

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: CS/SB 1752

INTRODUCER: Environment and Natural Resources Committee and Senator Rodriguez

SUBJECT: Independent Special District Utilities

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1752 exempts counties and independent special districts from receiving consent from the state authorizing construction or maintenance of water supply or sewage disposal systems on state lands, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund. For counties, this expands their existing exemption which, under current law, applies only to sovereign submerged lands. For independent special districts, it is a new exemption from state authorization for construction or maintenance of such facilities on state lands.

The bill revises provisions relating to counties and independent special districts that purchase or construct water supply or sewage disposal systems. Independent special districts constructing or purchasing such facilities must create a comprehensive study and report and make it available to the appropriate county commission(s). The district must obtain written consent from the owners of privately owned or operated facilities to serve the same area as the private system. Obtaining the elements necessary for the study and report may be paid out of the general funds of the independent specialist district.

Upon receipt of the report, the county commission(s) for each county in which the independent special district's purchase or construction is occurring may authorize the purchase or construction. If property is damaged or destroyed by an independent special district it must be restored or repaired and placed in its original condition as nearly as practicable, or else adequate compensation must be made from the funds derived from the revenue sources authorized for the district in its charter.

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,³ within such county or adjoining counties.⁴ When a county commission chooses to exercise this authority it must make or cause to be made surveys, investigations, studies, borings, maps, plans, drawings, and estimates of costs and revenues that it deems necessary in order to provide a comprehensive study and report to the county commission.⁵ Section 153.04, F.S., contains requirements for the study and report that must be made available to the county commission. The study and report must set forth the type, estimated cost, and location of each system, and must include information on any system improvements deemed necessary to protect public health.⁶

If the study and report reveals or it is a fact that any parcel, plot, or area of land proposed to be served by the contemplated county-owned and operated facilities is served or potentially served by privately-owned and operated facilities then the county may not serve such property without the written consent of the owner(s) of the privately owned facilities.⁷

Obtaining the necessary elements for the comprehensive study and report is considered by law a county purpose, and the costs of obtaining the elements may be paid out of the general funds of the county.⁸ Upon receiving the report, the county commission may authorize the purchase and/or construction of the facilities as it may deem feasible and practicable.⁹ All public or private property damaged or destroyed in carrying out the activities authorized by ch. 153, F.S., must be restored or repaired and placed in its original condition as nearly as practicable, or adequate compensation must be made out of the funding authorized by the chapter.¹⁰

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 153.02(4) and (6), F.S.

⁴ Section 153.03, F.S. This authorization generally requires the consent of any municipality in which the facilities are located.

⁵ Section 153.04, F.S.

⁶ Section 153.04(1) and (2)(a).

⁷ Section 153.04(2)(b), F.S.

⁸ Section 153.04(2)(c), F.S.

⁹ Section 153.04(2)(d), F.S.

¹⁰ Section 153.04(2)(e), F.S.

Under s. 153.04, F.S., the state consents to the use of all state lands lying under water which are necessary for the accomplishments or purposes of ch. 153, F.S.¹¹ Sovereign submerged lands are lands that are landward of the ordinary or mean high water line,¹² or beneath navigable fresh water or tidally-influenced waters, which are owned by the state—generally the Board of Trustees of the Internal Improvement Trust Fund.¹³ Chapter 18-21 of the Florida Administrative Code requires various forms of authorization for activities on sovereign submerged lands, but it provides an exception for the construction or maintenance of a water or sewer system by a county in accordance with s. 153.04, F.S., provided the required location map, plans, and drawings are submitted to the Board.¹⁴

State Lands

The Board of Trustees of the Internal Improvement Trust Fund,¹⁵ comprised of the Governor and Cabinet, generally owns and administers all state-owned lands in Florida, unless otherwise specified.¹⁶ Section 253.77, F.S., prohibits a person from commencing any activity involving the use of lands owned by the Board of Trustees until the person has received the required consent authorizing the proposed use.

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.¹⁷ 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.

¹¹ Section 153.04(2)(f), F.S.

¹² 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.

¹³ 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”; see FLA. CON., art. X, s. 11; see 253.03, F.S.

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

¹⁵ The Governor and Cabinet, *Structure of the Florida Cabinet*, <http://www.myflorida.com/myflorida/cabinet/structurehistory.html> (last visited Mar. 9, 2021).

¹⁶ See s. 253.03, F.S.

¹⁷ 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.”

