

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>8 Y, 0 N, w/CS</u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill dissolves the Peace Creek Drainage District (PCDD). In addition, the bill adds territory to the Lake Region Lakes Management District (LRLMD). The bill further provides for the election of LRLMD board members within the new territory and provides that the LRLMD may not levy ad valorem taxes in the new territory before January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill abolishes the Peace Creek Drainage District (PCDD). Although the PCDD is authorized to impose taxes, it has not done so in decades. The bill also expands the territory of the Lake Region Lakes Management District (LRLMD). The LRLMD is authorized to impose up to 1 mill on taxable property within its boundaries, and currently levies .3635 mills. The LRLMD is not authorized to levy ad valorem taxes in the new territory before January 1, 2007.

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 statements¹:

- 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.

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

¹ The PCDD was asked to provide a copy of the adopted Plan but did not do so prior to publication of this analysis.

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.

Effect of Proposed Changes

The bill abolishes the Peace Creek Drainage District (PCDD) on July 1, 2005.

The bill also amends the charter of the LRLMD to expand its boundaries. The bill includes provisions for the election of Board members in the expanded territory. 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 beginning January 1, 2007.

C. SECTION DIRECTORY:

- Section 1. Abolishes the Peace Creek Drainage District.
- Section 2. Amends the Lake Region Lakes Management District (LRLMD) charter to extend district boundaries.
- Section 3. Amends the LRLMD charter to provide for the election of board members within the expanded territory.
- Section 4. Amends the LRLMD charter to revise district powers regarding maintenance activities.
- Section 5. Prevents the levy of ad valorem taxes in the newly expanded territory before January 1, 2007.
- Section 6. 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:

None.

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 8-11 of 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.

On April 22, 2005, the Committee on Finance and Tax adopted a strike-all amendment to the bill. Before the strike all amendment was adopted, this bill abolished the Peace Creek Drainage District (PCDD) on July 1, 2005, and transferred all powers, duties, liabilities, and assets of that district to the Lake Region Lakes Management District (LRLMD). The bill amended 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 would have been subject to an ad valorem tax of up to .1 mill in accordance with the LRLMD charter. The bill also prohibited 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. This analysis reflects the changes proposed in the amendment.