

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 765 CS

Polk County

SPONSOR(S): Bowen

TIED BILLS:

IDEN./SIM. BILLS: SB 1166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>7 Y, 0 N, w/CS</u>	<u>Camechis</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

This bill dissolves the Peace Creek Drainage District (PCDD) and transfers its powers and duties, including the land area within its boundaries, to the Lake Region Lakes Management District (LRLMD). The LRLMD expects to take an active role "to help prevent flooding along the [Canal]...[and] increase recharge to the lowered and stressed aquifers."¹

The Canal and surrounding area lies within the Southwest Florida Water Management District (WMD). The WMD is in the process of clearing obstructions in the canal and developing a plan, in cooperation with stakeholders, regarding future management of the canal and water resources in the area. According to the WMD, if the bill becomes law, the WMD will not have jurisdictional oversight authority with respect to the LRLMD's powers and duties provided in the bill and, in the event management of the LRLMD is inconsistent with WMD rules, the WMD would have to pursue permitting or enforcement actions against the LRLMD if there is not an agreement between the agencies.

The Economic Impact Statement projects a \$350,000 annual increase in LRLMD revenues in FY 05-06 and FY 06-07. The increase in revenues is generated by the levy of ad valorem taxes on property owners in the area transferred from the PCDD to the LRLMD.

¹ Economic Impact Statement, Feb. 22, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill abolishes the Peace Creek Drainage District (PCDD) and transfers its powers and duties to the Lake Region Lakes Management District (LRLMD). Although the PCDD is authorized to impose taxes, it has not done so in decades. The LRLMD is authorized to impose up to 1 mill on taxable property within its boundaries, and currently levies .3635 mills. If this bill passes, property owners now within the PCDD will be subject to ad valorem tax levied by the LRLMD.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Peace Creek Drainage District

The Peace Creek Drainage District (PCDD), located in Polk County, was established pursuant to ch. 6458, L.O.F., in 1913 and currently possesses the powers of a drainage district under ch. 298, F.S. The jurisdiction of the PCDD covers approximately 45,000 total acres that are used primarily for agricultural purposes, and includes the Peace Creek Drainage Canal (Canal). The 34-mile long Canal was constructed by the PCDD around 1915 for the purpose of draining land for agricultural use. Construction of the Canal was funded by assessments levied against property owners in the district. The PCDD has not levied any assessment or tax in decades or performed any Canal maintenance.

The PCDD is governed by a three-member board elected by the landowners within the district. The owner of each one acre, or less, is entitled to one vote per acre. The board meets on an annual basis or at the call of the chair.

Section 298.225(3), F.S., requires drainage and water control districts to adopt a Water Control Plan. It appears that a proposed PCDD Plan was published in October 2000, and included the following statements²:

- There are no existing facilities owned or operated by the PCDD, other than the Peace Creek Drainage Canal.
- Construction of the Peace Creek Drainage Canal was begun sometime after the PCDD was organized, probably in late 1915. The canal was dredged – and continues to be used – for drainage purposes. As far as has yet been determined, PCDD had [sic] never constructed, or operated, any water control facilities within its District. There are no known engineering drawings pertaining to any structures within PCDD.
- PCDD has implemented no environmental or water quality program as of this time, and as a result of present budgetary limitations, has no present plans to do so.
- PCDD has no present plans to provide any water control facilities or services during the next 5 years, other than to cooperate with the Southwest Florida Water Management District.

Proponents of this bill, particularly the Lakes Region Lake Management District (LRLMD), contend that lack of Canal maintenance has led to the development of obstructions in the Canal that impede the southerly flow of water and that, during high-rainfall events, the restricted flow contributes to flooding of residential and commercial properties in the area.

By letter dated March 17, 2003, legal counsel to the PCDD informed the SWFWMD that the “PCDD is without funds to hire any work done to clear ... obstructions [in the Canal] which according to the

² The PCDD was asked to provide a copy of the adopted Plan but did not do so prior to publication of this analysis.

[LRLMD] appear to hinder the normal southerly flow of the water from Lake Hamilton. PCDD has no employees, no equipment, and no means of clearing the obstructions from the canal.”

On December 29, 2004, the PCDD voted to support the Southwest Florida Water Management District Plan outlined below and intended to address flooding issues in the area.

