



## 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, 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.

##### Status Statement Language

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the department's determination or declaratory statement regarding the status of the district.

##### Ocean Highway and Port Authority

The Ocean Highway and Port Authority (Authority) is an independent special district located in Nassau County. The Authority was created by ch. 21418 (1941), L.O.F., which has been amended by subsequent special acts.

According to Mr. Marshall Wood, Esq., council for the Authority, "the primary purpose of the Ocean Highway and Port Authority ("Authority") is to operate the Port of Fernandina, a Florida Seaport with access to the Atlantic Ocean. The Authority owns land and docking facilities in Fernandina Beach, on Amelia Island, in Nassau County, and services cargo ships, including loading and unloading bulk and container cargo. In addition, the Authority has jurisdiction over inland waters in and around Amelia Island, and has authority to assist in economic development in Nassau County, including the issuance of industrial revenue bonds. Initially, the Authority was established in the 1940's to acquire land and construct an ocean highway, which today links Duval and Nassau Counties via coastal road."

The Authority is governed by a five member board of commissioners, serving staggered terms of four years. Each commissioner represents one of five districts conterminous with the districts of the Board of County Commissioners of Nassau County. The port commissioners' must reside in each district and be elected by the qualified electors of the district.

The Authority has the power to establish and collect rates of wharfage, dockage, warehousing, storage, and port and terminal charges and rates and charges for the use of all improvements, port or harbor facilities located within the county and owned or operated by the Authority. 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 Ocean Highway and Port Authority Charter

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

- increasing the salary for the commissioners from \$12,000 to \$24,000 per annum; and
- increasing the interest rate at which the Authority may borrow money or issue revenue bonds or certificates from a rate not exceeding 8% to a rate not exceeding the maximum rate authorized by law.

### Charter of District

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

- Section 1:<sup>1</sup> Provides for the popular name of the Authority.
- Section 2:<sup>2</sup> Provides for the definition of "Authority" and "Board."
- Section 3:<sup>3</sup> Provides for the creation of the Authority; provides for the five member board of port commissioners; provides for 4 year term limits; provides for the boundaries of the Authority; provides for the election of the board commissioners; provides for vacancies; and provides for the membership of the board of commissioners.
- Section 4:<sup>4</sup> Provides for the adoption of rules and bylaws by the commissioners; provides for a quorum; provides the board will have exclusive control over the funds of the Authority including the withdrawal and investment of the funds.
- Section 5:<sup>5</sup> Provides for the compensation of each board member, the port director, agents and employees of the Authority; provides for a retirement plan and health insurance plan for the employees of the Authority.

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<sup>1</sup> HB 619 s. 1 (2005).

<sup>2</sup> HB 619 s. 2 (2005).

<sup>3</sup> See ch. 21418 (1941), L.O.F. § 1; ch. 24733 (1947), L.O.F. § 1; ch. 83-474, L.O.F. § 1; ch. 84-486, L.O.F. § 1; ch. 86-371, L.O.F. § 1; ch. 91-347, L.O.F. § 1.

<sup>4</sup> See ch. 21418 (1941), L.O.F. § 2; ch. 24733 (1947), L.O.F. § 2.

<sup>5</sup> See ch. 21418 (1941), L.O.F. § 3; ch. 24733 (1947), L.O.F. § 3; ch. 83-471, L.O.F. § 1; ch. 87-439, L.O.F. § 1; ch. 91-347, L.O.F. § 2.

Section 6:<sup>6</sup> States the Authority is a body politic and corporate and a political subdivision of the state and gives the corporate title of the Authority; provides the Authority may adopt and use a common seal and alter the same at pleasure; provides the Authority may contract and be contracted with; provides the district may sue and be sued; grants state lands easements, rights-of-way, and riparian rights to lands to the Authority.

Section 7:<sup>7</sup> Provides for the powers of the Authority, including the power to:

