

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1133
SPONSOR(S): Sorensen
TIED BILLS:

Key Largo Wastewater Treatment District, Monroe County

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>8 Y, 0 N</u>	<u>Camechis</u>	<u>Hamby</u>
2) <u>State Resources Council</u>	<u>9 Y, 0 N</u>	<u>Hamby</u>	<u>Hamby</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Key Largo Wastewater Treatment District is currently authorized to impose fees, rental, and other charges for the use of any wastewater management system facilities. If a property owner fails to timely pay any such charge, the District is authorized to impose penalties and interest, discontinue service, and recover delinquent charges in a court of competent jurisdiction.

This bill provides that delinquent fees, rentals, or other charges, together with interest, penalties, and charges for shutting off, discontinuing, and restoring such services, and reasonable attorneys' fees and other expenses constitute a lien, subject to the limitations in s. 4, Art. X of the State Constitution, on the real property against which such fees, rentals, or other charges were assessed, coequal with any lien of state, county, or municipal taxes and superior and paramount to all other liens, titles, and claims against such property. The District retains all current authority to collect delinquent fees, rentals, or other charges. Imposition of liens and foreclosure of such liens against homestead and exempt personal property may be limited by s. 4, Art. X of the State Constitution depending upon whether the fees, rentals, or other charges imposed by the District are considered "assessments" for purposes of the constitutional limitation.¹

According to the Economic Impact Statement, this bill will not have fiscal impact in FY 06-07 or FY 07-08.

¹ 48 Fla. Jur 2d Special Assessments § 3

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility - This bill authorizes imposition of a lien against property if the owner of the property fails to timely pay fees, rentals, or other charges lawfully imposed by the District.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Key Largo Wastewater Treatment District

The Key Largo Wastewater Treatment District (District) was created by the Legislature in 2002² as an independent special district to construct and operate facilities for the collection and treatment of wastewater in an area within Monroe County consisting of all lands east of Tavernier Creek, including Key Largo and Cross Key, with the exception of Ocean Reef. The District is authorized to exercise all powers within its boundaries for the collection and treatment of wastewater formerly exercised by the Florida Keys Aqueduct Authority pursuant to ch. 76-441, L.O.F., as amended.

The District is authorized by its charter³ to fix and collect rates, rentals, fees, and charges for the use of any wastewater management system facilities. The District may provide for reasonable penalties against any user for any such rates, fees, rentals, or other charges that are delinquent. In the event that such delinquency occurs and such fees, rentals, or other charges are not paid and remain delinquent for 30 days or more, the district may discontinue and shut off services until such fees, rentals, or other charges, including interest, penalties, and charges for shutting off, discontinuing, and restoring such services, are fully paid. The District may enter on lands, waters, and premises of any person, firm, corporation, or other body for the purpose of discontinuing and shutting off services under such circumstances. Further, such delinquent fees, rentals, or other charges, together with interest, penalties, and charges for shutting off, discontinuing, and restoring such services, and reasonable attorneys' fees and other expenses may be recovered by the District by suit in any court of competent jurisdiction. The District may also enforce payment by any other lawful method of enforcement.

Liens Against Property Generally

Article X, section 4 of the State Constitution provides in pertinent part as follows:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

² Ch. 2002-337, L.O.F.

³ Ch. 2002-337, L.O.F., Section 4(2)(j) of Section 1.

Under this provision of the Constitution, a debtor's homestead and personal property is exempt from forced sale under process of any court, and no judgment, decree, or execution will constitute a lien on the property, except for the payment of taxes and assessments, obligations contracted for the purchase, improvement, or repair thereof, or obligations contracted for the house or field, or other labor performed on the realty.⁴

Chapter 222, F.S., provides procedures for homeowners and personal property owners who wish to avail themselves of the constitutional and statutory exemption from forced sale and provides judicial procedures for determining qualification for the exemptions.

Effect of Proposed Changes

This bill provides that delinquent fees, rentals, or other charges, together with interest, penalties, and charges for shutting off, discontinuing, and restoring such services, and reasonable attorneys' fees and other expenses constitute a lien, subject to the limitations in s. 4, Art. X of the State Constitution, on the real property against which such fees, rentals, or other charges were assessed, coequal with any lien of state, county, or municipal taxes and superior and paramount to all other liens, titles, and claims against such property. The District retains all current authority to collect delinquent fees, rentals, or other charges.

Imposition of liens and foreclosure of such liens against homestead and exempt personal property may be limited by s. 4, Art. X of the State Constitution depending upon whether the fees, rentals, or other charges imposed by the District are considered "assessments" for purposes of the constitutional limitation.⁵

C. SECTION DIRECTORY:

Section 1. Amends ch. 2002-337, L.O.F., to authorize imposition of liens against the real property against which delinquent fees, rentals or other charges were assessed.

Section 2. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 13, 2006

WHERE? The Reporter, Tavernier, Monroe County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

⁴ 24A Fla. Jur 2d Executions § 28

⁵ 48 Fla. Jur 2d Special Assessments § 3

III. COMMENTS

- A. CONSTITUTIONAL ISSUES: None.
- 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

None