

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 987

Lake County Water Authority District

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill is a codification of the Lake County Water Authority (Authority), which oversees the freshwater resources of Lake County. This bill codifies, or reenacts, all prior special acts of the Authority into a single, logically organized act, as required by s. 189.429, F.S.; however, reenactment is not to be construed as a grant of additional authority. The bill deletes obsolete provisions and makes technical changes in the Authority's charter. The bill also includes several substantive changes to the Authority's current charter, including the following:

- The Authority is prohibited from allocating more than 3.5% of its annual ad valorem budget for educational programs to educate and teach the public about water issues.
- The Authority is required to submit its annual report to the St. Johns River Water Management District and the Lake County Board of County Commissioners.
- Currently, Authority board members are elected by voters within the Authority at nonpartisan elections. This bill provides for a referendum of the voters as to whether board members should be elected at partisan, rather than nonpartisan, elections. If approved by voters, the Authority's charter is amended to allow for partisan elections.

According to the attached Economic Impact Statement, this bill will not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate the House Principles.

B. EFFECT OF PROPOSED CHANGES:

This bill codifies and reenacts the charter of the Lake County Water Authority (Authority), including the provisions described below. However, bill also includes several changes to the Authority's current charter, including the following:

- The Authority is prohibited from allocating more than 3.5% of its annual ad valorem budget for educational programs to educate and teach the public about water issues.
- The Authority is required to submit its annual report to the St. Johns River Water Management District and the Lake County Board of County Commissioners.
- Currently, Board members are elected through nonpartisan elections. This bill provides for a referendum of the voters as to whether Board members should be elected at partisan, rather than nonpartisan, elections. If approved by voters, the Authority's charter is amended.

Lake County Water Authority

The Lake County Water Authority (Authority) was created by the Legislature in 1953. The purpose of the Authority is to control and conserve the freshwater resources of Lake County; foster and improve the tourist business in the county by improving the lakes, streams, and canals; provide recreational facilities for tourists and citizens by more efficient use of waterbodies; preserve, protect, and improve the fish and wildlife of the county; and protect freshwater resources of Lake County through assisting local governments in treatment of stormwater runoff. The boundaries of the Authority are coterminous with Lake County. The Authority is governed by a seven-member Board of Trustees (Board) elected in nonpartisan elections. Board members receive \$25 per day as compensation and actual, pre-approved expenses.

The Board must annually adopt a resolution establishing the millage rate not to exceed .5 mills as necessary to meet expenses for the coming year. The Lake County Property Appraiser, Tax Collector, Board of County Commissioners, and the Department of Revenue are required to prepare from their official records any and all information requested by the Board regarding tax valuations, levies, assessments, or collections in the county. Taxes are collected and enforced in the same manner as county taxes. However, the charter exempts all real and personal property owned, leased, controlled, or used by the Authority from all county, municipal, taxing district, and other ad valorem taxes and special assessments for benefits. [Please refer to "Constitutional Issues" on p. 5 of this Analysis for additional information.]

The Board may issue bonds to carry out the purposes of its charter payable solely from revenues of the Authority. The value of all bonds outstanding may not exceed 1/3 of the Authority's anticipated revenues for the period for which the bonds are outstanding. Revenue bonds may not be issued unless their issuance has been approved by a majority of electors voting in a referendum in which the ballot statement describes in detail the purpose for which the bonds will be issued.

The current powers and authority of the Authority include the authority to:

- Sue and be sued and enter into contracts;
- Acquire any lands within the territorial extent of the Authority that are reasonably necessary for constructing and maintaining the works and purpose of the Authority;
- Acquire land by condemnation or eminent domain in the manner prescribed for use by counties;
- Sell, own, use, control, operate, improve, and lease all land and personal property;
- Take, exclusively occupy, use, and possess any areas of land owned by the state within the territorial jurisdiction of the authority not in use for state purposes;
- Enlarge, change, modify, take possession of, control, or improve any stream, lake, or canal within the territorial limits of the Authority and clean out, straighten, enlarge, or change the course of any waterway or canal, natural or artificial, within the territorial limits of the Authority;
- Provide canals, locks, levees, dikes dams, sluiceways, reservoirs, holding basins, floodways, pumping stations, buildings, bridges, highways, and other works and facilities as the Authority deems necessary;
- Grant licenses or permits for the construction and excavation of canals and ditches connecting with navigable waters;
- Adopt and administer rules governing the construction and excavation of canals and ditches and prohibit any construction deemed detrimental to the best interests of the public or purpose of the Authority; and
- Enter into any agreement or contract with governmental entities for the purpose of carrying out the Authority's mission.

