

ENROLLED  
HB 733, Engrossed 1

2004 Legislature

A bill to be entitled

An act relating to the Loxahatchee Groves Water Control District, Palm Beach County; amending chapter 99-425, Laws of Florida; amending the district's election procedures; clarifying that the power of the district with respect to roadways and roads is not limited to roads shown on the replat of Loxahatchee Groves and clarifying that the levying of assessments by the district is pursuant to chapter 298, Florida Statutes, or this act; eliminating references to other types of assessments; providing a procedure for the dedication of roads to the district; amending the permitting of culverts, other drainage systems, bridges, or culvert crossings; providing procedures when such bridges or culvert crossings restrict the normal conveyance of water within the district's canals; providing that special assessments are not limited to roads and roadways but may be levied for district improvements; providing that the issuance of special assessment bonds are not limited to roads and roadways but may be used for district improvements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection e. of section 2 and subsections c., g., i., and j. of section 4 of section 2 of chapter 99-425, Laws of Florida, are amended to read:

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Section 2. Landowner's meeting and election of supervisors.--

e. Date of landowner's meeting; notice of intent to be elected.--Notwithstanding any provision of s. 298.12, Florida Statutes, to the contrary, for all elections held after 1999, in order for a person to be elected as a supervisor of the district, that person must notify the Supervisor of the Board of Elections of Palm Beach County of his or her intent to be elected as a supervisor at least 90 days prior to the annual landowner's meeting, which shall take place on the 4th Monday of June each year. The date of annual landowner's meeting may be changed by majority of the board of supervisors of the district provided that such change occurs at least 150 days prior to the newly selected date of the landowner's meeting and further provided that notice of such change of the date of the landowner's meeting shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands of the district are located, with the first such publication to be not less than 10 nor more than 15 days after the vote of the board of supervisors to change the date of the annual landowner's meeting. No person who has not timely provided notice to the supervisor of elections of his or her willingness to be elected, as set forth above in this section, may be elected as a supervisor of the district, unless no individuals or unless fewer individuals than the number of seats available for election, have timely provided notice to the supervisor of elections, in which event the provisions of s. 298.12(1), Florida Statutes, shall control. If the number of

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persons timely providing notice to the supervisor of elections is less than or equal to ~~does not exceed~~ the number of seats for which supervisors are to be elected in that year, then those individuals providing timely notice shall be deemed elected as supervisors as of the date of the annual landowner's meeting and no election, or notice of such election, shall be held. If the length of terms varies for those persons who timely provide notice, the length of terms will be assigned by lot. If the number of persons timely providing notice to the supervisor of elections is less than the number of seats for which supervisors are to be elected in that year, then the individual or individuals providing timely notice shall be deemed elected as set forth in this subsection and the seat or seats for which persons have not filed will be subject to election pursuant to the provisions of s. 298.12(1), Florida Statutes. In such event, if the length of terms are different, the person or persons timely providing notice to the supervisor of elections shall be deemed elected to the longer or longest term. If the number of persons providing timely notice to the supervisor of elections exceeds the number of seats for which supervisors are to be elected that year, then elections shall proceed forward at the annual landowner's meeting in accordance with the provisions of s. 298.12(1), Florida Statutes, as may be modified by this act. In the event that pursuant to this subsection an election is not required, notice as set forth in s. 298.12, Florida Statutes, for the annual meeting need not be provided so long as the annual meeting has been included among the meetings properly noticed under the requirements of s. 189.417, Florida Statutes.

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Section 4. Powers of the district.--

c. In addition to the powers of Loxahatchee Groves Water Control District, hereinafter referred to as the "district," elsewhere provided by general or special law, the district shall have the power to construct maintain, improve, and repair roadways and roads necessary and convenient for the exercise of any of the powers or duties of the district or the board of supervisors thereof, including, but not limited to, all the roads shown on the replat of Loxahatchee Groves, as recorded in Plat Book 12, Page 29, Palm Beach County Public Records, or to provide access to and development of areas within the district, or both; to provide funds for such construction, maintenance, improvement, or repair through the levying of assessments pursuant to chapter 298, Florida Statutes, or this act ~~hereinafter referred to as "drainage assessments," or special assessments,~~ or both; and to acquire land, including any interest therein, by purchase, gift, exchange, or eminent domain, for such construction, maintenance, improvement, or repair. The board of supervisors of the district, at its discretion, may accept for dedication a road within the boundaries of the district pursuant to the following procedures:

(1) The landowners possessing the easements to such road must petition in writing the board for dedication of the road, with those signing the petition agreeing to give the district their respective easements at no cost to the district, pursuant to policies established by the district.

