

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any House Principles

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The South Indian River Water Control District is an independent special district located in Palm Beach County. The district has maintained or has been asked to maintain a number of privately constructed roads within the district. The roads have never been dedicated to public use, although they are functionally a part of the District roadway system.

Effect of Proposed Changes

HB 973 authorizes the district to perfect a public dedication of roads if it has maintained the road for at least 7 years or if it has been requested to maintain such road by a majority of the landowner abutting the road. The filing of a map, with the clerk of the circuit court of the county where the road, showing the lands and reciting that the road has vested in the district is prima facie evidence of ownership of the road by the district. The bill does not apply to any facility owned by an electric utility. The bill's provisions are similar to s. 95.361, F.S., which authorizes counties and municipalities the same authority sought by this bill.¹

¹ (2) In those instances where a road has been constructed by a nongovernmental entity, or where the road was not constructed by the entity currently maintaining or repairing it, or where it cannot be determined who constructed the road, and when such road has been regularly maintained or repaired for the immediate past 7 years by a county, a municipality, or the Department of Transportation, whether jointly or severally, such road shall be deemed to be dedicated to the public to the extent of the width that actually has been maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. This subsection shall not apply to an electric utility, as defined in s. 366.02(2). The dedication shall vest all rights, title, easement, and appurtenances in and to the road in:

- (a) The county, if it is a county road;
- (b) The municipality, if it is a municipal street or road; or
- (c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of conveyance, dedication, or appropriation to the public use.

(3) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or subsection (2) or by any other means of acquisition, duly certified by:

- (a) The secretary of the Department of Transportation, or the secretary's designee, if the road is a road in the State Highway System or State Park Road System;
- (b) The chair and clerk of the board of county commissioners of the county, if the road is a county road; or
- (c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

(5) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

C. SECTION DIRECTORY:

Section 1: Provides the district authority to perfect title in certain roads maintained by the district; stating that filing of map with clerk of the circuit court is prima facie evidence of ownership of the road; and stating that section does not apply to facilities owned by electric utilities.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 29, 2007

WHERE? In the *Palm Beach Post* a newspaper published at West Palm Beach, in West Palm Beach, Florida.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Paragraph (21) of subsection 11(a) of Article III of the Florida Constitution prohibits special laws or general laws of local application pertaining to “any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote”² Pursuant to this authority, s. 298.76, F.S., was adopted and prohibits any special law or general law of local application which grants additional authority, powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S.

However, this subsection does not prohibit any special or local legislation which “authorizes the construction or maintenance of roads for agricultural purposes as outlined in this chapter.” Section 298.22(6), F.S. authorizes the district “to hold, control and acquire by donation or purchase and if need be, condemn any land, easement . . . for right-of-way, holding basin for any of the purposes provided in [the chapter].” In addition, s. 298.22(7), F.S., authorizes the district to “condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court as identified in the engineer’s report, and shall follow the procedure set out in chapter 73 [eminent domain].”

² The *Local Policies and Procedures Manual* indicates that this concern may be partially alleviated by House Rule 5.5(b).

While the district has the power of eminent domain as provided in chapter 73, F.S., the authority to automatically vest all right and title to a road under certain circumstances appears to grant additional authority not authorized by s. 298.76, F.S.

The law is unsettled regarding whether the "like vote" requirement to amend or repeal a law on a subject that was added to the prohibited subject list means that the amendment or repeal may be made (1) by any general or special law passed by a three-fifths vote; or (2) only by amending or repealing the underlying general bill that created the prohibited special law by a three-fifths vote. There is no case law on the issue and Florida attorneys general have come down on both sides of the issue.³

This bill may or may not require a three-fifths vote to pass the Legislature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide an opportunity for a person claiming an interest in the acquired property to prevent the dedication of the road. Such a provision is found in s. 95.361(4), F.S., which provides that:

Any person, firm, corporation, or entity having or claiming any interest in and to any of the property affected by subsection (2) shall have and is hereby allowed a period of 1 year after the effective date of this subsection, or a period of 7 years after the initial date of regular maintenance or repair of the road, whichever period is greater, to file a claim in equity or with a court of law against the particular governing authority assuming jurisdiction over such property to cause a cessation of the maintenance and occupation of the property. Such timely filed and adjudicated claim shall prevent the dedication of the road to the public pursuant to subsection (2).

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, the Committee on Urban and Local Affairs adopted an amendment to provide a process for a person claiming an interest in the acquired property to prevent the dedication of the road. The language was added to mirror the same provision found in state law, s. 95.361(4), F.S.

³ Op. Att'y Gen. 83-27 (May 5, 1983), Op. Att'y Gen. 69-80 (August 28, 1969).