

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1043 CS
SPONSOR(S): Sobel
TIED BILLS:

North Lauderdale Water Control District, Broward County
IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>7 Y, 0 N, w/CS</u>	<u>Smith</u>	<u>Hamby</u>
2) <u>Finance & Tax Committee</u>	<u></u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
3) <u></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

The North Lauderdale Water Control District (District) is a dependent special district located in Broward County. The District was created by ch. 63-661, L.O.F., which has been amended by subsequent special acts.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- authorizing the district to borrow money at a rate not to exceed that which is provided by law;
- providing that members of the board of supervisors shall be the “city commission,” rather than the “city council” of the City of North Lauderdale;
- requiring the board to elect a chair and vice chair at the required annual meeting or as necessary due to vacancies;
- requiring the publication of the meeting notice to be made once at least seven days prior to the meeting rather than by publication for two consecutive weeks, and requiring the meeting to be held at a public place, rather than a “convenient place”, providing for the notice to be waived under emergency situations;
- providing for the city clerk of the city of North Lauderdale to serve as the district secretary;
- requiring the board of supervisors to meet not less than three times per year to conduct the business of the District;
- providing for board members to be reimbursed for travel expenses pursuant to s. 112.061, F.S.;
- providing that unpaid assessments become delinquent and bear penalties and interest at the highest rate authorized by general or special law, or as otherwise provided in district legislation imposing the assessment;
- providing that interest rates on bonds issued by the board may not exceed the maximum rate allowed by law; and
- providing that interest rates on tax anticipation notes issued by the board, may not exceed the maximum rate allowed by law.

House Rule 5.5(b) states that 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. This bill appears to create such an exemption. (See Comments Section “C. DRAFTING ISSUES OR OTHER COMMENTS:”)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

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The bill deletes outdated language and organizes previously authorized powers of the Authority. The bill also makes minor, stylistic changes to some of the language of the charter.

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Charter of the District

Section 1. Creates the district; provides a legal description of the district’s boundaries; declares that said lands in their present condition are wet and subject to overflow, and that protection of these lands is in the public interest.

Section 2. Provides for applicability of provisions of ch. 298, F.S., which are not inconsistent with the act to the district. Adds new language which states that it is determined that said lands in their present conditions are wet and that the drainage,

reclamation and protection of these lands from the effects of water is conducive to the public health and welfare.

- Section 3. Provides for the powers of the district.
- Section 4. Provides for the district board of supervisors to be the governing body of the district; provides for a five member governing board, composed of the city commission of the City of North Lauderdale; provides for terms of office to be concurrent with the length of time each member is in office, as a member of the city commission; provides for annual meetings.
- Section 5. Provides for special meetings; provides for notice, with exception; provides for not less than three meetings annually.
- Section 6. Provides for compensation of the board.
- Section 7. Provides for the levy, apportionment and collection of annual taxes or non-ad valorem assessments.
- Section 8. Provides for a maintenance tax.
- Section 9. Provides for the levy and assessment of all taxes and assessments on fractional acres.
- Section 10. Provides for the collection and enforcement of all taxes and assessments.
- Section 11. Provides for penalties when unpaid taxes or assessments are delinquent.
- Section 12. Provides for the issuance of bonds; provides for the sale and disposition of proceeds; provides for interest; provides the duties of the treasurer with regards to bonds.
- Section 13. Authorizes full authority for the issuance and sale of bonds.
- Section 14. Authorizes the issuance of tax anticipation notes.
- Section 15. Authorizes the right of eminent domain by the district.
- Section 16. Declares that the water in the district is a common enemy.
- Section 17. Provides for unit development; provides for powers of supervisors to designate units of the district and to adopt system of a progressive drainage by the units; provides for plans of reclamation and financing assessments for each unit.
- Section 18. Provides for severability of the provisions of the act.

Background:

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 173 special districts have codified their charters.

Chapter 298, Water Control Districts

Chapter 298, F.S., contains provisions governing the creation and operation of water control districts. Section 298.01, F.S., restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and the provisions of s.125.01, F.S. (dependent water control districts), which relate to the powers of county governing bodies. Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by ch. 298, F. S. Upon the formation of a water control district, the circuit court where the majority of the land is located has jurisdiction within the boundaries of the district.

