

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1625 w/CS Ave Maria Stewardship Community
SPONSOR(S): Davis, M.
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Smith/Mitchell</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>20 Y, 0 N w/CS</u>	<u>Smith/Mitchell</u>	<u>Cutchins</u>
3) <u>Finance & Tax</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>

SUMMARY ANALYSIS

This bill creates the Ave Maria Stewardship Community District (District) within Collier County for the purpose of providing community development systems, facilities, services, projects, improvements, and infrastructure to the area surrounding Ave Maria University.

The bill provides the minimum requirements which must be included in the charter when creating an independent special district.

The bill also provides the District authority for: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, bridges, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the district; conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements with Collier County; and facilities for healthcare.

The bill creates a board of supervisors which is initially elected on a one-acre/one-vote basis, until such time when an area within the boundary of the District becomes urbanized, and then its qualified electors elect a board member.

The total amount of ad valorem taxes levied by the board for operating purposes, exclusive of debt service on bonds, will not exceed 3 mills.

This bill *appears* to provide an exemption from the provisions of general law. Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills.

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, which is authorized to raise revenues by ad valorem taxes, if a referendum is approved, non-ad valorem maintenance taxes¹, non-ad valorem assessments, benefit special assessments, maintenance special assessments, special assessments, fees, or service charges, and bonds.

B. EFFECT OF PROPOSED CHANGES:

The Barron Collier Company gave 905 acres to the Ave Maria University Foundation for the institution and operation of a private university known as Ave Maria University.² The initial landowners also own, immediately and adjacent to and surrounding the Ave Maria University³, lands on which they will be building “a university-oriented new town community.”

In order to provide community development systems, facilities, services, projects, improvements, and infrastructure for this community,⁴ this bill creates the Ave Maria Stewardship Community District (District) in Collier County.

Types of Special Districts

A special district is a local unit of *special purpose government* whose special purpose or purposes are implemented by specialized functions and related prescribed powers within a limited boundary.⁵ An independent special district is one which does not have any of the following:

- the membership of its governing body as identical to that of the governing body of a single county or a single municipality;
- all members of its governing body appointed by the governing body of a single county or a single municipality;
- members of the governing body of the special district subject to removal at will by the governing body of a single county or a single municipality during their unexpired terms; or

¹ [Non-ad valorem maintenance tax will apply only if there is a general law which provides that independent districts may levy a non-ad valorem maintenance tax.](#)

² HB 1625 s. 1(1)(e) (2004).

³ HB 1625 s. 1(1)(f) (2004).

⁴ HB 1625 s. 1(5) (2004).

⁵ See Fla. Stat. s. 189.403(1) (2003) (also exempting from the definition of special district: school districts, community college districts, a special improvement districts, municipal service taxing or benefit units, or boards which provide electrical service and which is a political subdivision of a municipality or is part of a municipality).

- a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.⁶

The District meets the definition of an independent special district. As an independent special district, the District must comply with the creation, dissolution, and reporting requirements set forth in chapter 189, Florida Statutes.⁷

Requirements for Creating a Special District - Minimum Charter Requirements

An independent special district, except for a community development district, is also required to have a charter that meets certain minimum requirements.⁸ This bill provides these minimum requirements.

Purpose of the District

The purpose of the District is to provide community development systems, facilities, services, projects, improvements, and infrastructure to the Ave Maria community by exercising its various management powers, with related financing powers.

Powers, Duties, and Functions of the District

The charter of the district must set forth the powers, functions, and duties of the district regarding ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements.⁹

Ad Valorem Taxation - The elected board has the power to levy and assess an ad valorem tax on all the taxable property in the District.¹⁰ The ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3 mills.¹¹

Bond Issuance - The charter provides for the sale of bonds, the issuance of additional bonds, refunding bonds, revenue bonds, and general obligation bonds.¹²

Other Revenue-Raising Capabilities - The District has authority to levy non-ad valorem maintenance taxes, non-ad valorem assessments, benefit special assessments, maintenance special assessments, special assessments, fees, or service charges, and bonds.

