

1989

Session Law 89-177

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 89-177" (1989). *Staff Analysis*. 941.
<https://ir.law.fsu.edu/staff-analysis/941>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

**H 1413 GENERAL BILL by Regulatory Reform; Rudd and others
 (Similar S 1187)**

Canal & Waterways Dev. Projects; (SUNDOWN) repeals provisions re creation of special taxing districts for waterways development projects, which provide purpose, powers, & duties of such districts & appointment, powers, & duties of district governing bds. & which authorize validation, & sale of bonds, issuance of promissory notes & use of state funds to match funds raised by such districts, etc. Repeals 374.75-.95; revives/readopts 374.031,.311-.511. Effective Date: 10/01/89.

B
I
L
L

H
I
S
T
O
R
Y

03/24/89 HOUSE Prefiled
 03/28/89 HOUSE Placed on Calendar
 04/04/89 HOUSE Introduced, placed on Calendar -HJ 135
 04/06/89 HOUSE Placed on Special Order Calendar; Read second time -HJ 165
 04/11/89 HOUSE Read third time; Passed; YEAS 118 NAYS 0 -HJ 194
 04/12/89 SENATE In Messages
 04/19/89 SENATE Received, referred to Natural Resources and Conservation; Finance, Taxation and Claims; Appropriations -SJ 193
 04/25/89 SENATE On Committee agenda—Natural Resources and Conservation, 04/25/89, 1:00 pm, Room-2C-(301) -SJ 203; Comm. Report: Favorable by Natural Resources and Conservation -SJ 211
 04/26/89 SENATE Now in Finance, Taxation and Claims -SJ 211
 04/28/89 SENATE Extension of time granted Committee Finance, Taxation and Claims
 05/02/89 SENATE On Committee agenda—Finance, Taxation and Claims, 05/03/89, 9:00 am, Room-1C-(309) -SJ 254
 05/03/89 SENATE Comm. Report: Favorable with 1 amendment(s) by Finance, Taxation and Claims -SJ 256
 05/04/89 SENATE Now in Appropriations -SJ 256
 05/10/89 SENATE Withdrawn from Appropriations -SJ 296; Placed on Calendar
 05/24/89 SENATE Placed on Special Order Calendar -SJ 402; Amendment failed; Passed; YEAS 37 NAYS 0 -SJ 422
 05/25/89 Ordered enrolled
 06/13/89 Signed by Officers and presented to Governor
 06/27/89 Approved by Governor; Chapter No. 89-177

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1413-f.rr
DATE: June 30, 1989

89-177

**HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1413

RELATING TO: Canal and Waterways Development Projects

SPONSOR(S): Committee on Regulatory Reform and Representative Rudd

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 27, 1989

CHAPTER #: 89-177, Laws of Florida [89-177]

COMPANION BILL(S): SB 1187

- OTHER COMMITTEES OF REFERENCE:** (1)
(2)
(3)

I. SUMMARY:

HB 1413 saves the Canal Authority Board of Directors and the Cross Florida Canal Navigation District Board of Commissioners from Sundown repeal and schedule their future Sundown repeal. The bill repeals portions of part III of chapter 374, Florida Statutes, related to the creation and powers of special taxing districts established by the Department of Natural Resources for state and federal waterways development projects.

A. PRESENT SITUATION:

Several related sections of chapter 374, Florida Statutes, are scheduled for Sundown repeal on October 1, 1989. Included in the repeal are the Canal Authority Board of Directors, created by section 374.031, Florida Statutes, and the Cross Florida Canal Navigation District Board of Commissioners, created and empowered by sections 374.311-374.511, Florida Statutes. The repeal also includes sections 374.77-374.80, Florida Statutes, applicable to the governing bodies of special taxing districts created by the Department of Natural Resources for state and federal waterways development projects.

Canal Authority Board of Directors

Part I of chapter 374, Florida Statutes, creates and empowers the Canal Authority and its Board of Directors. The Authority was created as a public corporation in 1933. It was given extensive corporate powers and other special powers to acquire, construct

and maintain a canal across Florida. Construction of the canal was started in 1935, halted due to lack of federal funds in 1936, and resumed and continued from 1964 until 1971. The Canal Authority acquired title or easement rights to over 50,000 acres of land for construction of the Cross Florida Barge Canal before construction was halted by federal court order in 1971.

