

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** CS/HB 1547 Lake Asbury Municipal Service Benefit District, Clay County  
**SPONSOR(S):** Military & Local Affairs Policy Committee and Proctor  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Military &amp; Local Affairs Policy Committee</u>	<u>12 Y, 0 N, As CS</u>	<u>Nelson</u>	<u>Hoagland</u>
2)	<u>Finance &amp; Tax Council</u>	<u></u>	<u></u>	<u></u>
3)	<u>Economic Development &amp; Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The Lake Asbury Municipal Service Benefit District is a dependent special district that was created by the Florida Legislature. The stated purpose of the district is the continuing maintenance of the lakes and dams known as Lake Asbury, South Lake Asbury and Lake Ryan in Clay County.

This bill amends the 1986 special act that created the Lake Asbury Municipal Service Benefit District. Currently, the district may levy an annual special assessment no greater than \$100. The bill authorizes the board of trustees of the district to establish an annual special assessment greater than \$100 per lot upon approval by majority vote of the district's electors voting in a referendum called for that purpose.

The fiscal impact of this bill will be dependent on whether district lot owners approve an increase in their assessments.

This act is effective upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Lake Asbury Municipal Service Benefit District was created pursuant to ch. 86-392, L.O.F. The Florida "Official List of Special Districts" cites the statutory authority for this dependent district as ch. 374, F.S., "Navigation Districts; Waterways Development."<sup>1</sup> The purpose of the district is the continuing maintenance of the man-made lakes and dams known as Lake Asbury, South Lake Asbury and Lake Ryan in Clay County.

The district's governing body consists of a nine-member board of district trustees. Board members are elected by the qualified voters of the district for four-year terms. To be eligible for election, a person must reside in the district and be qualified to vote. The board of district trustees meets at least once a month at a time, date and place established by the trustees. All meetings are held at a public place within the district, and are open to the public. Five district trustees constitute a quorum, and the affirmative vote of a majority of the trustees is necessary for any action taken. District trustees do not receive compensation, but are paid necessary expenses incurred while engaged in the performance of their duties.

The Clay County Tax Collector serves as the ex-officio tax collector for the district; the Clay County Clerk of the Circuit Court is the ex-officio clerk of the district; and the Clay County Supervisor of Elections is the ex-officio supervisor of elections for the district. The district board of trustees may appoint such other officers as it deems appropriate and necessary.

The district is required to submit a proposed annual district budget to the Clay County Board of County Commissioners for approval or rejection. The failure of the board to take action on the budget within 45 days after submission constitutes its approval. The district also may submit any budget amendments to the Clay County Board of County Commissioners for approval or rejection, which amendments are also deemed approved if the board fails to take action within 45 days. The district is audited annually and in such a manner as directed by the board.

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<sup>1</sup> <http://www.floridaspecialdistricts.org/OfficialList/criteria.cfm>.

Currently, the district is authorized to levy ad valorem taxes not to exceed three mills<sup>2</sup> to pay the cost of public functions or services authorized in its act which are municipal services within the meaning of s. 9(b), Art. VII, of the State Constitution,<sup>3</sup> provided that such millage constitutes part of the millage that the county may levy for municipal purposes. The millage limitation of three mills can be increased only upon petition of the district trustees, approval of such petition by the Clay County Board of County Commissioners, and approval by majority vote of the electors of the district voting in a referendum called for that purpose.

The district also may levy an annual assessment not to exceed \$100 against every district lot. The assessment must be billed and collected as provided by Florida law, the rules of the Florida Department of Revenue, and appropriate county ordinances, as applicable. The special assessments remain liens on the assessed property until paid.

There are 447 lots immediately adjacent to the three lakes contained in the special district.<sup>4</sup>

The dams of the Lake Asbury Municipal Service Benefit District were built in the late 1960s. As these dams have aged, regulatory requirements have increased and maintenance costs have escalated. The district has indicated that it desires to institute a proactive improvement plan for the lakes and dams in an “economically feasible manner.” The district is in need of engineering studies, quarterly dam inspections, leak alarms, erosion control, monthly water testing, stocking, emergency dam repair, a new maintenance program, a dredging schedule for the lakes, plus major capital improvements for all dams including new valves, controls, valve tubes, French drains and bulkheads, plus an emergency flood control spillway for South Lake Asbury.

The current revenue base does not support district expenses. The district’s annual assessment of \$100—which has been in effect since 1986—is 100 percent pledged to pay off a dredging loan. The cost of the loan is \$43,907 annually for another seven years. Before the loan, the district was able to fund some basic maintenance. Since the loan, the district cannot complete minimal maintenance, stock the lakes with carp, or conduct a vigorous hydrilla control program. The district received some relief in 2009 from donations of approximately \$22,000.<sup>5</sup>

In 2008, the board of trustees attempted to amend the district’s charter to allow for annual special assessments of up to \$1000 per lot. That bill (HB 1541) died in the Government Efficiency & Accountability Council without being heard.

On January 13, 2009, the Clay County Board of County Commissioners voted 4-0 to support Resolution 08-3 by the district trustees to again request that the Florida Legislature amend its charter to allow for greater special assessments. Approximately 50 lot owners signed a letter endorsing HB 713.<sup>6</sup>

Last year, the Florida Legislature passed HB 713, relating to the Lake Asbury Municipal Service Benefit District. This bill increased the cap on the annual special assessment that the district was authorized to

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<sup>2</sup> Residents presently are levied a one-mill ad valorem tax.

