

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 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: (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 \$337.

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 issue bonds.

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 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:

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; and
- removing a provision requiring that prior to the issuance of any bonds, the Authority comply with ch. 75, F.S., an act relating to Bond Validation.

Charter of District

In recreating and reenacting the charter for the Authority, the bill:

- 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.
- Section 6:⁷ Provides for compensation of the board members at the rate of \$337 per meeting, not to exceed three meetings per month; provides for reasonable

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.

⁷ See ch. 98-519, L.O.F. § 3.

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 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

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.

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, excluding Ocean Reef, the City of Key West, the City of Key Colony Beach, the City of Layton, and Islamorada, Village of the Islands 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.
- 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

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.

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.

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.
- 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.

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.

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.

- 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.
- 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.
- Section 40:⁴¹ Provides for severability.
- Section 41:⁴² Provides for liberal construction.
- Section 42: Provides a finding of sufficiency for the notice required by Art. III, s. 10, State Constitution.

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.

⁴¹ See ch. 80-546, L.O.F. § 10.

⁴² See ch. 76-441, L.O.F. § 41.

Section 43:⁴³ Ratifies all actions of the Authority prior to effectiveness of the act.

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, 98-519, 2003-304, and 2003-327, L.O.F.
- Section 5: Provides for rulemaking authority and ratifies rules adopted prior the effectiveness of this act as a valid exercise of delegated legislative authority.
- Section 6: Provides for the bill to take effect upon becoming law.

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?

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 5 of the bill, formerly section 48 of the charter, declares that rules adopted prior to the effective date of this act, contained in part 7 of the Rules of the Authority, are affirmed as a valid exercise of delegated legislative authority, and are not included in the charter.

⁴³ See ch. 76-441, L.O.F. § 43.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

An amendment may be necessary to correct a drafting error. The title of the bill includes a reference to ch. 87-454, L.O.F. This special act did not take effect because it was not approved by the voters as required, and is not repealed in this bill.

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 requested an amendment to increase the compensation to \$354 per meeting.

On page 19, lines 530-543, HB 225 provides:

(p) 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 as defined in chapter 2002-337, L.O.F., consisting of Key Largo, including all lands east of Tavernier Creek, including Tavernier, Key Largo, and Cross Key, but excluding Ocean Reef**, the City of Key West, the City of Key Colony Beach, the City of Layton, and Islamorada, Village of Islands unless such areas shall choose to grant the authority such jurisdiction, and the authority's wastewater system authorized hereunder shall be the exclusive provider of wastewater system services and no franchise or grant of power to any other entity or provider shall be lawful unless preapproved by the authority.

The language in bold is new language being added to the existing charter. The addition of the highlighted language appears to be an attempt to reflect the fact that ch. 2002-337 L.O.F., which created the Key Largo Wastewater Treatment District, removed the territory of the newly created district from the jurisdiction of the Authority. The new language is taken from the territorial description of the Key Largo Wastewater Treatment District found in ch. 2002-337, L.O.F. However, as drafted, it is unclear whether Ocean Reef, or the list of cities that are currently excepted from the Authority's jurisdiction, are being excluded from the territorial description of the Key Largo Wastewater Treatment District or from the Authority's jurisdiction.

Other Comments

It is unclear why the grant of rule-making authority and the declaration discussed above are not included in section 3 of the charter.

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.

Validation and Ratification

The bill codifies in section 42 of the charter a prior finding that the notice is sufficient and is hereby validated and approved.

Section 43 of ch. 76-441, L.O.F., ratified all actions of the Authority prior to the effective date of the act. This bill codifies section 43 of the charter, ratifying all prior actions of the Authority occurring prior to the effective date of *this* act.

The provision that ratifies all prior acts is problematic. The general rule for such curative provisions is: "what the Legislature could have authorized, it can ratify if it can authorize at the time of ratification."⁴⁴ It is important to note, however, that most of the cases on the issue of ratification and validation in Florida, with respect to special districts, relate specifically to the issue of assessments, which the Legislature had the power to ratify. Yet, different issues are presented through the use of overly broad and general validation and ratification language as it is not clear what exactly the Legislature is validating and ratifying. Broad and general language may, on its face, ratify actions outside the legislature's ratification power. Thus, the effect may be questioned in particular cases. Moreover, to the extent that this broad and general ratification provision is not directed at a specific issue, it might not be given retroactive effect in certain situations.⁴⁵

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

⁴⁴ See, e.g., *Charlotte H. & N. R. Co. v. Welles*, 260 U.S. 8 (1922).

⁴⁵ See, e.g., *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995) (where the Florida Supreme Court noted its refusal to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties).