

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1569 w/CS Woodlands Independent District
SPONSOR(S): Gottlieb
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>9 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>14 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
3) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
4) <u>Local Government & Veterans' Affairs</u>	<u>17 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
5) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill w/ CS, upon a majority vote of owners of freeholders not totally exempt from taxation on a referendum called by the City of Tamarac, creates the Woodlands Independent District as an independent special district within the City of Tamarac, Broward County. The purpose of the district is to maintain the appearance, aesthetics, and architectural standards of all private property within the district.

The bill w/ CS provides for the composition of the governing board, initial board members and subsequent elections. After the first elected board, board members will serve three year terms. Board members will serve without compensation, but may be reimbursed for expenses.

The bill w/ CS provides for the duties of the board which include the authority to impose and collect non-ad valorem assessments. The district may also issue revenue and refunding bonds. The district may not impose and collect ad valorem tax.

The bill w/ CS provides for a referendum to decide upon the creation of the District.

The district charter may only be amended by special act of the Legislature.

According to the Economic Impact Statement, there is no impact to the state or local budgets. Additionally, it is estimated that there will be minimal impact to the residents of the district as the current income of \$1.1 million is generated through voluntary contributions by a majority of residents. The contributions were mandatory under deed restrictions which have expired.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1569e.lgv.doc
DATE: April 23, 2003

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:

1. This bill creates an independent special district.
2. This bill authorizes the special district to make and collect special assessments.

B. EFFECT OF PROPOSED CHANGES:

This bill w/ CS creates, upon a majority vote of owners of freeholds not totally exempt from taxation on a referendum called by the City of Tamarac, the Woodlands Independent District as an independent special district within the City of Tamarac, Broward County. The purpose of the district is to maintain the appearance, aesthetics, and architectural standards of all private property within the district.

The bill w/ CS provides the district's boundaries.

The bill w/ CS provides that the governing board shall be composed of nine members who are qualified voters and residents of the district. The initial governing body, which will govern until March 19, 2004, of nine members is composed of the president from each of the eight homeowner associations and the president of the homeowner associations' board of directors. The sole function of the initial board is to adopt a resolution authorizing imposition of a non-ad valorem special assessment and to comply with the requirements of existing law for the resolution.

The subsequent governing board will be elected at a special election called by the City of Tamarac on March 19, 2004, with the individual receiving the greatest number of votes in each of the eight subdistricts being elected to the governing board. The ninth board member will be elected at large. Subsequent elections shall be called by the Board and scheduled in order to provide no lapse in representation. Following the elections in 2006, the term of office shall be for three years.

The bill w/ CS provides that board members may be removed by a majority vote of the board for misfeasance, malfeasance, or neglect of duty. Additionally, any vacancy for a term of office greater than 60 days in duration shall be filled by a special election within 30 days of the vacancy.

The bill w/ CS provides the powers of the governing board to include the authority to: contract, sue and be sued; acquire, own, convey, lease, construct, maintain, improve, enlarge, raise, relocate, operate, and manage property and facilities; accept grants and donations; have exclusive control of funds; hire personnel and provide benefits; cooperate and contract with governmental agencies; contract for professional services; contract with county or municipal governments for planning assistance; improve street lights, parks, streets, drainage, utilities, swales, and open areas and provide safe access to mass transportation facilities with prior approval of the City of Tamarac; undertake innovative approaches to securing the neighborhood from crime, blight, and failure to maintain property; adopt property maintenance, aesthetic, and architectural standards; provide for crime prevention; to privatize, close, vacate, plan or replan streets, roads, sidewalks, and alleys to regulate, restrict, or monitor traffic, all such actions require prior approval of the City of Tamarac; and to receive a planning grant from the Department of Community Affairs; to provide for fiscal management and budget preparation; to contract

and cooperate with community neighborhood improvement organizations; to apply and receive planning grants as a local government neighborhood improvement district.

The bill w/ CS authorizes the district to make and collect special assessments. The bill does not provide ad valorem taxing authority.

The bill w/ CS authorizes the district to issue revenue and refunding bonds.

