

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government and provide lower taxes: This bill creates a new independent special district for the purpose of providing public library services within the City of Sanibel. The District is authorized to levy ad valorem tax not to exceed 1 mill on taxable property within the District. In addition, the District is generally authorized to impose non-ad valorem assessments, fees, and impact fees; however, the bill does not address procedures for imposing the assessments or fees, or provide limits upon the District's authority to impose these assessments and fees.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter. See *State ex re. City of Gainesville v. St. Johns River Water Management District*, 408 So.2d 1067 (Fla. 1st DCA 1982).

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s. 189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

Sanibel Public Library

The Sanibel Public Library, Inc., is a Florida non-profit corporation that has provided library services for over 40 years on Sanibel Island. The Library's primary source of revenue is derived from an Interlocal Agreement between the City of Sanibel and Lee County, under which the library receives a 65% share of the county library tax levied in the City of Sanibel.

According to the Library, it has operated under an interlocal agreement for over 15 years; however, in 2004, Lee County declined to enter into a multi-year agreement. Instead, the county approved an agreement that encourages and requires the Library to seek legislation to create an independent special district.

Pursuant to the Interlocal Agreement that terminated in October 2004, Sanibel Public Library, as subgrantee of the City of Sanibel, received 65% of the County Library Tax revenues assessed against property in the City of Sanibel. In FY 03-04, the Lee County library ad valorem tax was .9630 mills, and the Library received \$2,368,089 as its share of the revenues generated by the tax.

Effect of Proposed Changes

This bill creates the Sanibel Public Library District, an independent special district created for the purpose of providing public library services within the City of Sanibel. It appears that the District is created in accordance with the requirements set forth in ch. 189, F.S., more specifically described above.

Creation, Boundaries, and General Powers

The bill creates an independent special district in Lee County to be known as the Sanibel Public Library District (District). The purposes of the District are as follows: to provide public library services; to assess, levy, and collect taxes, non-ad valorem assessments, and fees; to operate district facilities and services; and all other purposes stated in the act consistent with ch. 189, F.S., and other applicable general laws. The lands to be included within the District are those that are coterminous with the boundaries of the City of Sanibel, Lee County. The boundaries of the District may be modified, extended, or enlarged upon approval or ratification by the Legislature.

The District is granted, and the board may exercise by majority vote, all powers that an independent special district is authorized by law to have, including all powers set forth in chs. 189 and 257, F.S. Chapter 257, F.S., governs operations of public libraries and archives.

The District is authorized to establish and maintain one or more public library facilities and to provide all services as are customary for public libraries to provide; to sue and be sued; to enter into agreements or compacts; to impose taxes, assessments, and impact and user fees; to lease or purchase real and personal property; to borrow money and to issue bonds, notes, and evidence of indebtedness; to apply for and receive grants; to accept donations; and to employ such personnel and engage services of such persons as are deemed necessary for the proper function and operation of the district.

Governing Board Members and Elections

The District is governed by a board of seven commissioners who must be qualified electors residing within the District and elected by the qualified electors residing within the District. Board members serve terms of 4 years each or until a successor takes office. Terms are staggered, with three commissioners elected in one election cycle and four commissioners elected in the other election cycle.

In the initial election, to be conducted by the Lee County Supervisor of Elections within 120 days after approval of the referendum required by this bill, the three commissioners receiving the highest number of votes are elected to the initial 4-year terms ending in 2010, and the other four commissioners elected are elected to the initial 2-year terms ending in 2008. Candidates must qualify in accordance with general law.

Elections must be held on a nonpartisan basis on the first Tuesday after the first Monday in November unless otherwise required by law or by action of the Lee County Supervisor of Elections pursuant to law. If a vacancy occurs on the Board for any reason, the remaining Board members appoint a qualified person to fill the seat until the next general election, at which time an election must be held to fill the vacancy for the remaining term, if any.

Commissioners serve without compensation, but are entitled to payment or reimbursement of actual and necessary expenses incurred in performance of their duties, to the extent authorized by board bylaws. Any future provision for payment of any salary or honorarium must be determined in accordance with limitations in general law.

Each commissioner must take and subscribe to the oath of office prescribed by the State Constitution and general law, and within 30 days after assuming office, must give the Governor a surety bond in the sum of \$5,000, and the treasurer the sum of \$10,000, or as otherwise may be required by law. The cost of the bond is borne by the District, conditioned on the Board member's faithful performance of his or her duties of office.

District Administration

The Board must adopt bylaws to provide policies and procedures for conducting its business and exercising the powers granted in this bill, and the Board must remove any member who has three consecutive, unexcused absences from regularly scheduled meetings.