- 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.¹⁸

An “independent special district” is a special district that is not a dependent special district.¹⁹ A district that includes more than one county is an independent special district unless it lies wholly within the boundaries of a single municipality.²⁰ 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.²¹

When an independent special district is created, its charter must satisfy statutory minimum requirements.²² Legislation creating or authorizing an independent special district must address and require numerous specified items for inclusion in a district’s charter, including the purpose of the district, sources of revenue, and geographic boundary limitations.²³

The Department of Economic Opportunity’s website contains comprehensive information and resources on special districts.²⁴ According to the website’s interactive list of special districts, there are 1161 active independent special districts in Florida.²⁵

III. Effect of Proposed Changes:

Section 1 amends s. 153.04, F.S., which contains existing requirements and authorizations for counties purchasing or constructing water supply or sewage disposal systems.

The bill creates a new exemption from the requirements of s. 253.77, F.S., which requires consent from the state authorizing proposed uses of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund. The exemption applies to the construction or maintenance of water supply or sewage disposal systems by a county or independent special district, provided the county or independent special district utility completes the requirements of s. 153.04, F.S., as amended by the bill. For counties, the bill expands their existing exemption from authorization which, under current law, applies only to sovereign submerged lands. For independent special districts, it is a new exemption from state authorization for construction or maintenance relating to water supply or sewage disposal systems on state lands.

The bill requires independent special districts to follow the same requirements as counties when purchasing or constructing a water supply or sewage disposal system as authorized by the charter

¹⁸ Section 189.012(2), F.S.

¹⁹ Section 189.012(3), F.S.

²⁰ *Id.*

²¹ Section 189.03, F.S.

²² Section 189.031, F.S.

²³ Section 189.031(3), F.S.

²⁴ 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).

²⁵ DEO, *Create a Customized List of Special Districts*, <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 10, 2021).

of the independent special district. When an independent special district is exercising this authority it must prepare and make available to the appropriate county commission(s) a comprehensive study and report. The study and report must contain information on the types of systems, estimated costs, and locations, as well as information on any improvements necessary to protect public health including location by terminal points and route of each improvement, a description of its material, nature, character, and size, and its estimated cost.

If the comprehensive study and report reveals or it is a fact that any parcel, plot, or area of land proposed to be served by the facilities owned and operated by an independent special district is being served by privately owned and operated facilities then the independent special district is prohibited from furnishing the facilities without the written consent of the owner(s) of the privately owned and operated facilities.

The bill states that obtaining the surveys, investigations, studies, borings, maps, plans, drawings, and estimates pursuant to the bill serves a public purpose. It authorizes the costs of obtaining these items to be paid out of the general funds of the independent special district.

Upon receiving the report, the county commission(s) for each county in which the independent special district is exercising its authority may authorize the purchase and construction of facilities as each county commission deems feasible and practicable. If any public or private property is damaged or destroyed by an independent special district carrying out the authorized activities then 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 funds derived from the revenue sources authorized for the district in its charter.

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:

An amendment is recommended on line 26 of the bill to clarify that the comprehensive study and report made by the governing board of an independent special district must be made available to the county commissions of each county that would need to authorize the water supply or sewage disposal system. Language to address this could include adding the following to line 26 after the word “commission”: “or the county commission for each county in which the independent special district is exercising the authority granted under this section...” This would make the requirements for creating the reports on line 26 consistent with the language on authorization upon receipt of the reports on lines 75-80.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 153.04 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Environment and Natural Resources Committee on March 15, 2021:

- Deletes the language directing the Department of Environmental Protection to provide in rule an exception from authorization requirements for independent special districts that construct or maintain a water or sewer system on sovereign submerged lands.
- Requires independent special districts to follow existing requirements that counties must follow when purchasing or constructing a water supply or sewage disposal system.
 - The district must create a comprehensive study and report pursuant to statute.
 - The district must obtain written consent from the owners of privately owned or operated facilities serving the same area as the planned system.

- Obtaining the elements necessary for the study and report is declared a public purpose the costs of which may be paid out of the general funds of the independent specialist district.
- Upon receipt of the report, the county commission for each county in which the independent special district's purchase or construction is occurring may authorize the purchase or construction.
- Requires that if property is damaged or destroyed by an independent special district as part of water supply or sewage disposal system construction or operation, such property must be restored or repaired and placed in its original condition as nearly as practicable, or else adequate compensation must be made from the funds derived from the revenue sources authorized for the district in its charter.
- Exempts construction or maintenance of a water supply or sewage disposal system by a county or independent special district from the required authorization for activities on state lands owned by the Board of Trustees of the Internal Improvement Trust Fund, provided the county or independent special district utility completes the requirements contained in the bill.

B. Amendments:

None.