<sup>3</sup> Section 9, Art. VII of the State Constitution provides that special districts may be authorized by law to levy ad valorem taxes. These taxes may not be levied in excess of the following millages: for all county purposes, 10 mills; for all municipal purposes, 10 mills; for all school purposes, 10 mills; for water management purposes, 0.05—one mill, depending on location in the state; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

<sup>4</sup> Economic Impact Statement for HB 1547 prepared on 12/14/09, by DeAnn Bjornson, member of the Lake Asbury Municipal Service Benefit District Board of Trustees.

<sup>5</sup> <http://www.lakeasbury.us/VisionReport2-09.pdf>.

<sup>6</sup> March 6, 2009, e-mail from DeAnn Bjornson.

impose from \$100 to \$1000 per lot. On June 11, 2009, Governor Charlie Crist vetoed this legislation, stating:

I have concerns about increases in the district's authority to incur obligations and authorize annual special assessments from \$1000 to \$1,000 occurring without a voter referendum. The need for a referendum is heightened when any change to a special district's practices could lead to increased financial costs, though taxes or special assessments, to landowners and those who reside within the district.

The district has reported recent developments that emphasize the critical needs facing the district. The Florida Department of Environmental Protection Dam Safety Division performed a dam observation on June 22, 2009, and strongly recommended that the district find a way to fund necessary engineering studies. As a result, the district joined the Clay County Local Mitigation Strategy Committee, which ranked the district ninth on its project list, with a mitigation benefit cost ration of approximately 35 to 1. The district also has pursued a Community Development Block Grant through the Department of Housing and Urban Development. On October 20, 2009, a Critical Infrastructure Threat Assessment Mitigation Software Project field risk assessment was conducted on the three lakes and dams by the Northeast Florida Regional Council. The district has not seen the completed report, but understands that the lakes will be ranked in the highest risk category.

The district held a public hearing on December 7, 2009, and asked residents to indicate their position on the current legislative effort. On December 8, the Clay County Board of County Commissioners again voted unanimously to support this bill.

### **Effect of Proposed Changes**

HB 713 amends ch. 86-392, L.O.F., authorizing the board of trustees of the Lake Asbury Municipal Service Benefit District to establish an annual special assessment greater than \$100 per lot upon approval by majority vote of the electors of the district voting in a referendum called for that purpose. Currently, the district may not levy an annual special assessment greater than \$100.

Every \$100 increase in assessments will bring in approximately \$47,700 less a three percent tax collector's fee. The board has indicated that it intends to propose between a \$300—\$500 annual assessment.

The act is effective upon becoming a law.

### **B. SECTION DIRECTORY:**

Section 1: Amends paragraph (j) of ss. (4) of s. 2 of ch. 86-392, L.O.F., relating to the Lake Asbury Municipal Service Benefit District.

Section 2: Provides an effective date.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 21, 2010

WHERE? The *Clay Today*, a weekly newspaper published in Orange Park, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement:

- The estimated cost of implementation of this bill will be \$400 for hearings, and \$3,000 for the cost of a referendum.
- HB 1547 is revenue neutral. It simply allows the property owners in the district to limit the allowed assessment used to maintain the integrity of the dams and the usability of the lakes that make up the district. It is the intention of the district to exercise its right to implement a referendum as soon as possible after HB 1547 becomes law in order to begin funding critical maintenance and capital projects.
- The dams in Lake Asbury are nearly 50 years old, are earthen construction and have received minimal maintenance. The inability of the district to raise revenue under its current charter creates a situation where more maintenance is deferred. According to the district engineer, lack of maintenance at this point in the service life of the dams will result in greater future costs for maintenance and repair.
- Failure of the dams due to lack of maintenance and redundant control devices could result in catastrophic adverse impacts to downstream landowners exceeding \$82.5 million, and could cause damage to public infrastructure in excess of \$11 million. The environmental impact of dam failure cannot be quantified. Loss of public infrastructure could result in loss of access to transportation routes by employed residents of Lake Asbury and neighboring communities.
- Loss of the lakes themselves would significantly reduce already depressed property values, undoubtedly causing many homeowners to owe more than their property would be worth. Dam failure would transform beautiful lake views into an unsightly, marshy mess littered with tree stumps and dead fish. The water front property where fishing, swimming and other water sports are routinely enjoyed would no longer exist.
- Assuming a referendum allowing for an increase should pass, each lot owner will see an increased assessment. However, as is stated above, the financial consequences of continuing to defer maintenance would far outweigh the increased cost of assessment.
- Lake Asbury Municipal Services Benefit District has no staff or full time employees. The district complies with the purchasing policies and procedures of Clay County and the State of Florida. Therefore, all expenditures of district funds must be in accordance with county and state bidding procedures. The additional revenue generated by this bill will be expended mostly on capital improvement expenditures, which will create work for construction industry businesses.
- Cost data for capital outlays were developed by civil engineers as part of the district's public facilities plan. Construction data, and recent local bid results were used as a basis for capital costs. All costs are present value. Impacts to downstream landowners are based on 70 percent damage of assessed value. Impacts to downstream infrastructure are based on county infrastructure GIS data. No data is available on impacts to Clay Electric utilities in the event of dam failure.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Drafting Issues**

None.

**Other Comments**

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 15, 2010, the Military & Local Affairs Policy Committee adopted one amendment. The amendment updates a statutory reference, and clarifies that a referendum will only be necessary in the instance where a special assessment represents an increase over a previously-approved maximum rate. This analysis is drafted to the Committee Substitute.