The Lake Region Lakes Management District

The Lake Region Lakes Management District (LRLMD), located in Polk County, is an independent special district created in 1919 and governed by special act of the Legislature. The LRLMD is an inland navigation district operating pursuant to ch. 374, F.S. The purpose of the LRLMD is to maintain, operate, construct, and protect boat canals, drainage canals, dams, lakes, and locks for the purpose of flood control and lake level management, and to protect, maintain, and improve the water quality of lakes and canals within its boundaries. The LRLMD is governed by a board of three commissioners who must be residents of the district and who are elected at a general election by voters of the district.

The LRLMD charter, as codified by the Legislature in 2004, specifies the district’s general powers, which include the power to:

- Construct, reconstruct, improve, extend, enlarge, relocate, equip, operate, repair, and maintain such boat canals, drainage canals, dams, locks, canal banks, lake shores, water control structures, stormwater control and treatment facilities, and other facilities necessary or proper to further the purposes of the district;
- Take all measures that may be conducive to the conservation of water, to the protection and improvement of water quality, and to the maintenance of navigable water levels in the lakes and canals within or adjacent to the district;
- Annually levy a “special tax” upon taxable property for the purpose of paying the interest becoming due and payable annually upon any general obligations bonds issued or borrowed;
- Annually levy a tax upon taxable property not to exceed 1 mill for the purpose of paying expenses incurred in performing its duties;
- Purchase, lease, sell, exchange, acquire, or dispose of real property and rights-of-way;
- Borrow money, issue bonds, and issue other certificates of indebtedness;
- Sue or be sued and enter into all contracts and agreements necessary or incidental to the performance of the district; and
- Exercise eminent domain.

The LRLMD is authorized to levy a “special tax” upon all the real and personal taxable property within its boundaries. According to the LRLMD, the “special tax” has never been levied. In 1945, the LRLMD was authorized to levy up to 1 mill on taxable property within its boundaries. Currently, the tax levy is .3635 mills.

The LRLMD charter also provides that anyone who willfully damages the quality of water, damages plant life or causes damage, fills or obstructs the flow of water or the passage of boats, removes any stone or earth or other material without consent of the board is guilty of a misdemeanor of the second degree, punishable as provided in sections 775.082 and 775.083, F.S.

Southwest Florida Water Management District

The Peace Creek Drainage Canal (Canal) is located within the boundaries of the Southwest Florida Water Management District (WMD). The WMD was created in 1961 as a flood control agency, and is now one of five water management districts in Florida operating under the provisions of ch. 373, F.S. The mission of the WMD is to manage the water and water-related resources within its boundaries. With respect to flood control, the WMD’s mission is to minimize the potential for damage from floods by protecting and restoring the natural water storage and conveyance functions of floodprone areas. An 11-member appointed governing board establishes policies for the 16-county WMD.

On February 6, 2004, the PCDD sent a letter to the WMD expressing concerns with proposed legislative action regarding the Canal. On March 3, 2004, the WMD responded that

The [WMD's] goal is to restore storage, flows, aquifer recharge, water quality and ecosystems that have been lost, degraded or significantly altered in the upper Peace Creek watershed. The combination of drainage alterations and groundwater pumpage has resulted in periods of low to zero flow in the upper Peace River. The Peace Creek Canal system is an integral component of any solutions to restore the water resource....[WMD] staff recognize the inherent conflict in goals that on one hand seek to maintain or improve flood protection (levels) and, on the other hand, goals to retain or detain surface waters for recharge and slow release. The [WMD] continues to explore various options realizing that to proceed further, private lands will be impacted and landowners must be involved. It is the intention of the [WMD] to work in a voluntary manner with those private landowners and any existing entities, such as the PCDD and the LMD, to implement change that we feel would be desirable to all parties....Not only would the [WMD] ensure through regulation that any proposed changes by a landowner or constituted entity not be harmful to the environment or adversely impact landowners, but that these same regulatory conditions apply to the [WMD] itself in anything that it might propose.