BACKGROUND - Codification Generally

Codification is the process of compiling, updating, and systematically arranging the special acts that comprise a special district's charter. After a special district's charter is created by special act of the Legislature, the original charter provisions may be amended by subsequent special acts. However, special act amendments are not automatically incorporated into one special act charter. Therefore, in order to ascertain the current status of a special district's charter, it is necessary to locate all special acts amending a district's original charter. This can often be a difficult and time-consuming process for persons interested in determining the current status of a district's charter. Codification of special district charters is important because it permits readers to easily locate and identify the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature in ss. 189.429 and 191.015 , F.S., both of which were amended in 1998. The laws provide for codification of all special district charters by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor 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.

To date, 173 special districts have codified their charters.

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 29222, L.O.F. (1953), and chs. 57-1484, 59-1466, 63-1507, 65-1787, 69-1209, 2000-492, and 2003-376, L.O.F., to be read as provided in section 3 of this bill.
- Section 3. Reeacts and codifies the Authority's charter.
- Section 4. Repeals ch. 29222, L.O.F., 1953, and chs. 57-1484, 59-1466, 63-1507, 65-1787, 69-1209, 2000-492, and 2003-376, L.O.F.
- Section 5. Provides for the election of Board members at partisan elections.
- Section 6. Provide for referendum on whether Board members should be elected in partisan elections.
- Section 7. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 3, 2004

WHERE? The Daily Commercial, Leesburg, Lake County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? The next general election.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Public Lands

Section 9(c)-(e) of the charter grants the District broad powers with respect to taking, using, and occupying state lands "not in use for state purposes" and lakes, rivers, streams and water bottoms in the District. However, the Florida Constitution contains provisions specifically related to the ownership of state conservation lands and state sovereignty submerged lands, as follows:

Article 10, section 11, Sovereignty lands.--

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands my be authorized by law, but only when in the public interest. Private use of portions of such lands my be authorized by law, but only when not contrary to the public interest.

Article 10, section 18, Disposition of conservation lands.--

The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

Notice Requirements

Article III, section 10 of the Florida Constitution provides that “[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.” This bill does not require a referendum.

Chapter 11, F.S., provides general law requirements applicable to the notice for special laws. Section 11.02, F.S., requires the notice to “state the substance of the contemplated law.” Therefore, the notice must be broad enough to include all matters contained in the body of the proposed legislation, although the specific contents need not be listed in detail. The function of the notice is to provide reasonable notice to a person whose interests may be affected by the proposed legislation so that he or she may inquire further into the detail of the local bill.

The notice published for this bill reads as follows:

Notice is hereby given of intent to apply to the 2004 Session of the Florida Legislature for passage of an act creating a charter for the Lake County Water Authority; codification of special laws regarding the special district of the Lake County Water Authority; providing legislative intent; codifying, repealing, amending, and reenacting Chapter 29222, Laws of [sic] Florida 1953, as amended by chapters 57-1484....; providing district boundaries; providing for applicability of chapters 298 and 189, Florida Statutes, and other general laws; providing for liberal construction; providing an effective date to include referendum and budget.

In addition to codifying the existing charter of the Authority, the bill makes several changes to the charter. The bill limits the Authority's ability to allocate funding to educational programs, and requires submission of a report to the water management district. However, the notice does not appear to reference these provisions.¹ In addition, the notice provides that it is the intent of the Authority to seek legislation during the “2004 Session” rather than the “2005 Session”.

Tax Exemption

Section 16 of the charter contains the following language, which may be construed as an effort to establish an exemption from ad valorem taxation for property owned by the Authority and leased to a private entity:

All real and personal property owned, leased, controlled, or used by the authority is exempt from all county, municipal, taxing district, and other ad valorem taxes and special assessments for benefits.

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. The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

Special districts are not immune from taxation. Therefore, property owed 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.

¹ The notice does not refer to the change in Board member elections but that provision is only effective upon approval by the voters. Therefore, a published notice of intent to seek legislation on this issue is not required.

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 an 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. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). 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. See *Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

- B. RULE-MAKING AUTHORITY: This bill codifies the Authority's current power to adopt rules governing the construction and excavation of canals and ditches.
- C. DRAFTING ISSUES OR OTHER COMMENTS:

2004 Legislation

During the 2004 Legislative Session, HB 883 was enacted to codify the charter of the Authority. However, the bill also removed the millage rate cap. Governor Bush vetoed the bill based upon the removal of the millage rate cap without a voter referendum.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.