- (1) acquire by grant, purchase, gift, condemnation, exchange, or otherwise and convey such real and personal property as the board deems proper or expedient to carry out the purposes of this act; states the power of condemnation is exercised and carried out in the manner provided by general law;
- (2) lay out, construct, condemn, purchase, own, acquire, add to, extend, enlarge, maintain, conduct, operate, build, equip, manage, furnish, replace, enlarge, improve, lease, sell, regulate, finance, control, repair, and establish office and administrative buildings to be used and occupied by the Authority; perform all customary services of all commodities and cargoes received or shipped through any port or harbor within the jurisdiction of the Authority;
- (3) improve and develop Fernandina Harbor and all waters within the county of Nassau; create and improve harbor purposes; regulate, control, and improve all waters and waterways within the county; construct inlets and turning basins and dredge and deepen natural or artificial waterways within the county; apply for permission from the federal government to create, improve, regulate, and control all waters and natural and artificial waterways within the county; enact, adopt, and establish, by resolution, rules and regulations for the Authority;
- (4) apply to appropriate federal agencies to establish a free port and enter into agreements and payments to create same;
- (5) fix rates of wharfage, dockage, warehousing, storage, and port and terminal charges and rates and charges for the use of all improvements, located within the county and owned or operated by the Authority;
- (6) input, construct, condemn, purchase, own, acquire, add to, maintain, etc., a variety of transportation facilities and other facilities and improvements inside and outside the county; establish, charge, and collect necessary and reasonable fees, admissions, tolls, rates, rentals, and charges for any or all of the services or facilities of any works, undertakings, or properties; finance the cost of any project, from the proceeds of revenue obligations issued pursuant to this act;
- (7) perform and carry out all duties, functions, and purposes of the Housing Cooperation Law, contained under ch. 422, F.S.;
- (8) exercise police powers over the improvements and facilities; and
- (9) borrow money on the anticipated receipt of funds from any source and in evidence thereof issue notes, warrants, or debentures bearing interest at a rate not exceeding the maximum rate authorized by law.

Section 8:<sup>8</sup> Declares the Authority serves a public purpose.

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<sup>6</sup> See ch. 21418 (1941), L.O.F. § 2; ch. 24733 (1947), L.O.F. § 2.

<sup>7</sup> See ch. 21418 (1941), L.O.F. § 5; ch. 24733 (1947), L.O.F. § 5; ch. 26048 (1949), L.O.F. § 1; ch. 67-1739, L.O.F. § 1; ch. 69-1328, L.O.F. § 1.

<sup>8</sup> See ch. 21418 (1941), L.O.F. § 12.

- Section 9:<sup>9</sup> Provides the Authority the power to apply for and to accept grants or loans from or to enter into any contracts or agreements deemed advisable with the U.S., the State of Florida, the State of Georgia, or any political subdivision, public body, or agency; provides the Authority may enter into covenants and agreements with the holders of any bonds, certificates, or obligations issued by the Authority concerning the use and disposition of any grants or loans received by it from any parties.
- Section 10:<sup>10</sup> Provides the Authority is exempt from all taxation by the state or by any county, municipality, or political subdivision.
- Section 11:<sup>11</sup> Provides for eminent domain powers.
- Section 12:<sup>12</sup> Exempts the Authority from state and local government regulation.
- Section 13:<sup>13</sup> Authorizes the Authority to use any state rights-of-way, easements, lands under water, or other similar property right.
- Section 14:<sup>14</sup> Authorizes the Authority to acquire property in the state of Georgia.
- Section 15:<sup>15</sup> Provides all contracts and agreements executed or entered into by the Authority, and all proceedings or acts of the Authority taken or had, be and the same are hereby ratified, confirmed, and validated as valid and legally binding contracts, agreements, proceedings, and acts of the Authority.
- Section 16:<sup>16</sup> Provides authority for the issuance of bonds or certificates.
- Section 17:<sup>17</sup> Provides election procedures to authorize the borrowing of money or the issuance of bonds or certificates; provides elections are to be held and conducted in the manner provided by the general laws of Florida applicable to the holding and conducting of elections under the provisions of <sup>18</sup>section 12 of Article VII of the State Constitution.
- Section 18:<sup>19</sup> Preserves the validity of bonds, and provides the validity of bonds may be determined in proceedings in circuit court as provided by general law.
- Section 19:<sup>20</sup> Provides for the covenants and conditions of bonds or certificates.
- Section 20:<sup>21</sup> Provides for the security of revenue bonds.
- Section 21:<sup>22</sup> Provides for the rights of bondholders.

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<sup>9</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>10</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>11</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>12</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>13</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>14</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>15</sup> See ch. 26048 (1949), L.O.F. § 5.

<sup>16</sup> See ch. 21418 (1941), L.O.F. § 6; ch. 24733 (1947), L.O.F. § 6; ch. 26048 (1949), L.O.F. § 2; ch. 69-1328, L.O.F. § 2.

<sup>17</sup> See ch. 21418 (1941), L.O.F. § 7.

<sup>18</sup> Note.—current authority states s. 6 of Article 6 of Article IX of the Constitution of Florida, however, s. 6, Art. IX of the State Constitution of 1885 was superseded pursuant to s. 1, Art. XII of the State Constitution as revised in 1968.

<sup>19</sup> See ch. 21418 (1941), L.O.F. § 8.

<sup>20</sup> See ch. 21418 (1941), L.O.F. § 9.

<sup>21</sup> See ch. 21418 (1941), L.O.F. § 10.

<sup>22</sup> See ch. 21418 (1941), L.O.F. § 11.