SWFWMD's Plan

On December 17, 2004, the WMD provided an outline of a plan of action to interested parties, including the LRLMD and the PCDD, designed to address flooding issues in the area. The WMD indicated that “[s]olutions to the many flooding issues go beyond the control of governmental entities and therefore the cooperation and acceptance by the citizens is an important component.” According to the WMD, it is currently implementing the plan of action outlined in the letter. The WMD's Plan included the following components:

- Create a “Coordinating Committee” composed of a member of the WMD Governing Board, the Peace River Basin Board, Polk County Commission, LRLMD Board, and the PCDD Board.
- Require the Committee to conduct public workshops.
- Provide SWFWMD technical/advisory staff to the Committee.
- Require a Committee report by April 1, 2005, summarizing a series of recommendations for flood protection improvements.

According to the SWFWMD, issues addressed by the Committee include:

- The WMD will take the lead in making improvements to the conveyance system throughout the Canal, including maintenance, and identify upgrades to culverts and other infrastructure that currently restricts flows.
- The WMD will continue to take the lead in the larger, more long-term solutions of providing large storage areas through land acquisition and associated structural, non-structural alterations. This element is ongoing with several large property owners and involves funds from the Federal Government through the Natural Resources Conservation Service.
- The WMD will pursue easements as part of taking over the conveyance system.
- Funding for land easements, acquisition would come from state grants, basin board funds, Florida Forever, and possibly WMD funds if there are benefits to minimum flows or levels and water supply.
- Polk County would commit to making improvements to facilities over which the county has control, such as culverts under roads and ditches.
- Polk County would commit to improving level of service for existing roads being flooded and subsequently closed during high rainfall events.
- Polk County would review and make improvements to their zoning and building approval process to insure compliance with goals of greater flood protection.

- Polk County would enter into a Memorandum of Understanding with the WMD to formalize the relationship in projects and response to flooding situations.
- LRLMD would identify necessary improvements to stabilize facilities to withstand extreme events or improve water conveyance, all within environmentally acceptable levels.
- LRLMD and the WMD would develop a comprehensive lake management schedule identifying optimal lake levels.
- LRLMD would identify any internal drainage improvements that would benefit flood protection measures within their system.

In accordance with the plan outlined by the WMD, the Coordinating Committee has conducted a series of meetings in an effort to formulate Committee recommendations. The WMD expects the Committee's report to be complete by April 1, 2005.

In early March 2005, the Coordinating Committee voted 4-1 to recommend that the WMD assume management of the Canal. The dissenting vote was cast by the Chairman of the LRLMD.

Effect of Proposed Changes

The bill abolishes the Peace Creek Drainage District (PCDD) on July 1, 2005, and transfers all powers, duties, liabilities, and assets of that district to the Lake Region Lakes Management District (LRLMD). The bill amends the charter of the LRLMD to expand its boundaries to include the area previously governed by the PCDD. Property owners in the expanded territory of the LRLMD will be subject to an ad valorem tax of up to .1 mill in accordance with the LRLMD charter.

The bill also prohibits the LRLMD from constructing any facilities that provide access to the Peace Creek Canal other than those deemed necessary by the LRLMD for the purpose of repairing, improving, operating, or maintaining the canal.

According to the WMD, if the bill becomes law, the WMD will not have jurisdictional oversight authority with respect to the LRLMD's powers and duties provided in the bill and, in the event management of the LRLMD is inconsistent with WMD rules, the WMD would have to pursue permitting or enforcement actions against the LRLMD if there is not an agreement between the agencies.

C. SECTION DIRECTORY:

- Section 1. Abolishes the Peace Creek Drainage District and transfers its powers and duties to the Lake Region Lakes Management District.
- Section 2. Amends the Lake Region Lakes Management District (LRLMD) charter to extend district boundaries.
- Section 3. Amends the LRLMD charter to make a conforming change.
- Section 4. Amends the LRLMD charter to revise district powers regarding maintenance activities.
- Section 5. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2004

WHERE? The News Chief, a daily newspaper published at Winter Haven, Polk County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No .

(The bill does not require a referendum.)

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

This bill expands the boundaries of the Lakes Region Lakes Management District, which is authorized by its charter to levy ad valorem tax at a rate not exceeding 3 mills. However, the bill does not require a referendum of the qualified voters to approve the levy of the tax on the area proposed for annexation.