The bill includes the following administrative requirements:

- Funds of the District may be disbursed only upon the order or pursuant to resolution or action of the board or by warrant or check signed by the treasurer or other person or persons authorized by the board.
- A permanent record book must be maintained in which the minutes of all meetings, resolutions, proceedings, certificates, bonds given by commissioners, and corporate acts are recorded.
- The record book is a public record and all meetings must be conducted in accordance with ch. 286, F.S., and other general laws.
- Unless otherwise required by law, a majority of commissioners in office constitute a quorum for the conduct of business. Action may be taken only by a majority vote of a quorum present.

Fiscal Matters and Millage Rates

The Board must annually prepare, consider, and adopt a budget pursuant to the applicable requirements of ch. 200, F.S., for purposes of providing funds for the District. The Board is required to fix a millage rate sufficient to meet the requirements of the budget. The millage rate must not exceed 1 mill per year, except as otherwise provided by general law. All taxes must be levied, assessed, and collected in the same manner as county taxes.

Non-ad valorem assessments and user and impact fees must be levied and collected in accordance with applicable provisions of general law.

The bill provides that it is the intent of the Legislature that during the first fiscal year of operation and until the District is able to adopt its own millage and budget, funding will continue to be provided through the library's current funding mechanisms, and Lee County is not prohibited from including the District in its library taxing district for the first fiscal year.

Additionally, without limiting its general powers, the District has full power to borrow money and to accept property or funds necessary for the operation of the District until the District is able to adopt its own millage and budget and raise its own revenues.

Indebtedness and the Use of Funds.

The District is authorized to incur debt and issue bonds or any other evidences of indebtedness as provided and to the extent limited by s. 12, Art. VII of the State Constitution and ch. 189, F.S.

Funds of the District may be used for any purpose of the District in accordance with this charter and with provisions of any other applicable general laws and special acts. The District is specifically authorized to expend funds to purchase, lease, own, and maintain one or more public libraries within the District's jurisdiction; to construct one or more public library facilities as the board deems necessary in the exercise of its powers; and to dispose of surplus real or personal property and to enter into interlocal agreements or other arrangements to assist in achievement of the powers and purposes of the District.

Planning Requirements

The District must adopt a 5-year plan to identify the facilities, equipment, personnel, and revenue needed by the District over the next 5-year period. The plan must be updated in accordance with s. 189.415, F.S., and satisfy the requirement for a public facilities report required by s. 189.415(2), F.S.

Referendum

The bill takes effect upon approval by a majority vote of those qualified electors of Lee County voting in a referendum to be conducted by the Lee County Supervisor of Elections in conjunction with the next general election or at an earlier date that the Lee County Supervisor of Elections may be able to conduct an election by mail ballot or otherwise, in accordance with the provisions of law relating to elections currently in force in the District, except that this section shall take effect upon becoming a law.

C. SECTION DIRECTORY:

- Section 1. Provides for District establishment.
- Section 2. Provides the District name.
- Section 3. Establishes District boundaries.
- Section 4. Grants general powers.
- Section 5. Provides for governing board, elections of board members, and board administration.
- Section 6. Provides administrative procedures.
- Section 7. Authorizes millage rate not to exceed 1 mill and provides for fiscal administration.
- Section 8. Authorizes District borrowing and specifies permissible use of funds.
- Section 9. Requires five-year plans.
- Section 10. Provides for liberal construction.
- Section 11. Provides for severability.
- Section 12. Provides that the act is effective upon approval by a majority vote of qualified electors voting in a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 11, 2004

WHERE? News-Press, Fort Myers, Lee County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? The next general election or at an earlier date in accordance with general law.

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: The District must adopt bylaws to provide policies and procedures for conducting its business and exercising the powers granted by this bill.
- C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 189.404(2)(e), F.S., provides as follows:

(2) SPECIAL ACTS PROHIBITED.--Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application which:

(e) Create an independent special district for which a statement has not been submitted to the Legislature that documents the following:

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. A 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.

On November 5, 2004, the Sanibel Public Library, Inc., adopted a resolution in support of creating an independent special district to provide library services upon Sanibel Island in Lee County.

By letter to Representative Kottkamp dated March 18, 2004, Jim Isom, the Acting City Manager of the City of Sanibel, stated that creation of the Sanibel Public Library District is the best alternative and best option for the City of Sanibel because the creation of the special district serves a public purpose in providing library services that will benefit persons residing in and visiting Lee County and the City of Sanibel. Mr. Isom further stated that the Sanibel Public Library is the only private, not-for-profit library system in Lee County and its location is remote from other libraries in the County. Mr. Isom also indicated that he confirmed with staff of the City's Planning Department that the creation of the proposed district is not inconsistent with the adopted Sanibel Plan and the City of Sanibel has no objection to the creation of the proposed Sanibel Public Library District.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The bill sponsor is expected to offer two amendments in the Council on Local Government to make technical changes.