

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 CS

Florida Keys Aqueduct Authority, Monroe County

SPONSOR(S): Sorensen

TIED BILLS:

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>Water & Natural Resources Committee</u>	<u>11 Y, 0 N</u>	<u>Smith</u>	<u>Lotspeich</u>
3) <u>Finance & Tax Committee</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

The Florida Keys Aqueduct Authority (Authority) is an independent special district located in Monroe County. The Authority was created by ch. 76-441, L.O.F., which has been amended by subsequent special acts.

The bill codifies (reenacts) all prior special acts of the district into a single act, as required by s. 189.429, F.S.

The bill deletes outdated language and organizes previously authorized powers of the Authority.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.

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

- granting the Authority exclusive jurisdiction over the setting of rates, fees, and charges of, and the connection to and disconnection from, the water system and the sewer system of the Authority as granted by this act and providing that to this extent this act may supersede ch. 367, F.S., an act relating to Water and Wastewater Systems;¹
- providing for a referendum on whether the board of directors will be elected or appointed; and
- subject to a vote of the City Council, excluding the City of Marathon from the jurisdiction of the Authority's wastewater system service.

No fiscal impacts are anticipated according to the Economic Impact Statement.

¹ 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. Although the bill provides for this act to supersede ch. 367, F.S., pursuant to s. 367.022(2), F.S., the Authority is exempt from the provisions of the chapter. Therefore, the bill does not appear to create a new exception to general law.

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

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DATE: 3/15/2005

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:

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 the 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.

The Florida Keys Aqueduct Authority

The Florida Keys Aqueduct Authority is an independent special district located in Monroe County. The Authority was created by ch. 76-441, L.O.F., which has been amended by subsequent special acts.

The primary purpose and function of the Authority is to obtain, supply and distribute an adequate water supply for the Florida Keys, and to collect, treat, and dispose of wastewater in the Florida Keys.

The Authority includes all of Monroe County within its district boundary and may additionally serve customers residing within 1 mile of its pipeline from its well field at Florida City in Miami-Dade County to the territorial boundary of the Authority.

The Authority is governed by a five member board of directors, appointed by the Governor. Each director represents one of five districts coterminous with the districts of the Board of County Commissioners of Monroe County.

Current authority provides that each board member receive \$300 per meeting, not to exceed 3 meetings per month. The compensation amount for the members of the board may be adjusted annually based upon the index provided for pursuant to s. 287.017(2), F.S. According to the Authority the board members are currently receiving \$354.

The Authority has the power to establish and collect rates, fees, rentals and other charges, and to provide for reasonable penalties for any such rates, fees, rentals or other charges which are delinquent. The Authority may also issue bonds.

This bill codifies (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 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.

Changes to the Florida Keys Aqueduct Authority Charter

There are, however, provisions of this bill which do not simply codify existing law, but amend the charter of the Authority. These provisions include:

- granting the Authority exclusive jurisdiction over the setting of rates, fees, and charges of, and the connection to and disconnection from, the water system and the sewer system of the Authority as granted by this act and providing that to this extent this act may supersede ch. 367, F.S., an act relating to Water and Wastewater Systems;
- providing for a referendum on whether the board of directors will be elected or appointed; and
- subject to a vote of the City Council, excluding the City of Marathon from the jurisdiction of the Authority's wastewater system service.

Charter of District

This bill recreates and reenacts the Authority's Charter as follows:

- Section 1:² Declares the district to be an independent special district and provides for the creation of the district, for its name, and for its boundaries.
- Section 2:³ Grants exclusive jurisdiction over setting of rates, fees, and charges, and the connection and disconnection from, the water and sewer systems of the Authority and provides that to this extent the act may supersede ch. 367, F.S.; provides the Authority is not subject to ch. 120, F.S.
- Section 3:⁴ Provides definitions for the following words and terms: authority, board, department, bond, cost, project, water system, and sewer system.
- Section 4:⁵ Provides for a five member board appointed by the Governor with one member to represent each of the five districts consistent with the five districts of the Monroe County Board of County Commissioners.
- Section 5:⁶ Provides for record keeping of the Authority.

