

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** CS/HB 1585 City of Clearwater, Pinellas County  
**SPONSOR(S):** Government Efficiency & Accountability and Hooper  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2942

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Government Efficiency &amp; Accountability Council</u>	<u>11 Y, 0 N, As CS</u>	<u>Nelson</u>	<u>Cooper</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Pursuant to a 1925 special act, the State conveyed submerged lands to the City of Clearwater in Pinellas County for constructing the Memorial Causeway. The lands were to be used exclusively for public purposes by the city, and would revert to the State if ever used for any other purpose.

This bill ratifies any use of these submerged lands authorized by the city on or before the effective date of the bill, whether or not the use is for a public purpose. Also, the bill declares that any use of a portion of these submerged lands, which were described and conveyed in a 1986 special act, is consistent with the grant made in that act for the purpose of developing and maintaining a marine science center. This provision pertains to uses undertaken on or before the effective date of this bill.

Additionally, the bill provides that the City of Clearwater may authorize private uses of the submerged property granted to it under the 1925 act, for which it received an application no later than December 31, 2006, if such uses are consistent with the laws and rules governing the management of state sovereignty submerged lands by the Board of Trustees of the Internal Improvement Trust Fund. The alteration of any existing public land use designation of this property must first be approved by referendum. The city is required to use any revenue generated by authorizing private use of the subject submerged land to fund water-related activities for the benefit of the public.

Finally, the bill provides for reversion of the submerged lands granted to the City of Clearwater under the 1925 act should the board find any use, which is authorized by the city and not ratified by this act, inconsistent with the laws and rules governing their management of such lands.

The bill does not modify or supersede any provision of the City of Clearwater's charter concerning the requirement of a referendum for the use of city-owned waterfront property, and takes effect upon becoming law.

According to the Economic Impact Statement, the bill will have no fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### 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.

##### Sovereignty 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.<sup>1</sup> 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.<sup>2</sup>

##### Chapter 18-21, Florida Administrative Code: Sovereignty Submerged Lands Management<sup>3</sup>

The Board of Trustees of the Internal Improvement Trust Fund's Rule 18-21.004, F.A.C., provides the management policies, standards and criteria to be used in determining whether to approve or deny requests for activities on sovereignty submerged lands. In part, the rule provides that:

- For approval, all activities on sovereignty lands must be not contrary to the public interest, except for sales which must be in the public interest.
- All leases, easements, deeds or other forms of approval for sovereignty land activities shall contain such terms, conditions or restrictions as deemed necessary to protect and manage the lands.
- Equitable compensation shall be required from private parties for leases and easements which generate revenues, monies or profits for the user or that limit or preempt general public use.

<sup>1</sup> Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339 (Fla. 1986).

<sup>2</sup> Section 11 of Art. X of the State Constitution.

<sup>3</sup> The Board of Trustees of the Internal Improvement Trust Fund received specific authority to adopt this rule pursuant to s. 253.03(7), F.S.

- Activities on sovereignty lands shall be limited to water dependent activities only unless it is determined to be in the public interest to allow an exception as determined by a case-by-case evaluation. Public projects which are primarily intended to provide access to and use of the waterfront may be permitted to contain minor uses which are not water dependent in certain cases.
- Stilt house, boathouses with living quarters, or other such residential structures shall be prohibited on sovereignty lands.
- The State Lands Management Plan<sup>4</sup> shall be considered and utilized in developing recommendations for all activities on sovereignty lands.
- No application to use sovereignty submerged land adjacent to or surrounding an unbridged, undeveloped coastal island or undeveloped coastal island segment may be approved unless it meets certain criteria.
- All existing licenses shall be converted to leases upon the expiration or renewal date of the license.
- All sovereignty lands shall be considered single use lands and managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating and swimming.
- Activities which would result in significant adverse impacts to sovereignty lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed.
- Activities shall be designed to minimize or eliminate any cutting, removal or destruction of wetland vegetation on sovereignty lands.
- Reclamation activities on sovereignty lands shall be approved only if avulsion (a sudden loss or addition to land by the action of water) or artificial erosion is affirmatively demonstrated.
- To the maximum extent possible, shoreline stabilization should be accomplished by the establishment of appropriate native wetland vegetation.
- Severance of materials from sovereignty lands shall be approved only if the proposed dredging is the minimum amount necessary to accomplish the stated purpose and is designed to minimize the need for maintenance dredging.
- Severance of materials for the primary purpose of providing upland fill shall not be approved unless no other reasonable source of materials is available or the activity is determined to be in the public interest.
- Activities on sovereignty lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, and other natural or cultural resources.
- To the maximum extent feasible, all beach compatible dredge materials shall be placed on beaches or within the nearshore sand system.
- All structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

