

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 923 Big Cypress Stewardship District
SPONSOR(S): Davis, M.
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>9 Y, 0 N</u>	<u>Smith</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>20 Y, 0 N</u>	<u>Smith</u>	<u>Cutchins</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 the Big Cypress Stewardship District (District), an independent special taxing district located in Collier County. Special districts are local units of special purpose government restricted to a limited boundary.¹ They are created by general law, special act, local ordinance, interlocal agreement, or by rule of the Governor and Cabinet. An independent special district must comply with the creation, dissolution, and reporting requirements set forth in chapter 189, Florida Statutes.²

The bill provides that the District is created as an independent special district pursuant to chapters 189 and 298, Florida Statutes, and the specific provisions of this act. The bill sets forth the minimum charter requirements in section 12 of this bill and also provides the following powers and duties relating to acquisition and condemnation of land, the creating, maintenance, and funding of:

- parking facilities;
- additional systems and facilities for parks and facilities for recreational, cultural, and educational uses;
- sewer systems;
- facilities for and measures to control mosquitoes and other public health nuisance arthropods;
- systems and facilities for conservation and mitigation areas and wildlife habitats;
- systems and facilities for providing public safety;
- systems and facilities for fire prevention and emergency services; and
- systems and facilities for school buildings and related structures pursuant to ch. 1013, F.S.

The bill authorizes the District to establish certain other committees and boards under the District's auspices and provides for actions and penalties, including attorney's fees, for fee collection purposes. The bill also provides for required disclosure to the purchaser for the sale of real estate within the district.³

The total amount of ad valorem taxes levied in any year shall not be in excess of 10 mills on the dollar per annum on the assessed value of the taxable property within the district.⁴

¹ See Fla. Stat. s. 189.403(1) (2003) (also exempting from the definition of special district: school districts, community college districts, 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).

² See Fla. S. 189.4031(1) (2003).

³ See Fla. HB 923, s. 4 (2003)

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

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DATE: March 19, 2004

The District will be authorized to raise revenues by non-ad valorem assessments, loans, bonds, and, if approved by referendum, ad valorem taxes. The District's Governing Board will determine which of the sources the District should use and at what level.

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. The provisions of House Rule 5.5(b) appear to apply to this bill. (See section I.B. "EFFECT OF PROPOSED CHANGES: - Elections Provisions".)

⁴ See Fla. HB 923, s. 8 (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:

This bill creates a new special taxing district. The District will be authorized to raise revenues by non-ad valorem assessments, loans, bonds, and, if approved by referendum, ad valorem taxes.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the Big Cypress Stewardship District (District), an independent special taxing district located in Collier County. According to the representative of the District, Mr. David Ramba, Esq., with Lewis, Longman, and Walker, “the land within the District is currently owned by a single-landowner. The landowner has requested the creation of the District, as it is believed that this is the best mechanism to provide timely infrastructure, protect the environment, and to further effectuate the intent and purpose of the Rural Land Stewardship Overlay Area. The landowner will initially bear the costs of the District’s creation if the District decides to levy ad valorem taxes or charge non-ad valorem assessments. The District’s creation should have a positive economic effect on the economically depressed area of Eastern Collier County. The District will serve as the public institution and funding source for urban development in an area whose economic base has been primarily agricultural. District projects creating urban infrastructure should create new jobs in the area and subsequent development within the District should broaden the local economic base substantially”.