² See ch. 98-519, L.O.F. § 1.

³ See *generally* ch. 2003-304, L.O.F. § 1.

⁴ See ch. 98-519, L.O.F. § 2.

⁵ See ch. 84-484, L.O.F. § 2.

⁶ See ch. 76-441, L.O.F. § 4.

- Section 6:⁷ Provides for compensation of the board members at the rate of \$354 per meeting, not to exceed three meetings per month; provides for reasonable expense reimbursement consistent with ch. 112, F.S.; provides for annual adjustment of compensation based upon the index included in s. 287.017(2), F.S.
- Section 7:⁸ Requires each board member to execute a \$10,000 bond to secure faithful performance of powers and duties; requires an annual certified audit of the Authority with notice and public inspection; provides the board with authority to select a depository and deposit funds of the Authority; provides for employment of a fiscal agent for bookkeeping and associated functions; provides for the publication of the annual budget.
- Section 8:⁹ Provides for the powers and duties of the board of directors, including the power and authority to: employ engineers, contractors, consultants, attorneys, auditors, agents, employees, and representatives and approve and fix their compensation and duties; maintain an office; enter or direct entry upon any lands, premises, waters, or other property subject to the requirements of due process as to privately owned property; execute all contracts and other documents; authorize a chair or vice chair to execute contracts and other documents on behalf of the board or the Authority; appoint a person to act as general manager of the Authority having such official title, functions, duties, and powers as the board may prescribe -- however the general manager may not be a member of the board.
- Section 9:¹⁰ Provides for the powers of the Authority, including the power to:
- (1) sue and be sued;
 - (2) adopt and use a common seal and alter the same at pleasure;
 - (3) acquire, purchase, hold, lease, mortgage, and convey such real and personal property as the board deems proper or expedient to carry out the purposes of this act;
 - (4) lease as lessor or lessee, to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the Authority is authorized to undertake and facilities or property of any nature for the use of the Authority;
 - (5) upon resolution duly passed, insure its property in accordance with the State Risk Management Trust Fund;
 - (6) exercise the power of eminent domain;
 - (7) own, acquire, construct, reconstruct, equip, operate , maintain, extend, and improve water systems; regulate the use of and supply of water including rationing within the Authority's boundaries, or ways within or without the boundaries of the Authority when deemed necessary or desirable by the board of directors;
 - (8) issue bonds or other obligations authorized by this act or any other law;
 - (9) purchase, construct, acquire, improve, extend, enlarge, and reconstruct a sewage disposal system or systems; create sewer districts; exercise exclusive jurisdiction, control, and supervision over any sewer systems owned or operated and maintained by the Authority; restrain, enjoin, or otherwise prevent the violation of this law or of any resolution, rules, or

⁷ See ch. 98-519, L.O.F. § 3.

⁸ See ch. 98-519, L.O.F. § 4.

⁹ See ch. 80-546, L.O.F. § 5.

¹⁰ See ch. 76-441, L.O.F. § 9; ch. 77-604, L.O.F. § 1; ch. 80-546, L.O.F. § 6; ch. 84-483, L.O.F. § 1; ch. 98-519, L.O.F. §§ 5, 6; ch. 2003-304, L.O.F. § 1.

regulations adopted pursuant to the powers granted by this law; require and enforce the use of its facilities whenever and wherever accessible; approve or disapprove all subdivision plats and provide for compliance with sewer standards, rules, and regulations; provide and make covenants and agreements with bond holders; discontinue furnishing water services under specified circumstances; for purposes of financing any sewer system within the geographic boundaries of the Authority, combine into a single consolidated system any sewer system within the Authority's boundaries; adopt by reference and utilize or take advantage of any of the provisions of chapters 100, 153, 159, and 170, F.S.; contract with other entities; make or cause to be made such surveys, investigations, studies, borings, maps, drawings, and estimates of cost and revenues as it may deem necessary; prepare and adopt a comprehensive plan for the location, relocation, construction, improvement, revision and development of the wastewater system; lease the wastewater system or any part, with certain restrictions; charge its own books or against Monroe County with respect to providing any facilities or services rendered by the wastewater system to the Authority or to Monroe County or to any other political subdivision or public body or agency which receives services.