Additionally, the bill w/ CS provides the power to adopt property maintenance, aesthetic and architectural standards. The adoption of standards requires two public hearings as provided in existing law. Resolutions of the board must be adopted consistent with statutory requirements for the adoption of municipal ordinances. Resolutions of the board must be recorded in a book kept for that purpose; and each resolution and each regulation must be filed with the district clerk and the Clerk of the City of Tamarac. Once enacted, resolutions are enforceable as to private property within the district. Violations are enforceable through civil injunction or as a code violation enforceable by the City of Tamarac as provided by law. The district is entitled to recover court costs and attorney fees in successful enforcement actions. Additionally, the district's regulations carry the force and effect of city code provisions. Finally, the district shall enter into an agreement for enforcement by the City of Tamarac.

The bill w/ CS prohibits the district from creating a debt against, or pledging the credit of, the state, the county or of any municipality.

The bill w/ CS provides for a meeting of the governing board at least once every other month. Special meetings may be called from time-to-time.

The bill w/ CS provides that board members serve without compensation but may receive expense reimbursement.

The bill w/ CS provides for compliance with financial disclosure, noticing and reporting requirements of existing law.

The bill w/ CS provides for a referendum regarding the creation of the District.

The bill w/ CS provides that the charter may be amended by special act of the Legislature.

The bill w/ CS provides for the district's cooperation with the City of Tamarac in all planning matters.

Background

The Woodlands is a subdivision of the City of Tamarac in Broward County. Deed restrictions, created at the time of development of the subdivision, have expired and were not renewed. Although general law provides a process for renewal, legal counsel failed to properly execute the renewal. As a result, annual assessments required by the deed restrictions are no longer mandatory. The subdivision is comprised of eight homeowner associations and an umbrella association. By letter, dated April 3, 2003, from Carol Capri Kalliche, Esquire, Becker & Poliakoff, P.A., to Lawrence Torn, President, Woodland Homeowners Association, Inc., Ms. Kalliche opined that the various Woodlands' homeowner associations no longer had the authority to enforce restrictive covenants or to assess the individual homeowners for expenses incurred in connection with any common areas, including, but not limited to all clubhouses.

C. SECTION DIRECTORY:

Section 1. Provides for the creation of the Woodlands Independent District within the City of Tamarac.

Section 2. Provides the District's purpose.

Section 3. Provides the District's boundary.

Section 4. Provides for the composition of the District governing board; provides for elections of board members; provides for removal under certain circumstances; provides for the filling of a vacancy on the District board.

Section 5. Provides the powers and duties of the District governing board.

Section 6. Provides for the organization, compensation, and administrative duties of the District governing board.

Section 7. Provides for the District's compliance with audit and reporting requirements of ss. 189.415 and 189.418, F.S.

Section 8. Provides for future amendment of this act by special act of the Legislature.

Section 9. Provides the District has no ad valorem taxing powers.

Section 10. Provides that the District shall cooperate with the City of Tamarac regarding planning matters; provides that the City is the paramount authority regarding governmental planning, environmental, and land development laws, regulations, and ordinances; provides for District consistency with applicable comprehensive plans, ordinances and regulations of the City; provides that no fee, charge, or assessment imposed by the District shall result in relief from any fee, charge, assessment or tax imposed by the City; provides that all property or facilities of the district shall conform to applicable City standards and ordinances; provides that the district does not have comprehensive planning authority.

Section 11. Provides for a mail-in ballot referendum, called by the City of Tamarac, regarding the creation of the district; provides ballot language.

Section 12. Provides effective dates.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

February 2, 2003.

WHERE?

The Miami Herald, a daily newspaper of general circulation in Dade County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

Upon the call of the City of Tamarac.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

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.

The supremacy language was contained in the bill at s. 12 and was subsequently removed by amendment April 15, 2003..

Other Comments

Woodland Homeowners Association, Inc.¹

On behalf of the Woodlands Homeowners Association, Inc. ("WHOA"), this correspondence shall serve as the WHOA Letter of Intention in connection with the Broward Legislative Delegation's consideration of the above-referenced and enclosed Local Bill (the "Bill").