Liens and Foreclosure of Liens - Assessments for school facilities may become liens on the property upon a showing of special and peculiar benefits that flow to the applicable property.¹³ Any and all assessments including special assessments, benefit special assessments and maintenance special assessments constitute a lien on the property against which assessed from the date of levy and imposition thereof until paid, coequal with the lien of state, county, municipal, and school board taxes.¹⁴

⁶ See Fla. Stat. s. 189.403(3) (2003).

⁷ See Fla. Stat. s. 189.4031(1) (2003).

⁸ See Fla. Stat. ss. 189.4031(2) and 189.404(3) (2003).

⁹ See Fla. Stat. s. 189.404(3) (2003).

¹⁰ HB 1625 s. 4(14) (2004) (Ad valorem taxes may be levied to construct, operate, and maintain assessable improvements; to pay the principal of, and interest on, any general obligation bonds of the District; and to provide for any sinking or other funds established in connection with any such bonds).

¹¹ [The ad valorem taxation shall not occur unless there is a referendum on whether to levy the ad valorem taxes as provided in the bill.](#)

¹² HB 1625 s. 4(12) (2004).

¹³ HB 1625 s. 4(9)(k) (2004).

¹⁴ HB 1625 s. 4(14)(i) (2004).

Use of Tax Deeds and Tax Certificates to Collect Non-Ad Valorem Assessments - Any and all assessments including special assessments, benefit special assessments and maintenance special assessments may be collected, at the District's discretion, under authority of section 197.3631, Florida Statutes, by the tax collector pursuant to the provisions of sections 197.3632 and 197.3635, Florida Statutes, or in accordance with other collection measures provided by law.¹⁵

Contractual Agreements - The District has authority to enter into a number of contractual arrangements:

- to contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature, subject to public bidding or competitive negotiation requirements¹⁶
- to cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purpose authorized by this Act.¹⁷
- to exercise special powers and other express powers as may be authorized in any interlocal agreement entered into pursuant to chapter 163, Florida Statutes, including any interlocal service agreement with Collier County for fair-share capital construction funding for certain capital facilities or systems required of the developer pursuant to any applicable development order or agreement;¹⁸
- to contract with the Collier County School Board and the landowner developer of the lands within the jurisdiction of the District, to assess the school district educational facilities plan, and to implement a management and financing plan for timely construction, maintenance, and acquisition of school facilities;¹⁹
- to enter into impact fee credit agreements with Collier County;²⁰ and
- to enter into an agreement with the Ave Maria University for the planning, establishment, acquisition, construction or reconstruction, enlarging or extending, equipping, operating, maintaining, financing, and funding of any "project" which is an innovative system, facility, or service.²¹

Methods for Establishing the District

The bill establishes the District.²²

Method for Amending the Charter

The charter of the District may only be amended through action of the Legislature.²³

Membership and Organization of the Governing Board

¹⁵ *Id.*

¹⁶ HB 1625, s. 4(8)(c) (2004).

¹⁷ HB 1625, s. 4(8)(1) (2004).

¹⁸ HB 1625, s. 4(8)(p) (2004).

¹⁹ HB 1625, s. 4(9)(k) (2004).

²⁰ HB 1625, s. 4(9)(o) (2004).

²¹ HB 1625, s. 4(9)(t) (2004).

²² HB 1625, ss. 2(b), 3(2) (2004).

²³ HB 1625, s. 2(7)(c) (2004).

The bill sets forth the membership and organization of the governing board:²⁴

- The bill creates a board of supervisors composed of five persons who are initially elected on a one-acre/one-vote basis, until such time when an area within the boundary of the District becomes urbanized, and then its qualified electors elect a board member.
- The term of office of each supervisor shall be four years.
- A board member may be removed by the Governor at any time for cause.
- Vacant trustee seats are filled by majority vote of the Board of Supervisors to appoint a person to serve as a member of the Board of Supervisors for the unexpired portion of the term.

Maximum Compensation of a Governing Board Member

Provides that each supervisor will be entitled to receive for his or her services an amount not to exceed \$200 per meeting of the Board of Supervisors, and not to exceed \$4,800 per year per supervisor, or an amount established by the electors voting in a referendum. In addition, each supervisor shall receive travel and per diem expenses as set forth in s. 112.061, Florida Statutes, as amended.²⁵

Administrative Duties of the Governing Board

The board of trustees may select a chair, secretary, and treasurer from among its membership.²⁶

Applicable Financial Disclosure, Noticing, and Reporting Requirements

The charter contains several provisions related to the applicable financial disclosure, noticing, and reporting requirements:

- The board of supervisors is required to cause true and accurate minutes and records to be kept of all business transacted by the board and to keep full, true, and complete books of account and minutes.²⁷
- On or before July 15 of each year, the board of supervisors must make and file with the Collier County Board of County Commissioners, a complete financial statement of all moneys received and distributed by the board since the development of the District as to the first statement so filed, and since the last statement so filed as to any other year.²⁸
- The District will take affirmative steps to provide for the full disclosure of information relating to the public financing and maintenance of improvement to real property undertaken by the District. The information will be made available to all existing residents and all prospective residents, of the District.²⁹

Authority, Procedures, and Requirements for Issuing Bonds

The District is authorized to issue bonds, certificates, warrants, notes, or other evidence of indebtedness.

²⁴ Fla. HB 1625, ss. 4(3)(4)(5)(6)(7)(8) (2004).

²⁵ HB 1625, s. 4(4)(c) (2004).

²⁶ HB 1625, s. 4(3)(c) (2004).

²⁷ HB 1625, s. 4 (4)(b) (2004).

²⁸ HB 1625, s. 4 (6)(c) (2004).

²⁹ HB 1625, s. 4(7) (2004).

Procedures for Conducting Elections or Referenda

The bill sets forth election procedures for the Board of Supervisors of the District, and provides for the initial first board of supervisors by a noticed special meeting of the landowners of the District to be held 45 days after the effective date of this Act.³⁰

Qualifications of an Elector of the District

When elected on a one-acre/one-vote basis, the only qualifications for electors of the District are land ownership, residing in the state, and being a citizen of the United States. Once elections are conducted by the electors, the voters must be qualified electors under the United States Constitution and the Florida Constitution, and are no longer required to be landowners. A qualified elector must meet both age and district residency requirements.³¹

Methods for Financing the District

The method for financing the District is the authority, subject to referendum approval, to levy an ad valorem tax. Other methods for financing, not subject to a referendum, include to levy non-ad valorem maintenance taxes, non-ad valorem assessments, benefit special assessments, maintenance special assessments, special assessments, fees, or service charges, and bonds.

Millage Rate Authorized for Ad Valorem Taxes

The total amount of ad valorem taxes levied by the board for operating purposes, exclusive of debt service on bonds, will not exceed 3 mills.³²

Methods for Collecting Non-Ad Valorem Assessments, Fees, or Service Charges

The District is authorized to collect non-ad valorem maintenance taxes, non-ad valorem assessments, benefit special assessments, maintenance special assessments, special assessments, fees, or service charges, and bonds permitted by the bill.

Planning Requirements

The provisions for planning requirements are limited by the provisions charter.

Geographic Boundary Limitations

The territorial boundaries of the District are set forth in the bill.³³

Additional Provisions of the Charter

The charters of independent special districts may have additional provisions to the minimum requirements. The charter for the District includes such additional provisions powers:

- water management and control, water supply, sewer, and wastewater management, reclamation, and reuse;

³⁰ Fla. HB 1625, s. 4(4)(c) (2004).

³¹ Fla. HB 1625, s. 4(4)(b) (2004).

³² *Supra* note 3.

³³ Fla. HB 1625, s. 4(2) (2004).