Subsection (9) also provides that neither Monroe County, nor any municipality or special district, shall exercise any power to interfere with the Authority's jurisdiction and operation of the wastewater system in such a manner that may impair or adversely affect the covenants and obligations of the Authority under agreement relating to bonds or other debts.

The subsection provides that the Authority shall have exclusive jurisdiction over the administration, maintenance, development, and provision of wastewater system services in Monroe County, with the exception of the Key Largo Wastewater Treatment District; the City of Key West; the City of Key Colony Beach; the City of Layton; Islamorada, Village of the Islands; and the City of Marathon, if approved by vote of the Marathon City Council; unless such areas choose to grant the Authority such jurisdiction.

- Section 10:¹¹ Provides for rulemaking authority upon reasonable advance notice to the public and an opportunity for persons to be heard.
- Section 11:¹² Provides for the exercise of the Authority's powers within municipalities whose boundaries lie wholly or partially within the district boundary.
- Section 12:¹³ Provides the Authority with the power to furnish facilities and services within its boundary.
- Section 13:¹⁴ Provides for the maintenance of projects across rights-of-way; provides for just compensation for any consequential taking of, or damage to, private property.

¹¹ See ch. 2003-304, L.O.F. § 1.

¹² See ch. 76-441, L.O.F. § 11.

¹³ See ch. 76-441, L.O.F. § 12.

¹⁴ See ch. 76-441, L.O.F. § 13.

- Section 14:¹⁵ Provides for the Authority to establish, revise and collect fees, rentals and charges and to provide reasonable penalties against users for delinquencies in payment; provides parameters for the calculation of such fees and charges; provides for special rates and charges for persons who are 60 years of age or older, or who are disabled American veterans, and provides for the submission of an affidavit to that effect from such persons; provides that rates and charges shall be sufficient to produce revenue to provide for certain costs of the Authority; and provides for public hearings prior to the establishment or increase in rates and charges.
- Section 15:¹⁶ Provides for the recovery of delinquent charges and for service charges in accordance with s. 832.07(1)(a), F.S.
- Section 16:¹⁷ Provides for the discontinuance of service following delinquencies and for enforcement by other lawful methods.
- Section 17:¹⁸ Provides remedies for bond holders.
- Section 18:¹⁹ Provides for receivership in the event the Authority may default in the payment of principal or interest on any issued bonds.
- Section 19:²⁰ Provides the Authority may enter agreements for the furnishing of facilities or services of the type provided for in the act.
- Section 20:²¹ Provides the board of directors with exclusive jurisdiction and control over the Authority's projects; provides that it is not necessary for the authority to obtain any certificate of convenience or necessity, franchise, license, permit or authorization from any state bureau, board, commission or other instrumentality of the state or any political subdivision thereof for the construction, reconstruction, acquisition, extension, repair, improvement, maintenance or operation of any project; provides that the Authority is not subject to supervision, regulation, or the rate-setting power of any agency of the state or any political subdivision thereof.
- Section 21:²² Provides authority to issue revenue bonds.
- Section 22:²³ Provides authority to issue refunding bonds.
- Section 23:²⁴ Provides for the validity and binding nature of pledges of revenue, and provides lien of such pledges.
- Section 24:²⁵ Provides authority for the issuance of bond anticipation notes.

¹⁵ See ch. 76-441, L.O.F. § 14; ch. 80-546, L.O.F. § 7; ch. 2003-304, L.O.F. § 1; ch. 2003-327, L.O.F. § 1.

