

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 367 Construction and Maintenance of Water Supply and Sewage Disposal Systems by Counties and Independent Special Districts

SPONSOR(S): Environment, Agriculture & Flooding Subcommittee, Mooney

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	18 Y, 0 N, As CS	Melkun	Moore
2) Local Administration & Veterans Affairs Subcommittee	17 Y, 0 N	Darden	Miller
3) State Affairs Committee			

SUMMARY ANALYSIS

When constructing a water supply project, a sewage disposal system, or water or sewer system improvements, a county commission is required to generate a comprehensive study and report related to the construction.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water, or beneath tidally influenced waters, that are held in title by the Board of Trustees of the Internal Improvement Trust Fund (Board). Statute prohibits a person from commencing any excavation, construction, or any other activity involving the use of sovereign or other lands of the state until the person has received the required lease, license, easement, or other form of consent from the Board authorizing the proposed use.

The bill applies the same requirements to independent special districts that currently apply to counties related to generating a comprehensive study and report regarding the construction and maintenance of water supply and sewage disposal systems. In addition, the bill authorizes an independent special district to pay out of its general funds to acquire the information required to complete the comprehensive study and report.

The bill specifies that the construction or maintenance of a water supply or sewage disposal system on sovereign submerged lands by a county or an independent special district is exempt from requirements related to obtaining authorization from the Board to construct on such lands, provided the county or independent special district utility completes the comprehensive study and report.

The bill may have an indeterminate positive fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Independent Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.¹ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.² A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.³

Special districts are classified as either dependent or independent. A dependent special district is one that 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.⁴

An independent special district is one that is not a dependent district. Additionally, a district that includes more than one county is considered an independent special district unless the district lies wholly within the boundaries of a single municipality.⁵ As of March 25, 2021, there were 1,163 active independent special districts in Florida.⁶

Water and Sewer Systems

When constructing a water supply project, sewage disposal system, or water or sewer system improvements, a county commission is required to generate a comprehensive study and report related to the construction. Specifically, the study and report must include the following information:

- The type and estimate of costs of each water supply or sewage disposal system, the purchase or construction of which must be deemed by the commission to be desirable and feasible;
- The location of the water supply or sewage disposal system; and
- The water or sewer system improvements, if any, the county commission deems necessary to purchase or construct to protect the health of, and provide fire protection to, the inhabitants of the county; the location by terminal points and route of each such improvement; a description of the improvement's material, nature, character, and size; and an estimate of the cost of purchasing or constructing the improvement.⁷

The county commission is authorized to request surveys, investigations, studies, borings, maps, plans, drawings, and estimates of costs and revenues as it deems necessary to generate the comprehensive study and report. Acquiring such information is considered a county purpose, and the costs may

¹ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

² See ss. 189.02(1), 189.031(3), and 190.005(1), F.S. See generally s. 189.012(6), F.S.

³ 2020 – 2022 Local Gov't Formation Manual, pp. 60-61, at

<https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last visited Mar. 24, 2021).

⁴ S. 189.012(2), F.S.

⁵ S. 189.012(3), F.S.

⁶ Department of Economic Opportunity, *Division of Community Development*, available at <http://specialdistrictreports.floridajobs.org/webreports/StateTotals.aspx> (last visited Mar. 25, 2021).

⁷ S. 153.04, F.S.

therefore be paid out of the county's general funds. Upon receipt of the study and report, the county commission may authorize the purchase or construction of such water supply or sewage disposal facilities as it deems feasible and practicable.⁸ If any public or private property is damaged or destroyed in carrying out the project approved by the county commission, the property must be restored or repaired and placed in its original condition as nearly as practicable, or adequate compensation must be made from the county funds.⁹

Sovereign Submerged Lands

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water, or beneath tidally influenced waters, that are held in title by the Board of Trustees of the Internal Improvement Trust Fund (Board).¹⁰ Statute prohibits a person from commencing excavation, construction, or any other activity involving the use of sovereign or other lands of the state until the person has received the required lease, license, easement, or other form of consent from the Board authorizing the proposed use.¹¹ The Board provides exceptions from these requirements for the following activities:

- Construction or maintenance of a water or sewer system by a county, provided the required location map, plans, and drawings are submitted to the Board;
- Removal of material from the area adjacent to an intake or discharge structure;
- Removal of organic detrital material;
- Construction of floating vessel platforms or floating boat lifts; and
- Trimming or alteration of mangroves.¹²

Effect of the Bill

The bill applies the same requirements to independent special districts that currently apply to counties related to generating a comprehensive study and report regarding the construction and maintenance of water supply and sewage disposal systems. In addition, the bill authorizes an independent special district to pay out of its general funds to acquire the information required to complete the comprehensive study and report. The bill further authorizes an independent special district to purchase and/or construct water supply or sewage disposal facilities as it deems feasible and practicable. If any public or private property is damaged or destroyed in carrying out a project approved by the district, the property must be restored or repaired to its original condition as nearly as practicable, or adequate compensation must be made from the district's funds.

The bill specifies that the construction or maintenance of a water supply or sewage disposal system on sovereign submerged lands by a county or an independent special district is exempt from requirements related to obtaining authorization from the Board to construct on such lands, provided the county or independent special district utility completes the comprehensive study and report.

B. SECTION DIRECTORY:

Section 1. Amends s. 153.04, F.S., to provide an exemption from certain requirements to counties and independent special districts.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁸ *Id.*

⁹ *Id.*

¹⁰ Florida Department of Environment Protection, *Submerged Lands Management*, available at <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Mar. 2, 2021). The Board of Trustees of the Internal Improvement Trust Fund consists of the Governor and Cabinet. S. 253.02(1), F.S.

¹¹ S. 253.77(1), F.S.

¹² Rule 18-21.005(1)(a), F.A.C.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on independent special districts as a result of the cost savings associated with being exempt from requirements related to construction and maintenance of water supply and sewage disposal systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS specified that the construction or maintenance of a water supply or sewage disposal system on sovereign submerged lands by a county or an independent special district is exempt from certain requirements.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.