- privatization contracting;
- bridges or culverts;
- roadways and roads, parkways, bridges, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping;
- parking facilities;
- buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage;
- costs associated with cleanup of actual or perceived environmental contamination within the District;
- conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property;
- parks and facilities for indoor and outdoor recreational, cultural, and educational uses;
- fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;
- school buildings and related structures;
- security;
- mosquitoes and other public health nuisance arthropods control;
- waste, waste collection, and disposal;
- enter into impact fee credit agreements with Collier County;
- create committees, task forces, boards, or commissions, or other agencies under the supervision of the District, consistent with other plans the District may coordinate with the landowner developer and with the university on the phasing of the delivery of infrastructure and may create phase entities or units for its charter purpose;
- buildings and structures for District offices, maintenance facilities, meeting facilities, town centers or any other project authorized by this act;
- facilities for healthcare; and
- enter into agreements with the University.

The bill also authorizes the District to apply for coverage of its employees under the Florida Retirement System in the same manner as if such employees were state employees, subject to necessary action by the District to pay employer contributions into the Florida Retirement System Trust Fund.³⁴

³⁴ Fla. HB 1625, s. 4(8)(b) (2004). Per the Division of Retirement, if the special district is truly an independent special district, then that district may apply for participation in the FRS. The language contained in the bill would not be necessary, however, there is nothing wrong with the inclusion of that language. E-mail (March 17, 2004) (on file with the Committee on Local Government & Veterans' Affairs).

The District is *authorized to hold, control, and acquire by donation, purchase, or condemnation, or dispose of, any public easements*, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this Act other than public easements conveyed to or accepted by Collier County and to make use of such easements, dedications, or reservations for the purposes mandated by this Act.³⁵

A “Special” Special District

In addition to the extensive list of enumerated powers, the District also has some unique provisions.

A “Stewardship District”

There are a number of different types of special districts which have been created by the Florida Legislature. There are not, however, any “stewardship” districts. Thus this bill appears to create a new type of independent special district.³⁶

New Powers to Community Development Districts

Although the District is created pursuant to chapter 189, Florida Statutes, a section of the bill attempts to give the District future powers that may be included in chapter 190, Florida Statutes, relating to Community Development Districts:

Any amendment to chapter 190, Florida Statutes, after January 1, 2004, granting additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter, sections 190.006-190.041, Florida Statutes, *shall constitute a general power, special power, authority, or function of the Ave Maria Stewardship Community District.*” Therefore by amending chapter 190, Florida Statutes, relating to Community Development Districts, implies that this District is also granted the general, special power, authority or function.³⁷

Conflict with the Statute on Conflicts?

In general, section 112.313(7)(a), Florida Statutes, prohibits public officers or employees of agencies³⁸ from having or holding “any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee...nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.” However, this subsection, does not prohibit nor deem it a conflict of interest for certain kinds of special tax districts that are created by general or special law and that are limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, from having their public officers or employees employed by or in contractual relationships with such business entities.³⁹

³⁵ Fla. HB 1625, s. 4(8)(g) (2004).

³⁶ [Counsel for the District asserts that “the purpose of the Ave Maria Stewardship Community District is the growth management purpose of providing infrastructure to the Ave Maria Community. The term ‘stewardship’ is primarily a name”. See Memorandum from Ken van Assenderp \(Mar. 25, 2004\) \(on file with House of Representatives, Committee on Local Government & Veterans’ Affairs\).](#)

³⁷ Fla. HB 1625, s. 3(2) (2004).

³⁸ See Fla. Stat. s. 112.312 (2003) (defining “agency” as any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university).

³⁹ See Fla. Stat. s. 112.313(7)(a)1. (2003).

Yet, this subsection further clarifies this exemption to provide that “conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest.”