The Canal Authority Board of Directors was first scheduled for Sundown review and repeal in 1981. The Legislature, as a result of that review, revised and reenacted section 374.031, Florida Statutes, designating the Governor and Cabinet as the Board of Directors for the Canal Authority. The Executive Director of the Department of Natural Resources was designated as Executive Director to the Board. The Board and its Executive Director are served by a three member staff. Since 1971, the Board of Directors and its staff have managed the lands and assets held by the Authority pending final deauthorization of the Cross Florida Barge Canal Project.

The canal project has never been completely deauthorized. Florida enacted legislation in 1979, 1984 and 1985 to provide for the transfer of the Canal Authority to the Department of Natural Resources and for the disposition of its lands and assets effective upon Congressional deauthorization of the canal project. In 1986, section 1114 of Public Law 99-662 created a federal deauthorization plan which is, in part, contingent upon implementing legislation by Florida. Major differences which exist between the state and federal deauthorization plans have not yet been resolved.

Cross Florida Canal Navigation District Board

Part II of chapter 374, Florida Statutes, creates and empowers the Cross Florida Canal Navigation District (District). The District was created as a special taxing district in 1935. The purpose of the District was to raise funds to enable the Canal Authority to fulfill its responsibilities. The District includes the six counties in or adjacent to the Canal corridor: Duval, Clay, Putnam, Marion, Levy and Citrus counties. The District is governed by a five member Board of Directors. Board members are appointed by the Governor and must be residents of district counties. The board is authorized to borrow money and to issue bonds and promissory notes. The district also has ad valorem taxing authority in district counties. Funds obtained in excess of the district's operational needs were to be transferred to the Canal Authority. The district has not collected or transferred funds since construction of the canal was halted in 1971.

Since 1971, the district's Board of Commissioners has managed the remaining, untransferred ad valorem tax dollars and the interest earned on those funds. The district contracts with the Canal Authority for staff support in managing its funds. District funds, totaling approximately \$1.2 million, are invested with banks located in district counties. Pursuant to section 374.3001, Florida Statutes, the district's property and funds will be transferred to the Department of Natural Resources upon

federal deauthorization of the Cross Florida Barge Canal Project. Section 253.783(2)(g), Florida Statutes, (also effective upon federal deauthorization) provides for the repayment of district counties for ad valorem taxes paid to the district and for interest earned to June 30, 1985.

Navigation District Governing Bodies

Section 374.75, Florida Statutes, authorizes the Department of Natural Resources to create special taxing districts as needed to implement any state or federally approved waterways development projects in Florida. The purpose of such districts is to raise funds for use by the Canal Authority in acquiring rights-of-way for waterways development projects. Sections 374.76-374.95, Florida Statutes, enumerate the powers and duties of the districts and provide for the appointment and duties of their governing bodies. The governing bodies are empowered to levy ad valorem taxes, to issue bonds and promissory notes, and to run the affairs of the districts under supervision of the Department's Division of Resource Management. Two such districts were created in 1964, but were never fully operational. There are no existing navigation districts created under these statutes.

B. EFFECT OF PROPOSED CHANGES:

HB 1413 reenacts statutory provisions for the Canal Authority Board of Directors and the Cross Florida Canal Navigation District Board of Commissioners without change. This would preserve the Canal Authority and the Cross Florida Barge Canal Navigation District as separate organizational entities. Under existing state law, the Governor and Cabinet would continue to manage the lands and assets held by the Canal Authority until the Cross Florida Barge Canal Project is deauthorized by the United States Congress. Likewise, under existing law, the Board of Commissioners would continue to manage the monetary assets of the Cross Florida Canal Navigation District until federal deauthorization occurs.

The bill repeals those portions of Part III of chapter 374, Florida Statutes, which authorize the Department of Natural Resources to create special taxing districts for waterways development projects and which empower such districts and their governing bodies. The sections repealed would not effect the powers and duties of the Cross Florida Canal Navigation District, created by chapter 374, Florida Statutes, or the Florida Inland Navigation District or West Coast Inland Navigation District, created by special acts of the Legislature. Those navigation districts would continue to be subject to the control and supervision of the Department's Division of Resource Management pursuant to section 374.761, Florida Statutes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

No general revenue funds are expended for operation of the Canal Authority or the Cross Florida Canal Navigation District Board of Commissioners.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

The Canal Authority operates primarily from interest earnings on an Administration and Operations Trust Fund. As of June 30, 1988, the balance of that fund was \$6,259,327.29. A balance of

\$5,018,757.86 was maintained in a Right-of-Way Trust Fund. The Right-of-Way Trust Fund is made up of unexpended ad valorem taxes paid by Cross Florida Canal Navigation District counties which were transferred to the Authority plus accrued interest. That fund may be used only for right-of-way acquisitions.