- Section 22:<sup>23</sup> Provides that the bonds of the Authority constitute legal investments and securities.
- Section 23:<sup>24</sup> Provides for receivership of Authority property in the event of a default.
- Section 24:<sup>25</sup> Provides for the issuance of refunding bonds, certificates, or obligations.
- Section 25:<sup>26</sup> Provides a state covenant with debtors.
- Section 26:<sup>27</sup> Provides a declaration regarding the acquisition, extension, expansion, enlargement, construction, and equipping by the Authority of a pulp and paper mill.
- Section 27:<sup>28</sup> Authorizes Authority to acquire, construct, extend, enlarge and equip a pulp and paper mill and related facilities.
- Section 28:<sup>29</sup> Authorizes the Authority to lease a pulp and paper mill and related facilities.
- Section 29:<sup>30</sup> Authorizes the issuance of revenue bonds for pulp and paper mill and related facilities.
- Section 30:<sup>31</sup> Provides a declaration regarding the acquisition, construction, and equipping by the Authority of an oil refinery.
- Section 31:<sup>32</sup> Authorizes Authority to acquire, construct, and equip an oil refinery and related facilities.
- Section 32:<sup>33</sup> Authorizes the Authority to lease an oil refinery and related facilities.
- Section 33:<sup>34</sup> Authorizes the issuance of revenue bonds for an oil refinery and related facilities.
- Section 34:<sup>35</sup> Authorizes the Authority to construct a turnpike project or toll road in a certain area.
- Section 35:<sup>36</sup> Authorizes the sale of bonds for turnpike projects or toll roads.
- Section 36:<sup>37</sup> Provides for lease-purchase agreements for revenue-producing projects, within the State of Florida and partly within the State of Georgia.

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<sup>23</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>24</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>25</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>26</sup> See ch. 26048 (1949), L.O.F. § 3.

<sup>27</sup> See ch. 67-1748, L.O.F. §§ 1, 2, 3, 4, and 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See ch. 67-1737, L.O.F. §§ 1, 2, 3, 4, and 6.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See ch. 30290 (1955), L.O.F. §§ 1, 2, and 3.

<sup>36</sup> *Id.*

<sup>37</sup> See ch. 27763 (1951), L.O.F. §§ 2, 3, 4, 5, 6 and 7.

- Section 37:<sup>38</sup> Provides for the lease-purchase agreements with the state of Florida and the state of Georgia.
- Section 38:<sup>39</sup> Provides the Florida Department of Transportation is authorized to contract by lease-purchase with the Authority.
- Section 39:<sup>40</sup> Provides for the legality of lease-purchase agreements, bonds, and other agreements; provides for the rights of the bondholders.
- Section 40:<sup>41</sup> Provides that the provisions of this act shall not affect any lease-purchase agreements entered into between the Authority and the Florida Department of Transportation relative to projects wholly within the state; provides that no other law shall have application to revenue-producing projects located partly within the state and partly within Georgia which are financed under the provisions of this 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 21418 (1941), 24733 (1947), 27763 (1951), 30290 (1955), 67-1737, 67-1739, 67-1748, 69-1328, 83-471, 83-474, 84-486, 86-371, 87-439, and 91-347, L.O.F.
- Section 3: Recreates and reenacts the charter of the Authority.
- Section 4: Repeals chapters 21418 (1941), 24733 (1947), 27763 (1951), 30290 (1955), 67-1737, 67-1739, 67-1748, 69-1328, 83-471, 83-474, 84-486, 86-371, 87-439, and 91-347, L.O.F.
- Section 5: Provides for the bill to take effect upon becoming law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 24, 2004

WHERE? *News Leader*, Fernandina Beach, Nassau 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

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

The following existing exemption from taxation, which includes an exemption from ad valorem taxation, is codified in section 10 of the charter:

As long as the authority shall own the works, undertakings, and properties provided for in this act, all properties of the authority, real or personal, and all revenues and income derived from the services and facilities of the authority shall be exempt from all taxation by the state or by any county, municipality, or political subdivision thereof. Bonds, certificates, or other obligations issued pursuant to this act shall, together with the income thereon, be exempt from all taxation by the state or any county, municipality, or other political subdivision thereof.

Property owned by governmental entities is subject to ad valorem taxation unless immune or exempt, and such exemptions are strictly construed against party claiming them. Immunity from taxation precludes the power to tax, while an exemption from taxation presupposes the existence of the power to tax but the power is limited by a constitutional or statutory provision.<sup>42</sup> The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis.<sup>43</sup>

Special districts are not immune from taxation. Therefore, property owned by special districts is taxable unless the Legislature enacts an exemption from taxation that is consistent with the Florida Constitution. Section 189.403(1), F.S., provides that special districts are treated as municipalities for purposes of s. 196.199(1), F.S., which exempts from ad valorem taxation property owned by a municipality and used for "governmental, municipal, or public purposes". Thus, property owned by a special district may be entitled to exemption only if used for a governmental or public purpose.