Special districts are local units of special purpose government restricted to a limited boundary.⁵ They are created by general law, special act, local ordinance, interlocal agreement, or by rule of the Governor and Cabinet. An independent special district must comply with the creation, dissolution, and reporting requirements set forth in chapter 189, Florida Statutes.⁶

Chapter 298, Florida Statutes, contains specific provisions governing the creation and operation of water control districts that describe the makeup of the board of supervisors, the method of electing those supervisors, and the powers of the district relating to directing and funding district water management plans. One section of this chapter prohibits the creation of special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to this chapter. However, this section authorizes special or local legislation that prescribes specific provisions for changing the method of voting for a board of supervisors, qualifications for board members, and changing the governing authority or board. Additionally, this section provides that any special or local laws enacted by the Legislature pertaining to any water control district shall prevail as to that district and shall have the same force and effect as though it had been a part of this chapter or any section thereof at the time the district was created and organized. The bill provides that the District is created as an independent special district pursuant to chapter 189, Florida Statutes, and addresses the following minimum requirements as part of the bill:

⁵ *Supra* note 1.

⁶ *Supra* note 2.

- The district's purpose.
- The district's powers, duties, and functions regarding:
 - ad valorem taxation;
 - bond issuance;
 - revenue raising capabilities;
 - budget preparation and approval;
 - liens and foreclosure of liens;
 - use of tax deeds and tax certificates for non-ad valorem assessments; and
 - contractual agreements.
- The methods for establishing the district.
- The method for amending the district's charter.
- The membership and organization of the district's governing board. Districts whose boards are elected on a one-acre/one-vote basis are required to have five board members, with three of those members constituting a quorum.
- The maximum compensation of the district's governing board members.
- The administrative duties of the district's governing board.
- The financial disclosure, noticing, and reporting requirements for the district.
- The procedures and requirements for issuing bonds, if the district has such authority.
- The district's election and referenda procedures and the qualifications to be a district elector.
- The district's financing methods.
- The authorized millage rate for a district authorized to levy ad valorem taxes, except for taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors of the district.
- The methods for collecting non-ad valorem assessments, fees, or service charges.
- Planning requirements.
- Geographic boundary limitations.

The bill provides that the District is created as an independent special district pursuant to chapters 189 and 298, Florida Statutes, and the specific provisions of this act. The bill sets forth the minimum charter requirements in section 12 of this bill and also provides the following powers and duties relating to acquisition and condemnation of land, the creating, maintenance, and funding of:

- parking facilities;
- additional systems and facilities for parks and facilities for recreational, cultural, and educational uses;
- sewer systems;
- facilities for and measures to control mosquitoes and other public health nuisance arthropods;
- systems and facilities for conservation and mitigation areas and wildlife habitats;
- systems and facilities for providing public safety;
- systems and facilities for fire prevention and emergency services; and
- systems and facilities for school buildings and related structures pursuant to ch. 1013, F.S.

The bill authorizes the District to establish certain other committees and boards under the District's auspices and provides for actions and penalties, including attorney's fees, for fee collection purposes. The bill also provides for required disclosure to the purchaser for the sale of real estate within the district.⁷

The charter may refer to other general law provisions that address the charter requirements, e.g., fire districts may refer to chapter 191, Florida Statutes provisions.⁸

⁷ See Fla. HB 923, s. 4 (2003)

⁸ See Fla. HB 923, s. 2 (2003)

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled. All local bills, regardless of the subject matter, must comply with local notice requirements.

The total amount of ad valorem taxes levied in any year shall not be in excess of 10 mills on the dollar per annum on the assessed value of the taxable property within the district.⁹

The bill provides for an interlocal agreement with Collier County providing for a fair share capitol construction funding contribution for the long-range traffic capacity improvements of county arterial and collector roads within the proximate to the district.¹⁰

According to the Economic Impact Statement, the District will be authorized to raise revenues by non-ad valorem assessments, loans, bonds, and, if approved by referendum, ad valorem taxes. The District's Governing Board will determine which of the sources the District should use and at what level. During the FYs 04-05 and 05-06, it is anticipated that the Governing Board of the District will develop a plan for providing infrastructure and services and levy non-ad valorem assessments on District land to provide funding.