¹⁶ See ch. 76-441, L.O.F. § 15.

¹⁷ See ch. 76-441, L.O.F. § 16.

¹⁸ See ch. 98-519, L.O.F. § 7.

¹⁹ See ch. 76-441, L.O.F. § 18.

²⁰ See ch. 76-441, L.O.F. § 19.

²¹ See ch. 76-441, L.O.F. § 20.

²² See ch. 76-441, L.O.F. § 21.

²³ See ch. 76-441, L.O.F. § 22.

²⁴ See ch. 76-441, L.O.F. § 23.

²⁵ See ch. 76-441, L.O.F. § 24.

- Section 25:²⁶ Provides authority for short term borrowing for terms not exceeding three years.
- Section 26:²⁷ Provides for the security of bonds with trust agreements.
- Section 27:²⁸ Provides authority for the sale of bonds.
- Section 28:²⁹ Provides the board with authority to authorize the issuance of bonds.
- Section 29:³⁰ Provides the board with authority to issue interim certificates or receipts prior to the issuance of definitive bonds; and provides the authority to issue replacement bonds.
- Section 30:³¹ Provides for the negotiability of issued bonds.
- Section 31:³² Provides that bonds issued by the Authority shall constitute legal investments for savings banks and other fiduciaries.
- Section 32:³³ Provides for bond validity and validation proceedings according to ch. 75, F.S.
- Section 33:³⁴ Provides for the pledge by the State to bondholders and to the Federal Government to not limit or alter the rights of the Authority so as impair the rights or remedies of bondholders.
- Section 34:³⁵ Provides the Authority may enter into contracts, apply for grants and receive contributions.
- Section 35:³⁶ Provides for certain tax exemption for the Authority in the performance of essential public functions.
- Section 36:³⁷ Provides the Authority power over the acquisition, construction, reconstruction, extension, repair, improvement, maintenance, and operation of its projects.
- Section 37:³⁸ Provides rights and remedies in law and equity to the board of directors and any aggrieved person.
- Section 38:³⁹ Provides authority to the board of directors to invest the funds of the Authority in certain types of investment.
- Section 39:⁴⁰ Provides the board of directors the authority to establish or reestablish the fiscal year.

²⁶ See ch. 80-546, L.O.F. § 8.

²⁷ See ch. 76-441, L.O.F. § 26.

²⁸ See ch. 76-441, L.O.F. § 27.

²⁹ See ch. 98-519, L.O.F. § 8.

³⁰ See ch. 76-441, L.O.F. § 29.

³¹ See ch. 76-441, L.O.F. § 30.

³² See ch. 76-441, L.O.F. § 31.

³³ See ch. 76-441, L.O.F. § 32.

³⁴ See ch. 76-441, L.O.F. § 33.

³⁵ See ch. 76-441, L.O.F. § 34.

³⁶ See ch. 76-441, L.O.F. § 35.

³⁷ See ch. 76-441, L.O.F. § 36.

³⁸ See ch. 76-441, L.O.F. § 37.

³⁹ See ch. 76-441, L.O.F. § 38.

⁴⁰ See ch. 76-441, L.O.F. § 39.

Section 40:⁴¹ Provides for rulemaking; declares that rules adopted prior to May 18, 1983 (the effective date of chapter 83-468, L.O.F.), contained in part 7 of the Rules of the Authority, are affirmed as a valid exercise of delegated legislative authority.

Section 41:⁴² Ratifies all actions of the Authority occurring prior to June 25, 1976.

C. SECTION DIRECTORY:

Section 1: Provides that the bill constitutes the codification of all special acts relating to the Authority; provides legislative intent.

Section 2: Codifies, reenacts, amends and repeals chapters 76-441, 77-604, 77-605, 80-546, 83-468, 84-483, 84-484, 86-419, 98-519, 2003-304, and 2003-327, L.O.F.

Section 3: Recreates and reenacts the charter of the Authority.