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(2) At least a simple majority of landowners on the road, on a per-acre basis, must petition the board to dedicate the road.

(3) The board of supervisors of the district shall then determine whether or not to accept such petition. If the board determines to accept the petition, the district will then project all estimated costs involved in planning, designing, and building the road or improving the existing road to meet specifications acceptable to the district, including therewith the cost of improving or replacing any culvert crossing or bridge that connects the road to be dedicated to an existing district road or roads, the cost of any eminent domain proceeding to obtain road easements from those landowners who did not sign the petition and to give the district their respective easements, the cost of establishing the special taxing unit, and any other costs anticipated to be incurred by the district as a result of any action involved with such dedication.

(4) The estimated cost information shall then be provided to the affected landowners and a referendum shall be held among those landowners to create a special taxing unit, consisting of all of the benefited land contiguous to and inclusive of the road to be dedicated to cover such cost. Upon passage of the referendum by majority vote, on a per-acre basis, the district shall create a special taxing unit and levy assessments for the costs as set forth in paragraph (3).

(5) The district shall then acquire by sale or through eminent domain, under chapters 73 and 74, Florida Statutes, as

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amended from time to time, the necessary easements and build the road or make the necessary improvements to the existing road to meet all district specifications.

(6) Thereafter, the road shall be dedicated to the district and maintained by the district under its general maintenance assessment.

Notwithstanding anything contained herein, the district's ability, under chapter 298, Florida Statutes, to create and assess units of development shall be unaffected.

g. The district shall have the power to adopt, by resolution, a uniform standard for culvert crossings, bridges, culverts, or other drainage systems that connect with or cross over any of the works of, or lie within the rights-of-way of, the district. If the district so establishes a uniform standard, the district shall by resolution adopt procedures:

(1) Which shall require notice of such uniform standards to be given to persons owning lands upon which, adjacent to, or, to the best of district's knowledge, using any culvert crossings, bridges, culverts, or other drainage systems that connect with or cross over any of the works of, or lie within the rights-of-way of, the district and to such other persons as the board of supervisors shall deem to be necessary or desirable, or both.

(2) Which shall authorize granting permits for culvert crossings, bridges, culverts, or other drainage systems, or pursuant to such uniform standards, and the district may allow for permits to be applied for by a single landowner or by

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multiple landowners, provided that in the case of multiple landowners, such landowners establish a single entity to represent all such landowners to apply for and obtain the permit and construct and maintain the culvert crossings, bridges, culverts, or other drainage systems, subject to review by the district to ensure that said entity has the legal authority to assess such landowners for the cost of construction and maintenance of such culverts, drainage systems, culvert crossings, or bridges, that such power to assess runs with the land of the landowners creating the entity, and that the district can enforce such assessment power if necessary.

(3)-(2) Which shall, except as hereinafter provided, require as to culverts or other drainage systems not less than 60-days' written notice to be given to persons owning lands upon which any ~~culvert crossings, bridges,~~ culverts, or other drainage systems exist in violation of any such uniform standards prior to the taking of any enforcement action by the district.

~~(3)~~ ~~Which may provide for~~ Less than 30-days' notice, in writing or otherwise, of violations of the uniform standards may be provided in emergency situations.

~~(4)~~ ~~Which may provide that~~ If, after such notice pursuant to this paragraph ~~(2)~~ ~~or paragraph (3)~~, any landowner shall fail to conform to such uniform standards, the district may enter upon such lands and take such action as necessary to cause such violation to be corrected and may assess the owner of such land for the district's costs in connection therewith.

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~~(5)~~ Upon the failure of any property owner to pay any assessment levied by the board of supervisors pursuant to this paragraph ~~(4)~~ within 30 days of receipt by such owner of notice of said assessment, the district shall have a lien on all lands and premises affected thereby. Such lien shall be superior and paramount to the interest in such land and premises of any owner, lessee, tenant, mortgagee, or other person except the lien of state, county, or district taxes and shall be on a parity with the lien of any such state, county, or district taxes. Such lien shall bear interest at an annual rate equal to the interest rate due on judgments, pursuant to s. 55.03, Florida Statutes, per year and shall, until paid, remain in effect in perpetuity.

(4) Which shall provide that in the event any culvert crossing or bridge, whether or not permitted by the district, is determined by the district to be restricting the normal conveyance of water in a district canal, the district shall notify the permitholder of said structure, or if there is no permit on file with the district for said structure, the district shall notify the landowner or landowners using such structure that the following options are available regarding the structure:

(a) The structure may be repaired, by the permitholder or the landowner or landowners using the structure, in conformance with current district standards (as determined by a licensed engineer), including obtaining a permit from the district pursuant to its uniform standards and procedures.



