

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 869 Manatee County Port Authority
SPONSOR(S): Community and Military Affairs, Boyd and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Shuler	Hoagland
2) State Affairs Committee		Cunningham	Hamby
3) Economic Affairs Committee			

SUMMARY ANALYSIS

This bill amends a special act relating to the Manatee County Port Authority. It provides for the conveyance of submerged lands from the Board of Trustees of the Internal Improvement Trust Fund to the Port Authority, and defines the territorial boundaries of these submerged lands.

The bill provides an effective date of upon becoming law.

The bill requires a transfer of property which may not comply with the standards articulated in s. 11 of Art. X of the State Constitution. See III. COMMENTS, A. CONSTITUTIONAL ISSUES.

Also, see III. COMMENTS, C. DRAFTING ISSUES OR OTHER COMMENTS of this analysis for a discussion of the classification of this bill.

Pursuant to House Rule 5.5(b), a local bill providing for 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Submerged Lands

The federal government granted Florida title to all lands beneath its navigable waters, up to the ordinary high water mark, when it became a state in 1845. No surveys were required to delineate the boundaries of these sovereign lands, and the title vested in the State to be held as a public trust.¹ The Florida Constitution currently reflects the State's ownership of such lands:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.²

In 1856, the Legislature adopted the "Riparian Rights Act of 1856." This act divested the State of fee simple title to submerged lands upon which upland owners constructed certain improvements in the interest of encouraging commerce by the development of waterfront property.

The Legislature enacted ch. 8537, L.O.F., known as the "Butler Act," in 1921 with the express purpose of improving and developing Florida's waterfront. Development was encouraged by permitting upland riparian owners to obtain title to submerged lands abutting land owned by them. Owner's ability to obtain title came with the condition that the submerged land was bulkheaded, filled in or permanently improved continuously from the high water mark in the direction of the channel.³

The 1957 Legislature expressly repealed the Butler Act, after 36 years of development on Florida's coastline, with ch. 57-362, L.O.F., known as the "Bulkhead Act of 1957." This action was the result of a change in public policy and the concern for citizen rights in submerged state lands.⁴ Upon repeal, the title to all submerged lands was vested to the Board of Trustees of the Internal Improvement Trust Fund. However, the Legislature confirmed title to submerged lands for those upland riparian owners who had filled or developed such lands prior to the repeal of the Butler Act. In the 1970s, the Board began requiring compensation to the State for public and private activities on submerged lands that generated revenues or excluded traditional public uses. Preexisting structures were given the option to be "grandfathered" and avoid lease fees until 1998.⁵

Board of Trustees of the Internal Improvement Trust Fund

Section 4 of Art. IV of the State Constitution establishes the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture as the Board of Trustees of the Internal Improvement Trust Fund. The Board is charged with the acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may inure to, the State or any of its agencies, except as otherwise provided by law. The Department of Environmental Protection (DEP) is directed to provide administrative staffing to the Board pursuant to s. 253.002, F.S., and the Division of State Lands within DEP performs duties and functions related to the lands which are titled in the name of the Board.

¹ *Coastal Petroleum Co. v. Am. Cyanamid Co.*, 492 So. 2d 339 (Fla. 1986).

² Section 11 of Art. X, Fla. Const.

³ *City of West Palm Beach v. Bd. of Trustees of Internal Improvement Trust Fund*, 756 So. 2d 1085 (Fla. 1999).

⁴ *Bd. of Trustees of the Internal Improvement Trust Fund v. Sand Key Associates*, 512 So. 2d 934 (Fla. 1987).

⁵ *City of West Palm Beach v. Bd. of Trustees of Internal Improvement Trust Fund*, 756 So. 2d 1085 (Fla. 1999).

Section 253.02, F.S., provides that the Board may not sell, transfer or otherwise dispose of any lands to which title is vested in the Board except by a vote of at least three of the four trustees. That section also provides that in the event submerged land is to be sold and transferred by the Board of Trustees, that the Board first require DEP to inspect the lands and to file a written report with the Board.

Pursuant to s. 253.12, F.S., the Board of Trustees may sell submerged land if it is determined by the Board to be in the public interest, upon such prices, terms and conditions as the Board sees fit. Prior to any such sale, the Board must determine to what extent the sale and ownership by private persons or the conveyance to political subdivisions or public agencies would interfere with the conservation of fish, marine, and other wildlife, or other natural resources. The Board may not sell or convey an interest in these lands to any applicant who does not also have specified applications before the Board.

