with s. 153.04, F.S., by an independent special district utility, provided the required location map, plans, and drawings for such water or sewer system are submitted to the Board of Trustees of the Internal Improvement Trust Fund.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill does not substantially amend, create, or repeal any section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
