

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1265 w/CS Tohopekaliga Water Authority
SPONSOR(S): Attkisson
TIED BILLS: None. **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	<u>14 Y, 0 N w/CS</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) <u>Natural Resources</u>	<u>18 Y, 0 N w/CS</u>	<u>Camechis</u>	<u>Lotspeich</u>
3) <u>Finance and Tax</u>	<u></u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates an independent special district known as the Tohopekaliga Water Authority (Authority). The bill provides a charter for the Authority. This bill provides for the collection of unpaid rates, fees, and charges. This bill provides for the assessment and imposition of ad valorem taxes at a rate not to exceed 1 mill upon approval by referendum of the electors of the district.

No fiscal impacts are anticipated for either fiscal year 2003-04 or 2004-05 according to the Economic Impact Statement. [See section III. "COMMENTS", C. DRAFTING ISSUES OR OTHER COMMENTS.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain: This bill creates an independent special district. This bill provides for the assessment and imposition of ad valorem taxes at a rate not to exceed 1 mill upon approval by referendum of the electors of the district. The district may establish separate rates, fees, and charges for different portions of the facilities, including separate rates, fees, and charges for each utility system. The district may levy and collect system development charges for capital improvements and debt service on capital improvements.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This bill creates an independent special district known as the Tohopekaliga Water Authority (Authority). The bill provides a charter for the Authority. This bill provides for the collection of unpaid rates, fees, and charges. This bill provides for the assessment and imposition of ad valorem taxes at a rate not to exceed 1 mill upon approval by referendum of the electors of the district.

Present Situation

In December 2001, Osceola County (County), the City of Kissimmee and the City of St. Cloud entered into an interlocal agreement creating a local government working group and authorizing the use of professional services relating to a study to determine the feasibility of creating a regional water and wastewater authority (Regional Utility).

Thereafter, during early 2002, representatives from each of the local governments organized and worked to solicit and engage professional services to assist and facilitate in the development and evaluation of information, feasibility analysis, policy direction and implementation strategies. Accordingly, the local governments collectively engaged Bryant, Miller and Olive, P.A., to assist them in facilitating and achieving a consensus concerning the feasibility, structure and implementation of a Regional Utility.

In May and June 2002, representatives from each of the local governments and special counsel to the local governments (Working Group) sought to begin to obtain information, insight, individual and collective policy direction from each local government’s officials and work to evaluate and synthesize such information and develop recommendations as to the feasibility, structure and implementation strategy for a Regional Utility.

The Working Group has developed, assembled and is prepared to workshop, draft documents which represent a general consensus on a structure and implementation strategy. The direction in the December 2001 Interlocal Agreement to the Working Group was to develop a “report, making recommendations as to the feasibility of the creation of a regional authority, [and] if feasible, the structure of the regional authority and an implementation plan for its creation”.

Unlike the County, Kissimmee and St. Cloud own and operate extensive water and wastewater treatment, distribution and collection systems within both incorporated and unincorporated areas of Osceola County. Both municipalities legally transfer and use substantial revenues from their utility systems to fund general government operations.

At this time the County does not own or operate any significant water or wastewater systems or facilities and, accordingly, does not rely on any substantial revenue transfers in the operation of water and wastewater utilities.

Although Kissimmee and St. Cloud currently provide substantial water and wastewater utility systems and facilities, the Working Group recognized that the delivery of water and wastewater services and ultimate build-out within the entire unincorporated area could occur in endless combinations over time. Rather than speculate on which government would ultimately serve which areas, the parties chose to recognize that the County does have significant and positive rights or opportunities to acquire or greatly assist a Regional Utility in acquiring certain governmentally owned systems or service areas. In developing a consensus, the Working Group was careful to put aside parochial or individual interests and focus on developing an approach that could serve the entire community as a whole.

Throughout the process of examining the development of a Regional Utility, the Working Group recognized St. Cloud's reservation that it might instead opt to seek a management or other contractual arrangement with the Orlando Utilities Commission to provide water and wastewater services within the St. Cloud service area or simply to retain the status quo. The Working Group was specifically directed by St. Cloud's representatives to develop an approach that would allow the County and Kissimmee to move forward with a Regional Utility both with and without St. Cloud. In any event, St. Cloud's representatives to the Working Group participated with the expectation that St. Cloud would support a Regional Utility, even if it did not participate in such a Regional Utility. Accordingly, an approach was developed that could initially include St. Cloud or, with relatively little revision, be modified not to include St. Cloud. In the event that St. Cloud chooses not to participate, this approach would allow St. Cloud to later participate on mutually agreeable terms if St. Cloud so requested.

As a facilitative tool and in response to suggestions and comments, the Working Group anonymously contributed a list of advantages and disadvantages. The Working Group's summary list of most frequently cited advantages and disadvantages follows:

Advantages: 1) more efficient service delivery, 2) more orderly growth management, 3) consistent levels of service, 4) orderly expansion of service, 5) improvement/enhancement of intergovernmental cooperation, 6) more equitable control over rates and impact fees, 7) control over quality of service and benefits, 8) elimination of inefficient use of water and sewer infrastructure annexation bargaining, 9) greater funding and financing options, 10) uniform standards and codes, 11) countywide water and wastewater infrastructure planning, and 12) protection of natural resources.