Notice of the first landowners' meeting is required within 20 days after the effective date of a special act creating a district. The notice is to be published once a week for two consecutive weeks in a newspaper of general circulation in each county in which lands of the district are located. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve three-year rotating terms, with one supervisor elected each year at a required annual meeting. To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located, unless a district's special act provides otherwise. The Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting if acreage owned by the state is subject to assessment by the district.

The primary funding source for water control district activities is special assessments. The assessment of the particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement. A board of supervisors also is authorized to issue bonds and taxes.

C. SECTION DIRECTORY:

- Section 1: Provides that this act is the district's charter codification required under s. 189.429, F.S.; provides Legislative intent; preserves all district authority, and any additional authority provided by the act.
- Section 2: Codifies, reenacts, amends and repeals chs. 63-661, 82-273, 85-385, 94-428, and 97-370, L.O.F.
- Section 3: Re-creates and reenacts the North Lauderdale Water Control District charter.
- Section 4: Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 3, 2004

WHERE? *Sun-Sentinel*, Fort Lauderdale, Broward County; Boca Raton, Palm Beach County; and Miami, Miami Dade County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Exemption from General Law

House Rule 5.5(b) states that 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. This bill may be subject to this provision in that it provides an exemption to ch. 298.11, F.S., at s. 5 of s. 3 of the bill. Section 5 of the charter provides, in part:

“Notice of all meetings shall be given by the board of supervisors by causing publication thereof to be made once at least 7 days prior to such meeting in some newspaper published in Broward County or by sending notice through the mail to each landowner.”

Section 298.11(1), F.S., provides, in part:

“The notice shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in each county in which lands of the district are located, the last publication to be not less than 10 nor more than 15 days before the date of the meeting. The meeting of the owners of the lands located in the district shall be scheduled, at a day and hour specified, at some public place in the county within which most of the district lands are located, for the purpose of electing a board of three supervisors, to be composed of owners of the lands in the district and residents of the county or counties in which the district is located.”

District Counsel – District Boundaries and Board of Supervisors

Mr. Michael J. Pawelczyk, Assistant District General Counsel, with the law firm of Goren, Cherof, Doody & Ezrol, P.A., representing the District, sent the following letter relating to the boundaries and election composition of the District:¹

This correspondence from the homeowners' association in the area requests, and indicates that the association has no objections to, the Broadview/Pompano Park Civic communities being incorporated into and made a part of the North Lauderdale Water Control District.

As I indicated in our telephone conversation, the Broadview/Pompano Park Community was, within the last several years, annexed into the City of North Lauderdale. The North Lauderdale Water Control District provides essential services to all areas located within the boundaries of the City of North Lauderdale, and has every intention of continuing to do so in order to assure that the canals and waterways within the City remain clear and operable for purposes of stormwater management. The District serves an important purpose, in partnership with the City of North Lauderdale, to protect the City, its residents, and its rights-of-way free from flooding in the event of heavy rains.

The governing board of the District, or the District Board of Supervisors, is the City Commission of the City of North Lauderdale. The City Commission, pursuant to the City of North Lauderdale Charter, is an elected body. Pursuant to Chapter 97-370, laws of Florida, the City Commission of the City of North Lauderdale was authorized by the Florida Legislature to serve as the governing body for the District, with the term of each member of the Board of Supervisors being coincidental with that member's terms of office as a member of the City Commission.

2004 Legislative Session

During the 2004 Legislative Session, Senate Bill 3188, an act relating to the North Lauderdale Water Control District, was vetoed by the Governor. The veto letter, dated June 18, 2004, stated "The bill codifies the district's authority into a single comprehensive act and provides certain amendments to the district's charter. The amendments to the charter include a boundary change so that the district's boundary mimics that of the municipality that controls the dependent special district. The district boundary change also mirrors recent annexations by the City of North Lauderdale. These annexations were supported by a voter approved referendum. However, no referendum was conducted nor proposed to support the special district's boundary revision."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Local Government Council adopted two amendments on March 30, 2005. The first amendment declares the district a dependent special district pursuant to s. 189.404(5), F.S. The second amendment removes s. 19 of the charter, s. 3 of the bill, relating to the notice of intention.

¹ See E-mail from Michael J. Pawelczyk (Mar. 14, 2005) (on file with House of Representatives, Local Government Council).