As the Delegation is aware, the WHOA and its sections were organized and had been operating under the various deed covenants and restrictions included in the original and subsequent deeds for properties within the Woodlands. Resident owners had been paying annual mandatory assessments as needed to support the cost of maintenance of the common properties and security provisions within the district. Unfortunately, the terms of the Marketable Record Titles To Real Property Act (FS Chapter 712) have made these payments and architectural restrictions no longer mandatory or enforceable, and, without legislative assistance, the District will not be able to maintain current standards of security, convenience or appearance. The proposed Bill would allow the District to operate as the successor to WHOA, with mandatory enforcement powers and the ability to continue to finance necessary activities and utilize the powers of a Neighborhood Improvement District, allowing the District to make special assessments, borrow money and issue bonds at interest rates not exceeding the maximum rates provided by law, provide for elections and meeting notice requirements, and for reimbursement of travel expenses to Board members in accordance with Section U2.061, Florida Statutes. The WHOA requests the filing of the Bill in accordance with the submitted draft bill.

¹ Letter from Lawrence Torn, President, Woodlands Homeowners Association, Inc., to Sandy Harris, Executive Director, Broward County Legislative Delegation, 3/17/03.

Public Comments

Numerous items of correspondence were received in both support and opposition to this bill. Rather than attempt to include them verbatim, the authors in both support and opposition are listed below.

Support

Ronald M. Miller, Section IV, President; Harvey Kram, P.E.; Stephen M. Fain, Member-at-Large, Board of Woodlands Home Owner Association, Home Owner Representative; Lawrence Torn, President, Woodlands Homeowners Association, Inc.; Dr. Stanley Benson, Section I, President; and a resolution the Board of Directors of the Woodlands Homeowners Association, Inc. (3/30/03); and Petition in support of the resolution containing 31 signatures in support and three signatures not in support.

Opposition

Ernie Davis; Karen Kleinman; Marjorie Kamhi; Barbara Benbassat; E. Stein; Sharon Bracht; William Bracht; Esther L. Erez; Mr. & Mrs. Byron Carhart; Joe Rhr; Judith Margolis; Hugh and Denise Yonn; Dee Hooper.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Local Affairs Subcommittee, at its April 15, 2003, favorably recommended one amendment that accomplishes several revisions to the bill as filed. The amendment changes the bill as filed to:

- Make a technical change to the district's creation language by substituting the words "shall be" for the words "is hereby" in line 23 of the bill as filed.
- Revise the language of s. 5(13)(f) of the bill as filed to provide that the enforcement agreement with the City of Tamarac will be an interlocal agreement and will provide for the indemnity of the City and will provide for an insurance policy which names the City as an additional insured.
- Revise the language of s. 10 of the bill as filed to clarify the paramount authority of the City in matters of the adoption, amendment and repeal of ordinances; governmental planning, environmental and land development laws, regulations, and ordinances which apply to all development of land within the district. The amendment prohibits actions inconsistent with the City's comprehensive plan, except as provided in s. 5(13) of the bill as filed. The amendment provides that no fee, charge, or assessment imposed by the district shall entitle any relief to a resident or landowner from any fee, charge, assessment, or tax imposed by the City. The amendment provides that all property or facilities owned or constructed by the district shall conform to the applicable standards and ordinances of the City. Finally, the amendment makes it clear that the district does not have comprehensive planning authority.
- Provide for a mail in ballot to be sent to property owners between July 20 and August 1, 2003; for the receipt of ballots by the Woodlands Homeowners Association Board of Directors by 5:00 p.m. on September 1, 2003; ballot language; for the creation of the Woodland Independent District only if a majority of the votes received by the Board of Directors pursuant to this act are affirmative.
- Remove the supremacy language contained in s. 13 of the bill as filed.

The Committee on Local Government & Veterans' Affairs, at its meeting on April 21, 2003, adopted one amendment offered by the Sponsor. The amendment accomplished the objectives detailed above.

The Committee on Local Government & Veterans' Affairs, at its meeting on April 24, 2003, adopted a Strike All amendment upon recommitment to the Committee on Local Government & Veterans' Affairs. The amendment corrects the entity authorized to call the referendum regarding creation of the Woodlands Independent District; and amends the effective date of the act to provide that the referendum provision becomes effective upon becoming law, while the remainder of the bill becomes effective only upon a majority vote of the freehold owners as provided for in s. 11 of the bill.