For FY 87-88, Canal Authority operating expenses were \$202,692.18. Revenues for the period totaled \$844,085.84. Revenues were derived from accumulated interest, leases and rental of lands, and an administrative services contract with the Cross Florida Canal Navigation District.

Operating expenses for the Cross Florida Canal Navigation District Board of Commissioners are paid from interest earned on ad valorem tax dollars that had not been transferred to the Canal Authority. These funds are invested in certificates of deposits with banks in District counties. For the budget period of October 1, 1987 through September 30, 1988, expenditures were \$9,440 with interest earned totaling \$74,237, for an estimated balance of \$1,209,492.

Similar operating expenses and revenues could be anticipated if the Canal Authority and the Cross Florida Canal Navigation District are continued as proposed by this bill.

According to the Department of Natural Resources, little, if any, cost savings would be realized if these entities were repealed and their assets and responsibilities were transferred to the department. A great potential exists that legal costs would increase due to an anticipated increase in litigation.

III. LONG RANGE CONSEQUENCES:

None.

IV. COMMENTS:

HB 1413 reflects the findings and recommendations of staff's Sundown review and report on the Canal Authority Board, the Cross Florida Canal Navigation District Board of Commissioners, and of governing bodies of navigation districts created by the Department of Natural Resources.

Although construction, further acquisition of lands, and funding for the Cross Florida Barge Canal Project were halted in 1971, the project has never been fully deauthorized. There are unresolved differences between the 1986 federal deauthorization legislation (section 1114 of Public Law 99-662) and Florida's long-existing plan for disposition of the over 50,000 acres of Canal lands and related assets (chapters 79-167, 84-287, and 85-302, Laws of Florida).

The Canal Authority owns 39,173 acres of land in fee simple and has perpetual easements for 11,751 additional acres. The market value of these lands and land interests has been estimated at \$60 to \$100 million. The Canal Authority has managed these lands with a high degree of input and cooperation from local governments, regional

entities such as the water management districts, and environmental groups at the state and local level. The lands are geographically diverse. They range from waterways and lowlands that are very similar to lands being purchased by the state under the CARL program to lands that pass through highly developed areas of growth and major intersections. Approximately 8,000 acres of flooding easements, surrounding completed portions at the eastern end of the canal project, form Lake Oklawaha. Heavily utilized recreation areas also exist around finished canal facilities on the western end of the project. The fate of these lands are of considerable environmental and economic interest to the state and to the counties within and adjacent to the canal corridor.

In determining whether to abolish the Canal Authority before final deauthorization, the Legislature should consider three major legal issues which could arise as a consequence of such a repeal:

- (1) whether repeal would constitute a breach of the Canal Authority's contractual obligation to the United States Government;
- (2) whether repeal would constitute legal abandonment of the easements obtained;
- (3) whether the state would be required to return property subject to an abandoned easement to its original state.

Several legal challenges to titles held by the Canal Authority have been brought by previous land owners under the theory of abandonment. The state, and private counsel on behalf of the authority, argued that title had transferred irrevocably into state ownership where the total fee ownership had been taken and further argued that the project had not been abandoned as the authority remained under continuing and binding contractual obligations to maintain sufficient title and easements for construction and maintenance of the canal. While titles which had been obtained in fee simple have been determined to be permanently in public ownership, considerable questions as to the continued validity of easements have subsequently been raised. Thus far, easements relating to the constructed parts of the canal have not been extinguished.

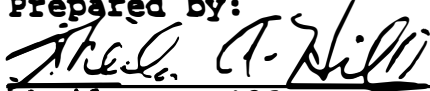
In determining whether to repeal the Cross Florida Canal Navigation District and transfer its funds to a state agency prior to deauthorization, consideration should be given to whether such an action would place the Canal Authority in jeopardy with respect to its contractual obligations to the United States Government. Retention of the district and its Board of Commissioners would continue to provide an established legal entity, at a minimal cost, that would enable the Canal Authority to meet those obligations. This would also preserve local district oversight in the management of funds collected from district counties. Retention would also avoid any potential questions about the legality of a state agency disposing of funds raised from ad valorem taxes levied by this special taxing district.