Article VII, section 9(b) of the Florida Constitution provides that ad valorem taxes may be assessed by special districts at a millage authorized by law and *approved by a vote of qualified electors*. However, art. XII, ss. 2 and 15 of the Florida Constitution contain the following savings provisions pertaining to special districts created prior to 1968:

SECTION 2. Property taxes; millages.--Tax millages authorized in counties, municipalities and special districts, on the date this revision becomes effective, may be continued until reduced by law.

* * *

SECTION 15. Special district taxes.--Ad valorem taxing power vested by law in special districts existing when this revision becomes effective shall not be abrogated by Section 9(b) of Article VII herein, but such powers, except to the extent necessary to pay outstanding debts, may be restricted or withdrawn by law.

In 1990, the issue of boundary expansion was considered by the Florida Second District Court of Appeal in *Hillsborough County v. Tampa Port Authority*, 563 So.2d 1108 (Fla. 2nd DCA 1990). In that case, the Tampa Port Authority was an independent special district created and authorized to levy ad valorem taxes prior to 1968. The territory of the Authority was expanded in 1970 and the millage rate continued as it was before, but was also levied within the annexed area. The ad valorem tax levy was not subjected to a voter referendum. Years later, Hillsborough County filed suit arguing that the tax levy was invalid because it was not approved by the qualified electors of the district.

The court concluded that a referendum was not required prior to the ad valorem tax levy in the newly annexed area of the district. Specifically, the court held that (1) the Constitutional savings provisions apply to independent special districts that possessed ad valorem taxing powers before 1968, and (2) tax millages authorized in those districts on the date the 1968 Constitutional revision took effect continue until restricted or withdrawn by law. Further, the court concluded that expansion of the district's boundary did not create a new district requiring a voter ratification referendum prior to levying the ad valorem tax. The court reasoned that, although the district's territory was expanded, its authority was not.

The Lake Region Lakes Management District was created and authorized to levy ad valorem taxes prior to 1968. In addition, the District is located within the jurisdiction of the Florida Second District Court of Appeal.

B. RULE-MAKING AUTHORITY: Rule-making authority is not addressed in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

As of July 1, 2005, the bill requires the LRLMD to “assume all powers and duties formerly exercised by the Board...of the Peace Creek Drainage District”. The PCDD is a drainage district under ch. 298, F.S., with all the powers and duties attendant thereto. On the other hand, the LRLMD is an inland navigation district governed by ch. 374, F.S., with the powers and duties described therein. It is unclear whether enactment of this bill will transfer the powers and duties applicable to the PCDD under ch. 298, F.S., to the LRLMD.

Positions of Interested Parties

The following entities adopted resolutions in support of this bill:

- Lake Region Lakes Management District;
- Polk County Board of County Commissioners;
- City of Lake Wales;
- City of Winter Haven;
- City of Lake Alfred (Discharges water into the Peace Creek through a series of lakes and canals);
- Town of Dundee (Discharges water into the Peace Creek through a series of lakes and canals);
- Eloise Community Redevelopment Agency;
- Winter Haven Federation of Lakes Association, Inc.
- Citizens for Proper Planning (Not-for-profit corporation established to find workable solutions and better plans for growth in Polk County);
- The Cypresswood Community Association, Inc. (Responsible for the maintenance and operation of the surface water management system that serves 900 residents in the Cypresswood Golf & Country Club Planned Unit).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2004, Representative Bowen, the bill’s sponsor, offered a strike-all amendment at the meeting of the Council on Local Government. The amendment was adopted by the Council and the bill reported favorably as a committee substitute. The committee substitute differs from the filed bill as follows:

- The amendment deletes a new provision (lines 8-11of the bill as filed) that would prohibit the LRLMD from constructing a canal or other navigable waterway, or take any action to improve, maintain, or repair any existing canal or other navigable waterway, when the result of such action would be to create public access to lands within the Peace Creek Canal area if such access did not exist on the effective date of this act.
- The amendment adds a new provision (lines 319-323 of the amendment) to prohibit the LRLMD from constructing any facilities that provide access to the Peace Creek Canal other than those deemed necessary by the LRLMD for the purpose of repairing, improving, operating, or maintaining the canal.
- The amendment deletes language currently found in the LRLMD’s charter (lines 311-314 of the amendment) which requires the LRLMD to obtain permission from private or public property owners prior to performing beautification and maintenance activities on their property.
- The amendment makes technical corrections to the land description.