The rule also provides standards and criteria for private residential single-family docks and multi-family docks and piers. See, s. 18-21.004(4), F.A.C.

#### Clearwater Harbor—Memorial Causeway Submerged Lands

The State conveyed submerged lands in 1925 via ch. 11050, L.O.F., to Pinellas County to be surrendered to the City of Clearwater, for the purpose of building the Memorial Causeway.<sup>5</sup> That act provided that the property was to be used exclusively for public purposes by the city, and that it would revert to the State if it was ever used for any other purpose. The act also provided that “the owners (present and future) of the land abutting said land on the north, the City of Clearwater or the County of Pinellas shall have the right to fill said land lying north of said line to be used for public parks and

<sup>4</sup> See, s. 253.03(7), F.S.

<sup>5</sup> This land included 500 feet to the north and 700 feet to the south of a centerline, east to west, following the course of the former Memorial Causeway.

places of recreation only...provided further that should said property ever cease to be used for public parks and places of recreation only, same shall revert to the State.”

Submerged lands to the north of the Memorial Causeway Submerged Lands (which were not included in the special act grant) were later filled, resulting in the “Island Estates” subdivision. Consequently, Island Estates’ most southerly boundary extended along the northerly boundary of the Memorial Causeway Submerged Lands. In 1958, a Deed of Dedication was granted by the Clearwater City Commission and recorded in the public record to “dedicate, grant and convey unto the Public in general,” a portion of the Memorial Causeway Submerged Lands, subject to express provisions in the dedication, and conditions and provisions of law (presumably including the 1925 Special Act). The dedication stated that the land was to be used as a “waterway for boating and boat traffic,” “docks, boat slips or piers” by “lessees, tenants, permittees or assigns.” As a result of this dedication, docks were built within the Memorial Causeway Submerged Lands area for use by Island Estates’ upland owners in 1965.

Pursuant to ch. 86-345, L.O.F, the Legislature released a portion of the property granted by the 1925 special act from the right of reverter retained by the State in order to permit the development and maintenance of a nonprofit marine science center as approved by the city commission and electors of the City of Clearwater.<sup>6</sup> The act declared that the use of the property as a marine science center was for a proper public purpose, and conditioned the act upon the city conveying the property to the Clearwater Marine Science Center subject to the restriction that the center devote the property solely to the expansion of its facility, or that such property automatically would revert to the city.

### **Effect of Proposed Changes**

This bill ratifies any use of the property described in the 1925 special act, ch. 11050, L.O.F., and authorized by the City of Clearwater on or before the effective date of the act, whether or not the use is for a public purpose. It is unclear exactly what uses the Legislature would be ratifying, although proponents of the bill have described this language as contemplating the docks built by the Island Estates’ upland owners,<sup>7</sup> an additional upland owner who recently has requested a permit to build a dock for a multifamily complex, and possibly a portion of the current municipal marina.<sup>8</sup> Also, the bill declares that any use of the property described in ch. 86-345, L.O.F., is consistent with the grant made in that act for the purpose of developing and maintaining a marine science center. Proponents of the bill have indicated that the land at issue currently is being used for the purposes intended by the 1986 act.<sup>9</sup> This provision pertains to uses undertaken on or before the effective date of the bill. Unless future uses trigger a reversion to the City of Clearwater, it appears that such ratification would preserve the property to the ownership of the Clearwater Marine Science Center.

