

STORAGE NAME: h1875a.ca

DATE: April 15, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 1875

RELATING TO: North Lauderdale Water Control District, Broward County

SPONSOR(S): Representative Rayson

COMPANION BILL(S): SB 2420 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 6 NAYS 0
 - (2)
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 - (5)
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I. SUMMARY:

This bill reduces the number of members of the Board of Supervisors of the North Lauderdale Water Control District (an independent water control district created by special act), from a governing board of 7 members to a board of 5. The current governing board has 7 members consisting of 2 appointees from the North Lauderdale City Council and 5 members elected by the landowners. The new governing board would have 5 members consisting of the 5 sitting members of the North Lauderdale City Council.

By effect, this would change the status of the water control board from an independent to a dependent special district.

This bill would become effective upon becoming a law.

This bill does not appear to have any impact on state or local governments' revenue.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Special Districts

A special district is defined as a local unit of government that has a specific purpose and a limited boundary, and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. Special districts have unique functions and powers that are prescribed by law. In 1989, the Legislature enacted chapter 189, Florida Statutes, that governs special districts in Florida.

Special districts in Florida have either **independent** or **dependent** status. A dependent special district is defined as one that either has: 1) a governing body that is identical to the governing body of a single county or municipality; 2) governing board members that are appointed by a single county or municipal governing board; 3) a governing body whose members may be removed by a single county or municipality; or 4) a budget that must be approved or vetoed by a single county or municipality. An independent special district, on the other hand, has a governing board and budget that are not controlled by a local county or municipal government.

For special districts created after 1989, section 189.4041, Florida Statutes, provides:

A charter for the creation of a dependent special district created after September 30, 1989, shall be adopted only by ordinance of a county or municipal governing body having jurisdiction over the area affected.

Although this requirement does not affect special districts created prior to 1989, it is the specific intent of the Legislature that dependent districts be created at the prerogative of the counties and municipalities according to subsection 189.402(1), Florida Statutes.

Creation and Changes to the North Lauderdale Water Control District:

The North Lauderdale Water Control District (NLWCD), is an independent special district. In 1963, the Legislature enacted chapter 63-661, Laws of Florida, creating the NLWCD, as a drainage district in Broward County. This water control district is subject to the provisions of chapter 298, Florida Statutes. At the time of the creation of this district, the Board of Supervisors consisted of 3 members elected by the landowners of the district in a one-acre/one-vote electoral system.

In 1982, the Legislature enacted chapter 82-273, Laws of Florida, amending chapter 63-661, Laws of Florida. This act increased the number of members of the board from 3 to 5 (all members to be elected by the landowners). In addition, voting rights were extended to owners of partial acres.

In 1985, the Legislature enacted chapter 85-385, Laws of Florida, amending the legal description of the NLWCD to permit the annexation of adjacent or contiguous lands, subject to the expressed written approval of the district's engineers.

In 1994, the Legislature enacted chapter 94-428, Laws of Florida, amending chapters 63-661 and 82-273, Laws of Florida. This act increased the membership of the Board of

Supervisors from 5 to 7 with the 2 additional members to be appointed by the City Council of the City of North Lauderdale. Members of the city council or their designees were authorized to serve on the board.

B. EFFECT OF PROPOSED CHANGES:

The bill would reduce the number of members of the board from 7 to 5. The 5 members would consist of the 5 sitting members of the City Council of the City of North Lauderdale. The City Council, sitting as the board of supervisors of the NLWCD, would assume all duties, functions, and responsibilities of the district. The terms of the various board members would be identical to their term of office on the City Council.

This bill will change the water control district's status as an independent special district to that of a dependent special district.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

This bill amends chapters 63-661, 82-273, and 94-428, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. Although the North Lauderdale Water Control District's authority remains the same, in effect, the District will be transferred to the North Lauderdale City Council.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The North Lauderdale City Council will also have the responsibilities, obligations, and work that was handled by the previous District governing board (consisting of 2 council members and 5 landowners).

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

On the surface, it would appear that no responsibilities, costs and powers are being transferred; however, in reality, responsibilities and powers are being transferred to the North Lauderdale City Council.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

The City Council members are accountable to resident landowners through the one-person/one-vote of the city elections. The City Council members are not directly accountable to the nonresident landowners, as they are unable to qualify as voters in the City Council elections.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable (N/A).

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The change in composition of the District's governing board will eliminate the nonresident landowners' opportunity to participate in the decision on who will serve on the governing board.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

N/A

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

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- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION RESEARCH:

Section 1: Section 4 of chapter 63-661, Laws of Florida, as amended by chapters 82-273 and 94-428, Laws of Florida, is amended to change the composition of the North Lauderdale Water Control District (NLWCD) from a board of 7 members (5 members elected by landowners in one-acre or partial-acre/one-vote, and 2 members appointed by the City Council of the City of North Lauderdale), to a board of 5 members (all of whom shall be the five sitting members of the City Council of the City of North Lauderdale).