Disadvantages: 1) creation of another Government Entity, 2) involving the Board of County Commissioners in the water and sewer wastewater utility business when they haven't created their own system yet, and 3) sharing control of a larger service area vs. total control of each individual Local Governments' service area.

The Working Group arrived at a general consensus that the creation of a Regional Utility is feasible. Accordingly, the Working Group took the approach that the most productive means to address the numerous and complex issues relating to the structure of a Regional Utility and any implementation plan would be to develop a draft interlocal agreement providing for transition from the local governments to a Regional Utility, as well as a comprehensive charter for the Regional Utility which would serve the community in the short-term and in the long-term.

The City of Kissimmee and Osceola County have authorized and directed by joint resolution actions on behalf of each respective local government to seek passage of a special bill creating an independent

special district. The proposed special district is a regional water and wastewater utility service provider which will be known as the Tohopekaliga Water Authority.

Notwithstanding the fact that both local governments have adopted a joint resolution, and representatives of each appeared before the Osceola Legislative Delegation seeking sponsorship and support for the special bill, a letter to serve as evidence dated March 18, 2003, that the requirements of s. 189.404(e), F.S., has been complied with. The following has been submitted: 1) The purpose of the proposed district, 2) The authority of the proposed district, 3) an explanation of why the district is the best alternative, 4) a resolution of the governing body of the local jurisdiction within which the proposed district is located stating that the creation of the proposed district is consistent with the approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

C. SECTION DIRECTORY:

Section 1. Provides popular name.

Section 2. Provides legislative findings.

Section 3. Provides definitions.

Section 4. Creates and establishes an independent special district known as the Tohopekaliga Water Authority.

Section 5. Authorizes operation in Osceola County or areas adjacent to Osceola County; subject to general purpose local government consent.

Section 6. Provides the board of the district be the governing body of the district; provides for a five member board of supervisors; provides three year term limits; provides for the election of the board supervisors; provides elected members be residents of Osceola County or of the service area adjacent to Osceola County; provides limits for board members terms; provides for vacancies; provides for the organization of the board of supervisors; provides for compensation; provides for a quorum.

Section 7. Provides for prohibited conflicts of interest.

Section 8. Provides for meetings and notice.

Section 9. Provides for reports, budgets and audits.

Section 10. Provides for district's powers, functions and duties.

Section 11. Prohibits the creation of State, County, or Municipal debts.

Section 12. Provides for the adoption of rates, fees, and charges.

Section 13. Provides for system development charges and impact fees.

Section 14. Provides for the collection of unpaid rates, fees, and charges.

Section 15. Provides for the assessment and imposition of ad valorem taxes at a rate not to exceed 1 mill only upon approval by referendum of electors of the district.

Section 16. Provides for the collection and enforcement of all non-ad valorem assessments and taxes.

- Section 17. Authorizes the issuance of bonds and obligations.
- Section 18. Provides for a master plan to be adopted within three years of the effective date of this act.
- Section 19. Provides for merger and dissolution.
- Section 20. Provides for the effect of incorporation or annexation or presence of another special district.
- Section 21. Provides for enforcement and penalties.
- Section 22. Authorizes a tax exemption.
- Section 23. Provides for the liberal construction of act.
- Section 24. Provides for limitation of State authority.
- Section 25. States notice of intention to apply for legislation is given in time, form and manner required by State Constitution and Statutes; states notice for this legislation is sufficient, validated and approved.
- Section 26. Contains a supremacy clause which provides that this act control if there are any conflicting provisions in General Law/.
- Section 27. Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

- A. NOTICE PUBLISHED? Yes No
 IF YES, WHEN? February 4, 2003
 WHERE? Orlando Sentinel, Kissimmee, Osceola County, Florida
- B. REFERENDUM(S) REQUIRED? Yes No
 IF YES, WHEN? No specific date given for the referendum. [Section 15 of the charter.]
- C. LOCAL BILL CERTIFICATION FILED? Yes, attached No
- D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

- A. CONSTITUTIONAL ISSUES: Not Applicable.
- B. RULE-MAKING AUTHORITY: Not Applicable.
- C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: On April 9, 2003, the Committee on Natural Resources adopted one amendment to the bill. The purpose of the amendment was to strike Section 27 of the bill, which contains the "supremacy

clause.” However, the actual amendment inadvertently deleted the “severability clause” rather than the “supremacy clause.”

Other Comments: According to the Economic Impact Statement, “all costs of administration, implementation, and enforcement will be covered by rates, fees, and charges from utility customers without necessity for any immediate increase in rates, fees and charges currently being imposed. It is anticipated that the savings in the cost of money resulting from the transition, economies of scale, and efficiencies of consolidation will exceed the initial cost of implementation; and, that economies of scale and efficiencies of consolidation going forward will avoid the need to increase rates, fees, and charges for approximately two years after the effective date of the bill. Accordingly, the bill provides severe limitation on increasing rates for 2 years. The cost of administration and operation of a consolidated water and wastewater utility system will provide long term efficiencies and stability in rates for the consumer.