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(b) The structure may be abandoned and removed by the permitholder at its expense or, if the structure has not been permitted, the district shall remove the structure and the district shall not be liable to any person or entity that uses such structure for its removal.

(c) The landowner or landowners using such structure may apply for a permit to construct a conforming replacement structure. This process shall require obtaining a permit issued by the district pursuant to its uniform standards and procedures, said permit to be contingent upon the removal of the nonconforming structure and the construction of a replacement structure at the sole expense of said landowner or landowners.

(d) With respect to subparagraphs (a) and (c), in the event that there are multiple landowners involved, the landowners may establish a single entity as set forth in paragraph (2) to represent all such landowners.

(e) Alternatively, the affected landowners may request the district, via referendum of the landowners utilizing the structure, upon a majority vote of such landowners, on a per-acre basis, to establish a special taxing unit of all such landowners to pay a special assessment to cover the initial costs, including, but not limited to, engineering fees, removal cost, repair or replacement construction cost, dedication of adjoining road, and permit fees and the structure shall thereafter be a district-owned structure maintained by the district.

(f) The permitholder of a structure restricting the normal conveyance of water in a district canal, or if said structure is

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unpermitted, the landowner or landowners as reasonably determined by the district to be using such structure, shall have 60 days after notice is sent to respond to the district regarding which option set forth in this paragraph has been chosen and an additional 120 days to repair or remove said structure. If the district does not receive a written response within the first 60 days after the notice has been sent, the structure shall be reviewed by the district's board of supervisors, which may deem the structure to be abandoned. In emergency situations, the time periods for notice and response may be shortened by the district as is reasonable under the circumstances.

Notwithstanding any provisions contained in this subsection, the ability of the district's board of supervisors under chapter 298, Florida Statutes, to create and assess "units of development" shall be unaffected.

i. The board of supervisors of the district, in order to carry out any of the powers set forth in subsections c.-g. may levy and impose special assessments against any or all of the real property within the district upon a determination that the construction, maintenance, improvement, repair, or operation of said improvements or services provided to existing improvements ~~the roads or roadways~~ provide a benefit to such real property. The assessments shall be imposed upon the property specially benefited by such construction, maintenance, improvement, repair, or operation in proportion to the benefits to be derived therefrom, and the special benefits shall be determined and

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prorated by a method prescribed by the board of supervisors.

j. The district is authorized to provide from time to time for the issuance of special assessment bonds of the district to pay all or any part of the cost of ~~a system of roads and roadways and any~~ improvements thereto. The principal of and interest on any bonds shall be payable from special assessments sufficient to pay the bonds in the manner provided in the bonds, in this act, and the resolution authorizing such bonds. The bonds shall be authorized by resolution or resolutions of the board of supervisors of the district, adopted by a majority of the supervisors present and voting at a meeting of the supervisors. The bonds shall bear interest at a rate or rates not in excess of the maximum rates permitted by general law, may be in one or more series, may bear such date or dates, and may mature at any time or times not exceeding 40 years from their respective dates, may be payable in such medium of payment, at such place or places within or without the State of Florida, may carry such registration privileges, may be subject to redemption prior to maturity, with or without premium, may be executed in such manner, may contain such terms, covenants, and conditions, and may be in such form otherwise as such resolution or subsequent resolutions shall provide. The bonds may be sold or exchanged for refunding bonds, or delivered to contractors in payment for any part of the work or improvements financed by such bonds, or delivered in exchange for any properties, either real, personal, or both, to be acquired for such works or improvements, in such manner as the district in its discretion shall determine. Pending the preparation of the definitive

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bonds, interim certificates or receipts or temporary bonds in such form and with such provisions as the district may determine may be issued to the purchaser or purchasers of the bonds issued hereunder. The bonds and such interim certificates or receipts or temporary bonds shall be fully negotiable and shall be and constitute negotiable instruments within the meaning of and for all purposes of the law merchant and the Uniform Commercial Code of the State of Florida. The proceeds of the sale of any such bonds shall be used solely for the payment of the costs of the district incurred or to be incurred in carrying out the powers set forth in subsection c., subsection d., subsection e., ~~or~~ subsection f., or subsection g., and shall be disbursed in such manner and under such restrictions as the district may provide in the authorizing resolution. The district may also provide for the replacement of any bonds which become mutilated or are stolen, destroyed, or lost, upon proper indemnification. A resolution providing for the issuance of special assessment bonds may also contain such limitations upon the issuance of additional bonds secured on a parity with the bonds theretofore issued as the district may deem proper.

Section 2. This act shall take effect upon becoming a law.