Because the charter provides that “it shall not be a conflict of interest under chapter 112, Florida Statutes, for a board member, the District Manager, or another employee of the District to be a stockholder, officer, or employee of the landowner,” and because the charter does not mirror or reference the exemption provided for in section 112.313(7)(a)1., Florida Statutes, this provision could operate as an exemption from general law since it could be read in a way which fails to recognize the nature of the statutory exemption and which operates as a broader exemption. That is, the statutory exemption for certain kinds of special tax districts recognizes that conduct can create a conflict of interest while the charter provision could be read to say that it does not.

Limited Eminent Domain

The District *exercises eminent domain authority* with approval by super majority vote of a resolution of the governing body of the county if the taking will occur in an unincorporated area, over any property within the state, except municipal, county, state, and federal property, for the uses and purpose of the District relating solely to water, sewer, District roads, and water management, and the *power for the taking of easements for the drainage of the land of one person over and through the land of another.*⁴⁰ This bill gives the District authority the power to take easements from property owners for the purposes set forth in the bill.

Non-Ad Valorem Maintenance Taxes for Ad Valorem Taxes Paid by the District

The bill permits the District, if authorized by general law, to levy a *non-ad valorem maintenance taxes* to defray the current expenses of the District, *including any sum which may be required to pay state and county ad valorem taxes on any lands which may have been purchased and which are held by the District.*⁴¹

C. SECTION DIRECTORY:

Section 1. Creates the “Ave Maria Stewardship Community District Act.”

Section 2. Provides for legislative findings, ascertainments, determinations, intent, purpose, definitions, and the policy of the District.

Section 3. Provides the minimum charter requirements; and provides for the creation and establishment of the District.

Section 4. (1) provides for the exclusive charter of the District.

(2) provides for the legal description of the District

(3) provides for a five member board of supervisors, with 4-year term limits, the board supervisors must be residents of the state and citizens of the U.S. only; provides for the election of the initial board supervisors; provides for notice of the special meeting to elect the initial board supervisors; provides for the organization of the initial board supervisors by electing a Chair and a Secretary; provides for a one-acre, one-vote election process; provides for staggered term limits; provides the landowners present at a meeting constitutes a quorum; and provides for vacancies.

⁴⁰ Fla. HB 1625, s. 4(8)(k) (2004).

⁴¹ Fla. HB 1625, s. 4(14)(c) (2004).

(4) provides for elections by qualified electors under certain requirements; provides for a conversion process of the elected board supervisors; provides the board supervisors are public officials and subject to ethics and conflict of interest laws of the state that apply to all public officers; provides for the removal of a board supervisors; provides board supervisors elected by qualified electors are elected at large; provides for the board members elected at the first election and the first landowners' meeting following the referendum serve under certain term limits and certain requirements; provides for annual landowners' meetings; provides for compensation, travel, and per diem expenses of the board supervisors; and provides for open meetings.

(5) provides for the District supervisors to employ and fix the compensation of the District manger; provides for the District manager responsibilities; provides for the Treasurer of the District, who is a resident of the state, and is in charge of District funds; and authorizes the board supervisors to select a depository for its funds.

(6) provides for financial reports; provides for a District budget; provides for disclosure purposes only that the board supervisors at least 60 days prior to the adaptation of the budget submit to the Collier County Board of Commissioners the proposed annual budget for the ensuing fiscal year and the County Commissioners may submit written comments to the District supervisors; provides for the submission of the District public facilities report;

(7) provides for disclosure of public financing.

(8) provides for certain general powers, including to apply for coverage of its employees under the Florida Retirement System, to enter into contracts, sue and be sued in the name of the District, borrow money and accept gifts, adopt rules, maintain an office, borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness as provided, levy assessments and such taxes, charge, collect, and enforce fees and other user charges, to raise amounts of money which are necessary for the conduct of District activities and services and to enforce receipt and collection in the manner prescribed by resolution not inconsistent with law, the right and power of eminent domain, to contract with other governmental agencies, to assess and to impose in the District ad valorem taxes, order, levy, impose, collect, and enforce maintenance taxes and assessments, exercise special powers as provided by any interlocal agreement, to exercise all of the powers necessary in connection with any other powers or duties authorized by this act, and provides the provisions of this section are liberally construed.

