

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 367 Construction and Maintenance of Water Systems

SPONSOR(S): State Affairs Committee, Environment, Agriculture & Flooding Subcommittee, Mooney and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1752

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	19 Y, 0 N, As CS	Melkun	Williamson

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). Current law 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 Office of Economic & Demographic Research (EDR) is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations. EDR is required to conduct an annual assessment of Florida's water resources and conservation lands.

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.

Beginning with the annual assessment due January 1, 2022, the bill requires EDR to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure.

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater or stormwater services to develop a needs analysis for its jurisdiction over the subsequent 20 years. The analyses must be compiled and submitted to EDR, which must evaluate the compiled documents for the purpose of developing a statewide analysis for inclusion in the annual assessment due January 1, 2023.

The bill may have an indeterminate fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 April 1, 2021, there were 1,165 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

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 Section 189.012(2), F.S.

⁵ Section 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 Section 153.04, F.S.

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 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

Wastewater

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by the Department of Environmental Protection (DEP).¹⁰ Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.¹¹ Each day, over 1.5 billion gallons of treated wastewater effluent¹² and reclaimed water¹³ are disposed of from these facilities.¹⁴ Methods of disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.¹⁵

Stormwater

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.¹⁶ When stormwater falls on pavement, buildings, and other impermeable surfaces, the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.¹⁷ A stormwater management system is a system designed to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution.¹⁸ Most activities that create new impermeable surfaces or alter surface water flows will involve a stormwater management system.¹⁹

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

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 403.087(1), F.S.

¹¹ DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Apr. 2, 2021).

¹² Rule 62-600.200(22), F.A.C., defines the term "effluent" as, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

¹³ Rule 62-600.200(54), F.A.C., defines the term "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

¹⁴ DEP, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Apr. 2, 2021).

¹⁵ Rule 62-600.440(4), F.A.C.

¹⁶ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 2-10, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Apr. 2, 2021).

¹⁷ DEP, *Stormwater Management* (2016), 1, available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf (last visited Apr. 2, 2021).

¹⁸ Section 373.403(10), F.S.

¹⁹ DEP, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)* (June 1, 2018), 1-5, available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pd_0.pdf (last visited Apr. 2, 2021).

Improvement Trust Fund (Board).²⁰ Current law 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.²¹ 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.²²

Office of Economic & Demographic Research

The Office of Economic & Demographic Research (EDR) is a research arm of the Legislature that is principally concerned with forecasting economic and social trends that affect policymaking, revenues, and appropriations.²³ EDR publishes the official economic, demographic, revenue, and agency workload forecasts that are developed by consensus estimating conferences and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.²⁴

In 2016, the Legislature passed Senate Bill 552, which directed EDR to conduct an annual assessment of Florida's water resources and conservation lands.²⁵ The assessment is conducted with the assistance of the water management districts, DEP, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, counties, municipalities, and special districts and must be submitted by January 1 of each year.²⁶

Effect of the Bill

Water Supply and Sewage Disposal Systems

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 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.

²⁰ DEP, *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. Section 253.02(1), F.S.

²¹ Section 253.77(1), F.S.

²² Rule 18-21.005(1)(a), F.A.C.

²³ EDR, *Welcome*, available at <http://edr.state.fl.us/Content/> (last visited Apr. 2, 2021).

²⁴ EDR, *About Us*, available at <http://edr.state.fl.us/Content/about/index.cfm> (last visited Apr. 2, 2021).

²⁵ Chapter 2016-1, Laws of Fla.; s. 403.928, F.S.; EDR, *Natural Resources and Infrastructure*, available at <http://edr.state.fl.us/Content/natural-resources/index.cfm> (last visited Apr. 2, 2021).

²⁶ Sections 403.928(5) and (7), F.S.

Wastewater Management Analysis

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater services²⁷ to develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government must include:

- A detailed description of the facilities used to provide wastewater services.
- The number of current and projected connections and residents served calculated in five-year increments.
- The current and projected service area for wastewater services.
- The current and projected cost of providing wastewater services calculated in five-year increments.
- The estimated remaining useful life of each facility or its major components.
- The most recent five-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.
- The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

The bill requires each municipality or special district to submit its needs analysis, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its service area is located. Each county must compile all analyses submitted to it into a single document and include its own analysis in the document. The county must file the compiled document with the coordinator of EDR no later than July 31, 2022, and every five years thereafter.

Stormwater Management Analysis

By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing a stormwater management program or stormwater management system to develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government must include:

- A detailed description of the stormwater management program or system and its facilities and projects.
- The number of current and projected residents served calculated in five-year increments.
- The current and projected service area for the stormwater management program or system.
- The current and projected cost of providing services calculated in five-year increments.
- The estimated remaining useful life of each facility or its major components.
- The most recent five-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.
- The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

The bill requires each municipality or special district to submit its needs analyses, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its stormwater management program or stormwater management system is located. Each county must compile all analyses submitted to it into a single document and include its own analysis in the document. The county must file the compiled document with the Secretary of DEP and the coordinator of EDR no later than July 31, 2022, and every five years thereafter.

EDR Annual Assessment

Beginning with the annual assessment due January 1, 2022, the bill requires EDR to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure. As part of the analysis, the bill requires EDR to periodically survey public and private utilities.

²⁷ The bill defines "wastewater services" to mean service to a sewerage system or service to domestic wastewater treatment works.

The bill requires EDR to evaluate the compiled wastewater and stormwater analysis documents submitted by the counties for the purpose of developing a statewide analysis for inclusion in the assessment due January 1, 2023.

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. Amends s. 403.928, F.S., to require EDR to analyze certain expenditures.
- Section 3. Creates s. 403.9301, F.S., to require an analysis for wastewater management needs.
- Section 4. Creates s. 403.9302, F.S., to require an analysis for stormwater management needs.
- Section 5. Provides a statement of important state interest.
- Section 6. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on EDR associated with the costs of analyzing water-related infrastructure expenditures and evaluating wastewater and stormwater management analyses; however, these costs can likely be absorbed within existing resources.

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. The bill may have an indeterminate negative fiscal impact on local governments associated with the costs of analyzing the needs of wastewater and stormwater management services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities to conduct stormwater and wastewater management analyses. An exemption may apply if the requirement results in an insignificant fiscal impact. In addition, an exception may apply because the requirement applies to similarly situated persons and the bill provides a legislative finding that the requirements of the bill fulfill an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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.

On April 15, 2021, the State Affairs Committee adopted a PCS and reported the bill favorably as a committee substitute. The PCS retained the original bill and additionally:

- Required EDR to include an analysis of certain expenditures in its annual assessment of Florida's water resources and conservation lands.
- Required each county, municipality, or special district providing wastewater or stormwater services to develop an analysis of the wastewater and stormwater needs of its jurisdiction over the next 20 years.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.