If a private entity leases government owned property from an exempt governmental entity, such as a special district, the actual use of the property determines whether a valid exemption from ad valorem taxation continues to apply. If public property is leased to a private entity, but is not used for a "public purpose", the fee interest in the property is taxable. The "public purpose" standard applicable in tax exemption cases is the "governmental-governmental" standard under which property leased to private entities for "governmental-proprietary" activities is not tax exempt.<sup>44</sup> Non-exempt "governmental-proprietary" use occurs when a nongovernmental lessee utilizes public property for proprietary and for-profit aims to promote the comfort, convenience, safety and happiness of citizens. Conversely, exempt "governmental-governmental" use occurs when a lease of public property concerns the administration of some phase of government. It should be noted that the leasehold interest in leased public property may be subject to the intangibles tax regardless of whether the leased property itself is subject to ad valorem taxation.<sup>45</sup>

#### B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the Authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Notice

The published notice of intent to seek legislation states that this act is re-codifying the existing charter of the Ocean Highway and Port Authority (of Nassau County) as required by section 189.429, F.S.; the notice does not state that the charter is being amended.

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<sup>42</sup> See *Orange State Oil Co. v. Amos*, 139 So.2d 707 (Fla. 1930).

<sup>43</sup> See *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

<sup>44</sup> *Id.*

<sup>45</sup> See *Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).



### Drafting Issues:

On line, 687, the word 'article' is incorrect; it should be 'act.'

### *Status Statement*

The bill does not provide that the district is an independent special district pursuant to section 189.404(5), F.S.

### *Repeal of special act*

An amendment may be necessary to correct a drafting error. Section 189.429, F.S., requires that any codified act submitted to the Legislature for reenactment provide for the repeal of *all prior legislative acts relating to the district*. The bill does not repeal ch. 26048 (1949), L.O.F., relating to the powers of the Authority, revenue bonds, grants and loans, ownership of properties, exemption from taxation, obligations (including certificates and bonds), condemnation, authority for powers, authorized use of rights-of-way, and acquisition of property.

### *Name of Authority*

In the title of the bill and in the directory language of the bill the Authority is referred to as the 'Nassau County Ocean Highway and Port Authority'. However in the definition of "Authority" it is stated as the 'Ocean Highway and Port Authority'. The name of the Authority is inconsistent throughout the bill.

### Validation and Ratification

The bill codifies in section 15 of the charter a prior finding [s. 5 of ch. 26048 (1949), L.O.F.] that all contracts and agreements executed or entered into by the Authority, and all proceedings or acts of the Authority taken or had, be and the same are ratified, confirmed, and validated as valid and legally binding contracts, agreements, proceedings, and acts of the Authority.

As a general rule, the legislature may ratify, validate, or confirm through a curative act anything that it could have authorized initially if the subsequent statute or other measure is itself a proper exercise of legislative power under the State Constitution.<sup>46</sup>

The Florida Supreme Court has upheld a variety of curative acts of the legislature, including curative acts ratifying or validating special assessments, certain tax levies, municipal contracts, county contracts, and bond issuances. However, the court also invalidated a general law intended to ratify unspecified actions of municipalities and their officers performed under special and local laws.<sup>47</sup> In support of its conclusion, the court stated that "[The statute] is too general to be effective. A curative Act contemplates that the legislature has been advised of the nature of the matters done and performed which it purports to validate, ratify or confirm and any law as general as the aforesaid section which attempts to validate any and all acts and doings of a class of officers or public corporations is too general to be effective as a valid exercise of legislative power."

## **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>46</sup> *Charlotte Harbor & Ny. Co. v. Welles*, 260 U.S. 8 (1922); *State v. Sarasota County*, 155 So. 2d 543 (Fla. 1963); *State v. Haines City*, 137 Fla. 616, 188 So. 831 (1939); *Dover Drainage Dist. v. Pancoast*, 102 Fla. 267, 135 So. 518 (1931); *City of Winter Haven v. A. M. Klemm & Son*, 132 Fla. 334, 181 So. 153 (1938), reh'g denied, 133 Fla. 525, 182 So. 841 (1938).

<sup>47</sup> *Certain Lots Upon Which Taxes are Delinquent v. Town of Monticello*, 31 So.2d 905 (Fla. 1947); *Sullivan v. Volusia County Canvassing Bd.*, 679 So.2d 1206 (Fla. 5th DCA 1996) (citing *Certain Lots*).

None.