(9) provides for special powers, including water management and control, water supply, sewer, and wastewater management, reclamation, and reuse, provides for privatization contracting, bridges or culverts, construction, improvement, pavement, and maintenance of roadways and roads, and certain components thereof roads, parkways, bridges, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping, parking facilities, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage, costs associated with cleanup of actual or perceived environmental contamination within the District, conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property, provides for the use of general and special powers, parks and facilities for indoor and outdoor recreational, cultural, and educational uses, fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment, school buildings and related structures, security, mosquitoes and other arthropods control, waste, waste collection, and disposal, enter into impact fee credit agreements with Collier County, create government departments, committees, task forces, boards, or commissions, or other agencies under the supervision of the District, consistent with other plans the District may coordinate with the landowner developer and with the university on the phasing of the

delivery of infrastructure and may create phase entities or units for its charter purpose, provides the following powers and duties relating to acquisition and condemnation of land, the creating, maintenance, and funding of: buildings and structures for District offices, maintenance facilities, meeting facilities, town centers or any other project authorized by this act, and facilities for the provision of healthcare, system, facility or service constituting a project, to enter into an agreements with the University, adopt and enforce rules pursuant to chapter 120, Florida Statues, in connection with the provisions relating to its systems, facilities, services, projects, improvements, works, and infrastructure, the enumeration of special powers herein are not deemed exclusive ore restrictive, and provides for the liberal construction on the District's special powers.

(10) provides for the issuance of bond anticipation notes.

(11) provides for short-term borrowing.

(12) provides for the sale of bonds; provides for the authorization and form of bonds; provides for interim certificates and the replacement of certificates; provides for the negotiability of bonds; provides for defeasance; provides for the issuance of additional bonds; provides for the refunding of bonds; provides for revenue bonds; provides for general obligation bonds; provides bonds as a legal investment or security; provides for covenants; provides for validation proceedings; provides for tax exemption, states exception; requires bonds issued by the District to meet the criteria set in section 189.4085, Florida Statutes; provides this act furnishes full authority for issuance of bonds; provides for a pledge by the state to the bondholders of the District; and provides for a default on the bonds or obligations.

(13) provides for trust agreements.

(14) provides for ad valorem taxes, the total amount of ad valorem taxes levied by the board for operating purposes, exclusive of debt service on bonds, will not exceed 3 mills.; provides for benefit special assessments, non-ad valorem maintenance taxes; provides for maintenance special assessments; provides for special assessments; provides for the enforcement of taxes; provides when unpaid tax is delinquent and bears penalties; provides for status of assessments; provides assessments constitute a lien on the property against which assessed from; provides for the collection of assessments, and may be enforced pursuant to chapter 173, Florida Statutes; and provides land owned by governmental entity will not be levied of ad valorem taxes or non-ad valorem assessments.

(15) provides for special assessments; and provides rule making authority.

(16) provides for the issuance of certificates of indebtedness based on assessments for assessable improvements; provides the District may issue assessments bonds, revenue bonds, or other obligations payable from a special fund; provides for such dates of issue and maturity; provides for interest; and provides all bonds, or other obligations issued under this provision are negotiable.

(17) provides for tax liens.

(18) provides for the payment of taxes and redemption of tax liens by the District; provides for the sharing of proceeds of tax sale.

(19) provides for the foreclosure of liens.

(20) requires mandatory use of the water management and control facilities and water and sewer facilities of the District.

(21) provides for competitive procurement, bids, negotiations, and related provisions required.

(22) authorizes the District to establish and collect rates, fees, rentals, or other charges "revenues" for services furnished by the District; provides for the procedure for adoption of the rates, fees, rental, and other charges, and for modifications of such; provides for minimum revenue requirements; and authorizes board to enter into contracts for the use of projects by the District.

(23) provides for the recovery of delinquent charges.

(24) provides for the discontinuance of service by the District for certain services.