Section 4: Repeals chapters 76-441, 77-604, 77-605, 80-546, 83-468, 84-483, 84-484, 86-419, 87-454, 98-519, 2003-304, and 2003-327, L.O.F.

Section 5: Provides for liberal construction.

Section 6: Provides for severability.

Section 7: Provides for a referendum called by the Monroe County Supervisor of Elections, on the question of whether the Board of the Authority shall be elected by qualified electors of the County rather than appointed by the Governor. If the question is approved, s. 4 of the charter contained in s. 3 of the bill will be superseded by the following:

The board of directors shall consist of five members who represent one of five districts that are coterminous with the districts of the Board of County Commissioners of Monroe County. Each member of the board of directors will be a registered elector within Monroe County and have been a resident of the district for 6 months prior to the date of election. The members of the board will be elected by the qualified electors of the county at large as follows: five members, representing districts one through five, will be elected at the general election to be held in November 2006. The initial terms for seats two and four are 2 years each, and the initial terms for seats one, three, and five will be 4 years each. Subsequent terms for all seats will be 4 years each. The terms of members elected will begin on the Tuesday 2 weeks following the general election. The board will elect one of its members as chair and elect another member as secretary-treasurer. A majority of the members of the board will constitute a quorum. No vacancy in the board will impair the right of a quorum to exercise all the rights and perform all of the duties of the board. All members of the board are required to be bonded. Any vacancy occurring on the board shall be filled by appointment by the Governor for the duration of the unexpired term or until the next succeeding general election occurring more than 4 months after the vacancy occurs, whichever is the earliest. Any election shall be to fill the unexpired term.

Section 8: Provides for the bill to take effect upon becoming law, except as otherwise provided.

⁴¹ See ch. 83-468, L.O.F. § 2.

⁴² See ch. 76-441, L.O.F. § 43.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 12, 2004

WHERE? *The Citizen*, Key West, Monroe County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? October 2005

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

There do not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the Authority. Section 40 of the charter declares that rules adopted prior to *May 18, 1983 (chapter 83-468, L.O.F.)*, contained in part 7 of the Rules of the Authority, are affirmed as a valid exercise of delegated legislative authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Fiscal Impact

The Economic Impact Statement indicates the bill has no anticipated fiscal impact. However, as amended, s. 7 requires the Authority to pay for a county-wide referendum. The cost to the Authority is unknown.

Other Comments

The bill grants the Authority exclusive jurisdiction over the setting of rates, fees, and charges of, and the connection to and disconnection from, the water system and the sewer system of the Authority as granted by this act, and provides that to this extent the act supersedes ch. 367, F.S., an act relating to Water and Wastewater Systems. Although the bill provides for this act to supersede ch. 367, F.S., pursuant to s. 367.022(2), F.S., the Authority is exempt from the provisions of the chapter. Therefore, the bill does not appear to create a new exception to general law.

During the 2004 Legislative Session, House Bill 921, an act relating to the Florida Keys Aqueduct Authority, was vetoed by the Governor due to a technical error that inadvertently repealed a special law relating to another district.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted a strike-all amendment on February 23, 2005. The strike-all amendment:

- provides for a referendum on whether the board of directors will be elected or appointed;
- updates the listed compensation to \$354 per meeting for board members to reflect what the board members currently are paid;
- subject to a vote of the City Council, excludes the City of Marathon from the jurisdiction of the Authority's wastewater system service;
- clarifies language regarding the list of cities that are currently excepted from the Authority's jurisdiction;
- adds the bond validation provision back into section 32 of the charter;
- clarifies that only rules adopted prior to the effective date of chapter 83-468, Laws of Florida, are affirmed as a valid exercise of delegated legislative authority;
- clarifies that the bill only ratifies all prior actions of the Authority prior to the effective date of chapter 76-441, Laws of Florida;
- removes an obsolete provision validating the notice of intent; and
- repeals a special act related to the Authority that failed in referendum.

The bill, as amended, was reported favorably with committee substitute.