While the final determination as to whether to repeal should occur is a decision to be made by members of the Legislature and the Governor, it would not appear to be advisable to permit repeal prior to making substantial arrangements for the possible liability of the State. These arrangements could involve negotiations with private landowners, local governments, and the federal government in an attempt to avoid potential litigation.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Sheila A. Hill

Staff Director:



Patrick L. "Booter" Imhof

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

SH/cm

REVISED: May 3, 1989BILL NO. HB 1413DATE: May 2, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Gee</u>	<u>Voigt</u>	1. <u>NRC</u>	<u>Favorable</u>
2. <u>Boyle</u>	<u>Beggs</u>	2. <u>FTC</u>	<u>Fav/1 Amend</u>
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:

Waterways Development Projects

BILL NO. AND SPONSOR:

HB 1413 by
Natural Resources and
Conservation CommitteeI. SUMMARY:

A. Present Situation:

In December, 1988, the Senate Natural Resources and Conservation Committee published two reports entitled "A Review of the Cross Florida Canal Navigation District" and "A Review of Navigation Districts Operating Pursuant to Sections 374.77 - 374.80, Florida Statutes." In January, 1989, the committee published a third report, "A Review of the Canal Authority of the State of Florida." These reports represented the Senate's Sundown Review of provisions providing for entities relating to waterways.

The Cross Florida Canal Navigation District is a special taxing district established to raise funds for the acquisition of lands for the Cross Florida Barge Canal. The district was determined by staff not to meet the criteria for reauthorization pursuant to the Sundown Act, in that its essential function is no longer being accomplished.

The review of navigation districts operating pursuant to ss. 374.77 - 374.80, F.S., revealed that no such districts exist and that it is unlikely that any will be created in the future.

The Canal Authority of the State of Florida has not, since 1971, been able to accomplish its primary function of providing lands to the U. S. Army Corps of Engineers, due to a federal court permanent injunction barring further construction of the Cross Florida Barge Canal project. Senate Natural Resources and Conservation Committee staff therefore determined that the canal authority failed to meet the criteria for reauthorization pursuant to the Sundown Act.

Based on these considerations, Senate Natural Resources and Conservation Committee staff recommended that none of the provisions reviewed be reauthorized and that the remaining duties, responsibilities, assets, and liabilities of these entities be transferred to the Department of Natural Resources.

When a proposed committee bill to accomplish these recommendations was presented to the Committee on Natural Resources and Conservation on March 8, 1989, the committee did not agree to introduce the bill, due to concerns that abolishment of the Canal Authority and the Cross Florida Canal Navigation District could lead to legal complications relating to the title to canal lands and the contractual relationship existing with the Corps of Engineers. The committee directed staff to prepare instead a bill to reauthorize the Canal Authority and the Cross Florida Canal Navigation District pursuant to the Sundown Act and to repeal provisions

authorizing the non-existent navigation districts operating pursuant to ss. 374.77 - 374.80, F. S.

House Bill 1413 is identical to SB 1187, which was drafted by Senate Natural Resources and Conservation Committee staff to implement the March 8, 1989 committee directives.

B. Effect of Proposed Changes:

The bill repeals ss. 374.75 - 374.95, F.S., relating to navigation districts operating pursuant to ss. 374.77 - 374.80, F.S.

The bill revives and readopts ss. 374.031, 374.311, 374.321, 374.331, 374.341, 374.351, 374.361, 374.371, 374.391, 374.401, 374.411, 374.421, 374.431, 374.441, 374.451, 374.461, 374.471, 374.481, 374.491, 374.501, and 374.511, F.S., authorizing the existence of the Canal Authority of the State of Florida and the Cross Florida Canal Navigation District, and schedules said provisions for repeal October 1, 1999 with prior review by the Legislature pursuant to s. 11.611, F.S., the Sundown Act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None

B. Government:

None

III. COMMENTS:

The act takes effect October 1, 1989.

IV. AMENDMENTS:

#1 by Finance, Taxation, and Claims:

Schedules the Sundown of the Canal Authority and the Cross Florida Canal Navigation District for 1991.

SENATE COMMITTEE AMENDMENT

SB _____

No. 1
(reported favorably)

HB 1413

The Committee on Fin., Tax., & Claims recommended the following amendment which was moved by Senator.....and adopted: and failed:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Senate Amendment

On page 2, line 19, strike
the date "October 1, 1999"

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No	Yes
			-	

and insert:

October 1, 1991