(25) provides for the enforcement to ensure compliance with this Act; and provides for penalties.

(26) provides for suits against the District.

(27) provides for exemption of District property from execution.

(28) provides for the contraction or expansion of the District; provides for the termination of the District.

(29) provides the inclusion of any or all territory of the District within a municipality does not change, alter, or affect the boundary, or jurisdiction of the District.

(30) provides for the sale of real estate within the District; and provides a required disclosure statement to purchaser.

(31) provides for the notice of creation and establishment after the election of the first board of supervisors creating this District.

(32) provides any system, facility, service, works, improvement, project, or other infrastructure owned by the District is public.

Section 5. Provides for severability.

Section 6. Provides this act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 29, 2004 and February 2, 2004

WHERE? *News-Press*, Fort Myers, Lee County, Florida and *Naples Daily News*, Naples, Collier County, Florida, respectively.

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 []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Constitutional Limitations on Special Districts

There are additional statutory limits on special districts which prohibit certain types of special laws related to independent special districts. As these statutory limits were passed pursuant to section 11(a)(21) of Article III of the Florida Constitution, any special law which conflicts with these provisions must be passed by a 3/5 vote of the membership of each house.

This bill *does not appear* to enact the five types of prohibited special laws:

- a. it does not create an independent special district that does not conform to the minimum requirements for the charter of an independent special district;
- b. it does not exempt the independent special district elections from the appropriate requirements in section 189.405, Florida Statutes;
- c. it does not exempt the independent special district from the requirements for bond referenda in section 189.408, Florida Statutes;
- d. it does not exempt itself from the reporting, notice, or public meetings requirements of sections 189.4085, 189.415, 189.417, or 189.418, Florida Statutes; and
- e. it is not prohibited for failure to submit a statement to the Legislature documenting, as is done in the text of the bill itself: (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; and (4) resolution or official statement of the governing body or an appropriate administrator 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.

B. RULE-MAKING AUTHORITY:

Section 3(8)(e) of the bill provides that the District may adopt rules and orders pursuant to the provisions of chapter 120, Florida Statutes, as amended, prescribing the powers, duties, and functions of the officers of the District, the conduct of business of the District, the maintenance of records, and the form of certificates evidencing tax liens and all other documents and records of the District. The bill also authorizes the board to adopt administrative rules with respect to any of the projects of the District and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of District business.

The District is authorized to promulgate a rule or rules which provides or provide notice, levy, imposition, equalization, and collection of assessments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Broad Powers of the District

The “specialized functions and related prescribed powers,” which are a defining characteristic for a special district, are very broad for this particular District. Such broad powers, however, have been upheld by the courts as demonstrated by the leading case on this issue, *State v. Reedy Creek Imp. Dist.*, 216 So.2d 202 (Fla. 1968):

So long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose. In the present case, the numerous and diverse powers granted to the District by the enabling act appear to be logically related and essential to the realization of the valid public purposes by the District. In reaching this conclusion, we reject the State's argument that the powers granted the District are commensurate in scope with those characteristic of a local municipal government rendering the enabling act a mere subterfuge to avoid the creation of a municipality.

Other Comments - Potential Impact on Elections

It should be noted that the broad grants of power may impact the permissibility of conducting elections on a “one-vote-per-acre” basis. In *State v. Frontier Acres Community Development District Pasco County, Florida*, 472 So.2d 455 (Fla.1985), the Florida Supreme Court upheld one-vote-per-acre voting for community development districts created under chapter 190, Florida Statutes, based the decisions of the United States Supreme Court, which the narrow purpose of such districts and the disproportionate effect district operations have on landowners:

the powers exercised by these districts must comply with all applicable policies and regulations of statutes and ordinances enacted by popularly elected state and local governments. Moreover, the limited grant of these powers does not constitute sufficient general governmental power so as to invoke the demands of Reynolds. Rather, these districts' powers implement the single, narrow legislative purpose of ensuring that future growth in this State will be complemented by an adequate community infrastructure provided in a manner compatible with all state and local regulations.