Additionally, the bill provides that the City of Clearwater may authorize private uses of the submerged property described in ch. 11050, L.O.F., 1925, for which it has received an application no later than December 31, 2006, if such uses are consistent with the laws and rules governing the management of state sovereignty submerged lands by the Board of Trustees of the Internal Improvement Trust Fund. The bill provides that a dock or mooring facility for a multifamily dwelling or a dock for a single-family dwelling which is consistent with such laws and rules does not violate this act. The alteration of any existing public land use designation of this property must first be approved by the voters of the City of Clearwater in a “site-specific” referendum. The City of Clearwater is required to use any revenue

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<sup>6</sup> The Clearwater City Commission adopted Ordinance 4028-85, finding that the development and maintenance of the property as a marine science center was in the interest of public health, safety and welfare of the citizens of Clearwater, and authorized the conveyance of the property to the Clearwater Marine Science Center subject to a right of reverter. The electors of the city approved the action by a special referendum election called for that purpose on October 1, 1985.

<sup>7</sup> Letter from Laura Lipowski, Assistant City Attorney, City of Clearwater, January 5, 2006, to Peter Dunbar, of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.

<sup>8</sup> Telephone conversation with Peter Dunbar on April 17, 2007.

<sup>9</sup> Id.

generated by authorizing private use of the subject submerged land to fund water-related activities for the benefit of the public.

Finally, the bill provides for reversion of the submerged lands granted under the 1925 special act to the State if the Board of Trustees of the Internal Improvement Trust Fund finds that any use, which is authorized by the City of Clearwater and not ratified by the bill, is inconsistent with the laws and rules governing the board's management of such lands. This language would govern future actions by the city with regard to the submerged land.

The bill does not modify or supersede any provision of the City of Clearwater's charter concerning the requirement of a referendum for use of waterfront property that is owned by the city. The city's charter contains numerous provisions relating to the use of real property in ARTICLE II. LEGISLATIVE POWER, Section 2.01. Council; composition; powers.<sup>10</sup> Section 2.01(d)(5) provides, in relevant part, that:

no municipal or other public real property constituting the Memorial Causeway or lands immediately contiguous thereto, more particularly described as: That portion of Memorial Causeway (S.R. 60) a 1200-foot-wide right-of-way, lying between the east abutment of the west bridge and the east line of Clearwater Harbor, and the submerged portions of Board of Trustees of the Internal Improvement Trust Fund Deed Numbers 17,500 and 17,502, shall be developed or maintained other than as open space and public utilities together with associated appurtenances, except upon a finding by the council at a duly advertised public hearing that such development is necessary in the interest of the public health, safety and welfare of the citizens of the city and approval of such finding at referendum, conducted subsequent to the public hearing.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Provides for ratification of certain uses of submerged lands.

Section 2: Provides for limited private use of submerged lands; requires a referendum for certain alterations of uses; requires use of revenues to fund water-related activities.

Section 3: Provides for right of reverter.

Section 4: Provides that act does not modify or supersede city charter's requirement of a referendum for certain uses of waterfront property.

Section 5: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

January 26, 2007.

WHERE?

The *Pinellas News*, a weekly newspaper of general circulation published in Pinellas County.

<sup>10</sup> <http://www.municode.com/resources/gateway.asp?pid=10148&sid=9>.

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

According to the Economic Impact Statement, the bill will have no fiscal impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Drafting Issues**

##### Section 2

The language in the council substitute which refers to “any area under the control of the portions of the property” granted in the 1925 act may need clarification. It is assumed that this language refers to areas whose use is governed by that act.

The second sentence and the third sentence of this section could be reordered order to improve readability.

The language in the council substitute regarding a “site specific referendum put before the voters of the City of Clearwater,” also may need more specificity in terms of how such referendums would be conducted.

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 18, 2007, the Government Efficiency & Accountability Council adopted a strike-all amendment which:

- further limited the authorization which the City of Clearwater may provide for private uses of submerged lands to those for which it has received an application on or before December 31, 2006;
- added the requirement of a referendum if the use of specified submerged lands is altered in certain circumstances; and
- clarified that the act doesn't supersede the city charter requirement for a referendum for the use of waterfront property owned by the city.

The council reported HB 1585 favorably with a council substitute. This analysis has been updated to reflect the council substitute.