Section 4 of the chapter is also amended to require the North Lauderdale City Council to assume all of the duties, functions, and responsibilities of the NLWCD within 30 days after this act becomes a law.

Section 2: Provides that this bill shall take effect upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? March 2, 1997

WHERE? Sun-Sentinel, Fort Lauderdale, Broward County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

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

IV. COMMENTS:

Local Concerns:

The City of North Lauderdale supports this bill. According to comments from and information provided by the City of North Lauderdale, there have been substantial and significant complaints regarding the conditions of the drainage canals regulated by the NLWCD. The majority of the complaints make reference to the canals as being "choked with weeds and debris." See, Citizens Petitions.

The North Lauderdale Water Control District does not support this bill. According to information provided by the lobbyist for the NLWCD, "no specific complains have ever been brought to the attention of the Board, nor have the two Board members who are currently City Council members brought any specific complaints to the Board. Additionally, no citizens have appeared before the Board to lodge such complaints. See, "Reasons to Oppose HB 1875 - RE: North Lauderdale Water Control District pamphlet.

Contradictions Between the Bill and Chapter 189, Florida Statutes:

Under this bill, when the North Lauderdale Water Control District's governing board changes from the mixture of city council members and landowners to only the members of the City Council of North Lauderdale, the district will change from an independent special district to a dependent special district created by special act. As a dependent district, any ad valorem millage that might be levied by the District would fall under the Constitutional 10 mill cap for municipalities.

For special districts created after 1989, section 189.4041, Florida Statutes, provides that a charter for a dependent special district "shall be adopted only by ordinance of a county or municipal governing body having jurisdiction over the area affected."

As a dependent district created by special act of the Legislature, the District constitutes a pre-1989 relic inconsistent with the intent of chapter 189, Florida Statutes, which is to have independent districts governed by special act and dependent districts created and governed by local ordinance. By amending the special act, when the county could achieve the same results by repealing the special act and passing a local ordinance, the 1997 Legislature is perpetuating an exception to general law.

Dual Office-Holding: Concerns have been raised by the North Lauderdale Water Control District (NLWCD), that this bill provides for **dual office-holding** by the city council because they will be serving both as the board for the water control district and as the city council. However, the prohibition against dual office-holding applies only to state, county and municipal officers and does not apply to special district officers. See, e.g., Op. Att'y Gen. Fla. 94-93 (1994), 94-42 (1994), and 85-24 (1985). See also, In re Advisory Opinion to Governor, 630 So.2d 1055 (Fla. 1994) (which held that a member of a community college board of trustees is a special district officer and is not subject to the dual office-holding constitutional prohibition). See also, Op. Att'y Gen. Fla. 96-89 (1996) (held that provisions

of s. 112.0455 to establish a drug-free workplace were inapplicable to water control districts because they are special districts).

The NLWCD asserts that using the analysis of the Supreme Court In re: Advisory Opinion To the Governor--School Board Member--Suspension Authority, 626 So.2d 684 (Fla. 1993), where a district school board member was categorized as a "county" official and was subject to the governor's constitutional suspension authority, permits water control district board members to be classified as "municipal" officers subject to the constitutional prohibition against dual office-holding.

In the Suspension Authority case, the governor sought to use his constitutional authority to suspend a district school board member. Id. However, the governor was concerned that his authority did not apply to school board members because school boards are called "districts" in the Florida Constitution. Id. The Court's analysis indicated that for the purpose of determining the governor's constitutional suspension powers district school board members were "county" officials because the public viewed both county school board members and county commissioners as "county" officials with "equivalent power and authority" and because both school board members and county officials were constitutionally created offices. Id.

The analysis contained in the Suspension Authority case does not appear to apply to the NLWCD because of the following:

- The case appears to be limited to school board districts as they are constitutionally created and water control districts are not;
- Unlike district school boards which have identical boundaries with the counties, the NLWCD and the city do not have identical boundaries. The NLWCD is wholly encompassed by the city, however, not all of the city is encompassed by the NLWCD;
- The powers of a city are broad and inclusive, while the powers of the NLWCD are merely incidental to their limited purpose as a drainage control district and to what is specifically authorized by their special law; and
- While the question of public perception of the NLWCD is a "municipal" government due to the similarity of names is a question for the courts to decide, in Broward County there are several municipalities with similar names including: Ft. Lauderdale, Lauderdale-by-the-Sea, Lauder Lakes, Lauderhill, and North Lauderdale. There are also several special districts with similar names including: Fort Lauderdale Community Redevelopment Agency, Ft. Lauderdale Downtown Development Authority, Ft. Lauderdale Housing Authority, Lauderdale Isles Water Control District, and West Lauderdale Water Control District. The sheer number of similarly named municipalities and special districts would seem to indicate to the public to be sure of what district or city they are located in.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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