Within the chapter of rules used by the Board, DEP, and Department of Agriculture and Consumer Sciences in their administrative and management responsibilities regarding sovereignty submerged lands, the term "Public interest" has been defined as:

demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.⁶

The Manatee County Port Authority

The Manatee County Port Authority is a dependent special district initially established pursuant to ch. 67-1681, L.O.F. The Board of County Commissioners of Manatee County acts as the Port Authority. Regionally, the port annually provides in excess of \$2.3 billion in economic impact, and supports more than 18,000 jobs.⁷ To date, the port encompasses 1,100 acres of land, 6,702 linear feet of berths, eight miles of railroad track, one million total square feet of warehouse space, 30,000 square feet of freezer space, and 202,000 square feet of chill space.⁸

Presently, the Port Authority is investing port revenues into new facilities and infrastructure for current and prospective customers. The port is nearing the end of an 11-year, \$200 million port expansion, with the final dredging project set to begin in April 2011.⁹ Dredging will expand Berth 12 (located to the south of the Port) to a depth of 41 feet, which would accommodate Panamax-sized vessels.¹⁰ The expansion is aimed at attracting expected new cargoes due to the completion of the Panama Canal expansion in 2014.¹¹

The Port Authority's special act, ch. 2003-351, L.O.F., declares that all of the powers conferred by the charter and the exercise thereof are a proper public purpose.

Effects of the Bill

This bill amends ch. 2003-351, L.O.F., to allow the Port Authority to receive title to, right of entry upon, and the right to regulate the improvement of any and all submerged lands belonging to the Board of Trustees of the Internal Improvement Trust Fund contained within a described area. The bill also conveys these submerged lands from the Board of Trustees of the Internal Improvement Trust Fund to

⁶ Rule 18-21.003(51), F.A.C.

⁷ Manatee County Port Authority, Port Manatee Master Plan 2009 Revised, at VI-5 (2000) *hereinafter* Port Manatee Master Plan.

⁸ *Id.* at I-4, I-5.

⁹ Manatee County Port Authority, Port Manatee E-newsletter, Feb. 28, 2011, <http://www.portmanatee.com/newsletter/ShowNewsletter.aspx?ID=178>.

¹⁰ Manatee County Port Authority, Port Manatee 2011 Official Directory, at 20 (2011).

¹¹ *Id.*

the Port Authority for consideration of \$1, subject to the riparian rights of the respective owners of adjacent uplands.

The Port Authority may not sell or otherwise dispose of the submerged lands, and these lands are to be used only for proper public and Port Authority purposes. Representatives of the Port Authority have indicated that the area at issue consists of 523.20 acres (outlined in white in the figure below) and that the Authority is seeking this legislation to eliminate the need for leases or other forms of consent from the Board for future expansion projects. This area is currently designated as a “motorized vessel exclusion zone” as a condition of a DEP permit for a previous expansion.¹²



The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Subsection (15) is added to section 6 of section 3 of ch. 2003-351, L.O.F., relating to the conveyance of title to submerged lands to the Manatee County Port Authority.

Section 2: Provides an effective date of upon becoming law.

¹² Port Manatee Master Plan, *supra* note 7, at II-19. The designated protection area is for the protection of seagrasses and manatees, and is pursuant to DEP Permit No. 0129291-002 EI. *Id.*

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?
January 29, 2011

WHERE?

The *Bradenton Herald*, a daily newspaper of general circulation, published in Manatee County.

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

The Economic Impact Statement indicates that the transfer of adjacent submerged lands integral to port operations will "eliminate" a substantial administrative burden and related costs" of the Port Authority relating to applying for and obtaining a sovereign lands lease from the Board of trustees of the Internal Improvement trust Fund each time the Authority modifies or amends its operational area. The Statement does not discuss the impact that this transfer of property would have on the State.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 11 of Art. X of the State Constitution provides:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

It is unclear whether the conveyance of sovereign submerged lands held in public trust for the benefit of all Florida citizens to a port authority is in the public interest. The bill provides that the land at issue only be used for proper public and Port Authority purposes, and the port's special act declares the exercise of its powers to be a proper public purpose. Nonetheless, it is debatable whether such a transfer would serve to benefit the general public. The only rationale that has been articulated by the port is that the transfer will eliminate its substantial administrative burden and cost to obtain a sovereign lands lease from the Board.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemptions from General Law

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. As this bill provides for numerous exemptions from ch. 253, F.S., the provisions of House Rule 5.5(b) appear to apply.

Classification of Bill

A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, is a law relating to a state function or instrumentality.¹³ Because this bill conveys state property, it could be found to be properly classified as a general, rather than a special, law.

Arguably, such classification is important because special acts are treated uniquely within the legislative process (generally, they do not have companion bills in the Senate and are placed on an expedited calendar) and as such, these bills may not receive the same exhaustive review by the legislature as would a general bill. Also, House Rule 5.3 provides that members may file only six general bills in each regular session.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Community and Military Affairs Subcommittee adopted one amendment. The amendment:

- Clarified that the land to be conveyed would be that belonging to the Board of Trustees of the Internal Improvement Trust Fund.

The bill was then reported favorably.

¹³ *State ex rel. Landis v. Harris*, 163 So. 237 (1934).