Elections Provisions

The board of supervisors will consist of five persons who will hold office for three year term limits. The election of the district's board of supervisors is on a one-acre one-vote basis.¹¹ However, at the initial landowners' meeting, the landowners shall, at such election, determine the length of the terms of office of each initial supervisor so elected by them. Respectively, there shall be one 1-year term, two 2-year terms, and two 3-year terms. Thereafter, all terms of supervisors shall be for 3 years. Provided, however, one 3-year supervisor position shall not be elected by the landowners. Upon the election of four supervisors and organization of the board, the board shall appoint the fifth supervisor for a 3-year term. The appointed member shall be a representative of an environmental organization based in Collier County who shall not be a district landowner.¹²

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 on the decisions of the United States Supreme Court,¹³ 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.

⁹ See Fla. HB 923, s. 8 (2003)

¹⁰ See Fla. HB 923, s. 12(13)(b) (2003). Terry Lewis, Esq. with Lewis, Longman & Walker, P.A., the representative of the district sent this e-mail: This section was added at the request of Collier County. It will require the District to share with Collier County in the capital costs of constructing a variety of transportation improvements in the vicinity of the District. If the parties fail to reach agreement within 90 days, Collier County would have the authority to reject any proposed development within the District until agreement is reached. The section essentially requires the District to reach agreement with the County before it can go forward with any plans. That is the only effect. (March 8, 2004) (on file with the Committee on Local Government & Veterans' Affairs).

¹¹ See Fla. HB 923, s. 5(1)(2) (2003)

¹² See Fla. HB 923, s. 5(3) (2003)

¹³ See *Ball v. James*, 451 U.S. 355 (1981) and *Salyer Land Co. v. Tulare Lake Basis Water Storage District*, 410 U.S. 719 (1973).

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 do not directly relate to its single, narrow purpose.

C. SECTION DIRECTORY:

- Section 1. Provides for District establishment and boundaries; sets forth the purpose of the District to provide public infrastructure and services; states status of the District; and provides boundaries.
- Section 2. Provides chapters 189 and 298, F.S., are applicable to the District.
- Section 3. Provides powers of the District; provides compliance with county plans and regulations.
- Section 4. Provides for the sale of real estate within the District; provides for disclosure statement to purchaser.
- Section 5. Provides for a five member board of supervisors; provides for the powers and duties of the board of supervisors; provides for three year term limits, except as provided in the initial landowners' meeting to determine the length of the terms of office of each initial supervisor, the fifth supervisor position shall be appointed; provides the board of supervisors are elected on a one-acre one-vote basis; provides for the organization of the board of supervisors; provides for a quorum.
- Section 6. Provides for compensation and per diem of the board of supervisors.
- Section 7. Provides for the annual landowners' meeting and the election of supervisors pursuant to s. 5 of this act.

- Section 8. Provides for ad valorem taxes, subject to referendum approval; sets forth limits; and states the ad valorem tax provided is in addition to county and municipal ad valorem taxes; provides for non-ad valorem assessments; sets forth that taxes and assessments shall constitute a lien on land; provides for the compensation of the property appraiser, tax collector, and the clerk of the circuit court; and provides for the levies of non-ad valorem assessments on land less than one acre.
- Section 9. Provides for penalties when unpaid taxes and assessments are delinquent.
- Section 10. Provides for the enforcement of taxes and assessments.
- Section 11. Provides for the issuance of revenue bonds, assessment bonds, and bond anticipation notes.
- Section 12. Provides for the minimum charter requirements.
- Section 13. Provides for the severability of any unconstitutional provision.
- Section 14. Provides for the election in s. 15 of the bill, that each assessable acre or fracture of an acre is present in person or by proxy will be counted as one vote.
- Section 15. Provides s. 15 and s. 14 shall take effect upon becoming law, and the remaining sections shall take effect upon approval by a majority vote of the owners of land within the district not exempt from ad valorem taxes or non-ad valorem assessments, and present at a landowners' meeting to be held within 20 days after this section becomes law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 4, 2003

WHERE? *Napes Daily News*, Napes, Collier County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? 20 days after the bill becomes law.

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: None.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.