All funding is expected to occur through rates, fees, and charges to the customers of the consolidated utility system.

The bill has been drafted to severely limit rate increases for two years after the effective date. The only potential increases during the first 2 years would be those predicated upon implementing an identified capital improvement plan, meeting state or federal conservation or water demand management requirements, a periodic automatic indexing factor, or a 2% surcharge for the purpose of establishing a general fund account.

The contemplated Authority would provide many advantages to the affected individuals, businesses and governments, including (1) more efficient service delivery, (2) more orderly growth management, (3) consistent levels of service, (4) orderly expansion of service, (5) improvement/enhancement of intergovernmental cooperation, (6) more equitable control over rates and impact fees, (7) control over quality of service and benefits, (8) elimination of inefficient use of water and sewer infrastructure annexation bargaining, (9) greater funding and financing options, (10) uniform standards and codes, (11) regional water and wastewater infrastructure planning, (12) efficient protection of natural resources, and (13) more focused provision of water and wastewater utility services by local government.

The creation of a consolidated utility provider avoids inefficient expansion of water and wastewater facilities, increases efficiency and competition in the burgeoning real estate development market in the Osceola County area (1) in a manner advantageous to minimizing inefficient government, (2) in a manner which efficiently advances the delivery of water and wastewater infrastructure concurrent with demand, and (3) in a manner which provides stable and equitable rates for the consumers.

As a part of the contemplated transition to the Authority, the City of Kissimmee and Osceola County have agreed to enter into an interlocal agreement providing for (1) the retention and continued employment of all employees currently employed in the operation of the existing utility system, (2) a preference in hiring to any employee of the county and city currently employed in the operation of a utility system, and (3) an inclusionary pre-transition approach which keeps all affected employees informed of the personnel, staffing, and employment preference aspects of the transition process. The city and county will thus institute safeguards for current personnel, and anticipate that consolidation will yield new jobs as future growth occurs and local water and wastewater infrastructure is more effectively managed by the Authority.

The bill contains express provision that nothing therein shall be construed to grant the Authority any jurisdiction to regulate the services or rates of any investor-owned utility. Furthermore, the Authority is prohibited from providing service in any area currently being served by any general purpose local government unless the local government adopts a specific resolution authorizing the Authority to provide service.”

Supremacy Clause

Many local bills contain language providing that in the event of a conflict of the provisions of the local bill with the provisions of any other general or local law, the provisions of the act being considered controls to the extent of the conflict(s). This is referred to as a "supremacy" clause. This language does not allow interested persons or Members of the Legislature knowledge of the specific laws containing potential conflicts. Unless those specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Committee on Local Government & Veterans' Affairs adopted one amendment on March 27, 2003. The strike-all amendment includes:

1. A revision to lines 209 – 210 correcting reference to provide the independent special district is Tohopekaliga Water Authority.
2. Revisions have been included to insure that each affected general purpose local government (city or county) enters into an interlocal agreement which addresses representation of retail customers. The City of Kissimmee and Osceola County have already developed such interlocal agreements.
3. The District's powers are clarified relative to the ability to create, dispose, receive, recover, store and supply potable and non-potable water on a retail, wholesale and bulk service basis.
4. The ability of the District is clarified relative to its participation as a party in any civil, administrative or other action.
5. The local bill is being amended to clarify that nothing therein shall affect the ability of either the City of Kissimmee or Osceola County to engage in or pursue any civil administrative actions or remedies.
6. The local bill is clarified so that it shall not be construed to, or limit the power of the local self government of the charter county, or conflict with the Constitution or the Osceola County Home Rule Charter.
7. The local bill is modified to provide a severe limitation on increasing current water and wastewater rates for two years after the effective date of the legislation; unless the newly created Authority causes a rate consultant to review its rates, operating expenses and methods of operation and determines that such increase is either predicated upon (1) implementing an identified capital improvement program or (2) meeting state or federal conservation or water demand management requirements.
8. Although ad valorem taxes may be imposed by a special district only upon a vote of the electors, the local bill is modified to remove such authorization. No ad valorem taxes will be authorized in the District's charter.
9. Additional constraints relating to dissolution which require a 4/5's vote of both the City Commission and the Osceola County Board of County Commissioners have been included.
10. Language clarifying the relationship between subsequently incorporated or annexed areas and the District, and clarification that nothing in the local bill shall affect the powers of any municipal service benefit unit or dependent special district established by a charter county have been included.
11. Conflict provisions have been revised to be legally sufficient.

12. Minor punctuation, grammar and typographical errors have been corrected to implement the above-summarized items. As well, the term "Authority" has been appropriately capitalized throughout.

On April 9, 2003, the Committee on Natural Resources adopted one amendment to the bill. The purpose of the amendment was to strike Section 27 of the bill, which contains the "supremacy clause." However, the actual amendment inadvertently deleted the "severability clause" rather than the "supremacy clause."