Following this case, the 4th District Court of Appeal reached a similar conclusion with respect to water control districts which are governed by chapter 298, Florida Statutes, in *Stelzel v. South Indian River Water Control Dist.*, 486 So.2d 65 (Fla. 4th DCA 1986). In reaching its decision, the court evaluated the functions exercised by the water control district and found that the evidence established that the District does not exercise general governmental functions:

While the record here contains evidence which tends to support appellants' claims that the District exercises municipal functions, it also demonstrates with equal clarity that each of the functions performed by the District directly relate either to its water control function or to its limited road maintenance authority.

These decisions, and the decisions of the United States Supreme Court, suggest a nexus between the nature and number of powers granted to a special district and whether voting may be conducted on a one-vote-per-acre basis. Thus, the more and varied powers a special district has, it seems more likely that one-vote-per acre voting would be unconstitutional, particularly if the district meets any of the following criteria upon which the courts have based their decisions:

- the district does not have to comply with all applicable policies and regulations of statutes and ordinances enacted by popularly elected state and local governments;
- the district has a grant of power that is not limited and which constitutes “sufficient general governmental power;”

- the district does not have a single, narrow legislative purpose; or
- the functions performed by the district directly relate to its single, narrow purpose.

Other Comments - "Unit of Local Government"

The charter contains the following provisions:

...there is in particular a special need to use a specialized and limited single-purpose independent special district unit of local government for the Ave Maria Community...

...the flexible, limited, focused, and locally accountable management and related financing capabilities of independent special purpose local government...

...that the existence and use of such a limited specialized single purpose local government for the Ave Maria community, subject both to the Rural Lands Stewardship Overlay Area District and to the Collier County Growth Management Plan...

...this land area for the private university and its new town community requires an independent, special, and single purpose local government ...

...Ave Maria Stewardship Community District means the unit of special and single purpose local government created and chartered by this Act, including the creation of its charter ...

...the District which is a local government and a corporate body politic is limited to its single, narrow, and special purpose as expressed in this Act, with the power to provide, plan, implement, construct, maintain, and finance as a local government management...

...or "District" is created and incorporated as a public body, corporate and politic, an independent, limited, special, and single purpose local government...

The use of phrases like "single-purpose independent special district unit of local government" and "independent special purpose local government" is problematic. In general, there are "local governments" which are defined as municipalities and counties⁴² and there are independent special districts.⁴³ These phrases in the charter, however, may blur the important distinctions between local governments and special districts.

Other Comments - District Counsel - Exemptions and Elections

- Counsel for the District asserts that the legislation was not drafted to constitute an exemption from general law.⁴⁴
- Counsel for the District states that HB 1625 was designed expressly to reflect all the referenced case law to the following effect: 1) there is one single, narrow, expressed legislative purpose to be implemented by the expressly related general and special powers of the district in the charter. Therefore, the district does not come close to multi-purpose general local government;

⁴² See, e.g., Fla. Stat. ss. 163.2514(1) and 163.3164(13) (2003); see also Fla. Stat. s. 218.21(1) (2003) (specifically excluding special districts from the definition of "unit of local government").

⁴³ See Fla. Stat. ss. 189.403(3) and 200.001(8)(e).

⁴⁴ See Memorandum from Ken van Assenderp (Mar. 25, 2004) (on file with House of Representatives, Committee on Local Government & Veterans' Affairs).

and 2) the inordinate burden is on the initial landowner and is modified by the election law using “urban areas” as time goes by for the district.⁴⁵

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Local Affairs recommended three technical amendments on March 25, 2004. The first amendment adds a reference to a section of law that was inadvertently left out. The second amendment removes a cross reference that does not exist. The third amendment adds “FEET” to a boundary description. On March 31, 2004, the Committee on Local Government & Veterans’ Affairs adopted these amendments without objection and reported the bill favorably as a committee substitute.

⁴⁵ *Id.*