

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1483
SPONSOR(S): Attkisson
TIED BILLS:

Grove Community District, Okeechobee County

IDEN./SIM. BILLS: SB 2766

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Local Government Council, Camechis, Hamby.

SUMMARY ANALYSIS

This bill creates the Grove Community District (district), which encompasses approximately 6,000 undeveloped acres within Okeechobee County, for the purpose of providing community development systems, facilities, services, projects, improvements, and infrastructure to the area.

The district may levy user charges and fees; non-ad valorem maintenance taxes as authorized by general law; and special assessments. The district may impose ad valorem taxes not to exceed 3 mills upon voter approval at referendum conducted after the entire board is elected by electors of the district.

The bill creates a five-member Board of Supervisors to govern the district. The Board is initially elected on a one-acre/one-vote basis, however, as population in the district increases, members are elected by qualified electors of the district.

The attached Economic Impact Statement does not project any fiscal impact in FY 05-06 and FY 06-07; however, the district is authorized to levy special assessments, fees, non ad-valorem assessments, and ad valorem taxes (upon approval at referendum) but the amount of revenues generated by these assessments is indeterminate.

This bill appears to provide exemptions from the provisions of general law. Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. [Please see p. 20 of this analysis.]

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government:** This bill creates an independent special district that is authorized to perform a wide range of functions within its jurisdictional boundaries and extraterritorially, and that may adopt a wide range of administrative rules pursuant to ch. 120, F.S.

**Provide for Lower Taxes:** The district is authorized to raise revenues by levying ad valorem taxes up to 3 mills, if approved at referendum; non-ad valorem maintenance taxes; non-ad valorem assessments; benefit special assessments; maintenance special assessments; special assessments; and fees, or service charges.

#### B. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

###### **Special Districts Generally**

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; rather, they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter.

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s. 189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and Board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

## **Election Procedure for Independent Special Districts Generally**

The bill specifies that “[t]he transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes.” Section 189.4051, F.S., provides a transition process for boards of special districts to convert from board members elected on a one-acre-one vote basis, to board members elected by qualified electors of the district. That section requires a referendum to be called by the board of a district that is elected on a one-acre/one vote basis on the question of whether certain members of a district governing board should be elected by qualified electors, provided that all of the following conditions are satisfied at least 60 days prior to the referendum:

1. The district has a total population of at least 500 qualified electors; and
2. A petition signed by 10 percent of the qualified electors is filed with the governing board and certified by the supervisor of elections.

If the qualified electors approve the election procedures described in s. 189.4051(2), F.S., the board must be increased to five members and elections must be held pursuant to that provision. After approval, the board must prepare maps of the district describing the “urban areas”<sup>1</sup> within the district. A process is provided in statute for landowners or qualified electors to contest the accuracy of the urban area maps. Upon adoption of the urban area maps by the board, the maps are used to determine the extent of urban area within the district and the number of governing board members to be elected by qualified electors and those elected on a one-acre/one-vote basis.

If the electors disapprove the election procedure, elections of board members continue as described by general law or enabling legislation of the district.

## **Community Development Districts**

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments. Community Development Districts (CDDs) must be contained within the boundaries of a single county. CDDs consisting of 1,000 acres or more must be created by rule adopted by the Florida Land and Water Adjudicatory Commission granting a petition for the establishment of the CDD, whereas CDDs with less than 1,000 acres must be created pursuant to county ordinance.

Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges. Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located. As of November 2003, there were 210 active CDDs in Florida.

Section 190.012, F.S., specifies the types of infrastructure CDDs are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and waste water management, reclamation, and reuse; bridges or culverts; roads; street lights; parks and other outdoor recreational, cultural, and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal. CDDs are governed by an elected five-member board of supervisors, who possess the general managerial authority provided to other special districts in the state. This includes the authority to hire and fix the compensation of a general manager; the right

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<sup>1</sup> Section 189.4051(1)(b), F.S., defines “urban area” as “a contiguous developed and inhabited urban area within a district with a minimum average resident population density of at least 1.5 persons per acre as defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas must be designated by the governing board of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the district.”

to contract; to borrow money; to adopt administrative rules pursuant to ch. 120, F.S.; and the power of eminent domain.<sup>2</sup>

### **Election Procedures for Community Development Districts Generally**

Section 190.006(3), F.S., provides for the transition of Community Development District (CDD) boards that are elected by landowners to boards elected by qualified electors of the districts. If a CDD wishes to exercise ad valorem taxing power, the district board must call an election at which the members of the board of supervisors will be elected by qualified electors. Each member must be elected by the qualified electors of the district for a term of 4 years, except that, at the first such election, three members are elected for a period of 4 years and two members for a period of 2 years. All elected board members must be qualified electors of the district.

Regardless of whether a district has proposed to levy ad valorem taxes, commencing 10 years after the initial appointment of members, the position of each member whose term has expired must be filled by a qualified elector of the district, elected by the qualified electors of the district. However, if, in the 10th year after initial appointment for districts exceeding 5,000 acres in area, there are not at least 500 qualified electors, members of the board continue to be elected by landowners.

If a district has less than 50 qualified electors when the district is created, after the 10th year and, once a district reaches 250 or 500 qualified electors, respectively, then the positions of two board members whose terms are expiring must be filled by qualified electors of the district, elected by the qualified electors of the district for 4-year terms. The remaining board member whose term is expiring must be elected for a 4-year term by the landowners and is not required to be a qualified elector. Thereafter, as terms expire, board members must be qualified electors elected by qualified electors of the district for a term of 4 years.

Once a district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district must be held at the general election in November.

### **EFFECT OF PROPOSED CHANGES**

#### **Grove Community District Generally**

This bill creates the Grove Community District (district), a "local government and corporate body politic, is limited to its single, narrow, and special legislative purpose herein expressed, with the power to provide, plan, implement, construct, maintain, and finance as a local government management entity its basic systems, facilities, services, improvements, infrastructure, and projects and possessing financing powers to fund its management purpose over the long term." The boundaries of the district encompass approximately 6,000 undeveloped contiguous acres in Okeechobee County. The general purpose of the district is to The limited, single, and specialized purpose of the Grove Community District is to "provide community development systems, facilities, services, projects, improvements, and infrastructure to the new community by exercising its various management powers, with related financing powers, both general and special, as set forth by and limited by this act."

The independent district charter created in this act involves "innovative general and special powers not otherwise available for this unique and highly specialized first ever new community in such a unique area." However, the district must operate and function subject to, and not inconsistent with, the Okeechobee County Comprehensive Plan and Land Development Regulations and any applicable development orders, zoning regulations, or other land development regulations.

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<sup>2</sup> *Community Development Districts*, The Florida Senate, Committee on Comprehensive Planning, Interim Project Report 2004-121, Nov. 2003.

On January 12, 2006, the Board of County Commissioners of Okeechobee County adopted Resolution 2006-1, expressing no objection to the creation and establishment of the Grove Community District and finding it consistent with the Okeechobee County Comprehensive Plan.

### **Referendum Requirement**

This bill takes effect upon becoming a law, without a referendum of the voters or landowners in the district; however, the provisions of the bill that authorize the levy of ad valorem assessments take effect only upon express approval by a majority vote of those qualified electors of the district, as required by Section 9 of Article VII of the State Constitution, voting in a referendum to be called by the Supervisor of Elections of Okeechobee County and held by the Board of Supervisors of the Grove Community District. The referendum must be held in accordance with the provisions of law relating to elections in force at the time the referendum is held.

### **Modification of District Boundaries and Charter**

The territorial boundary of the district embraces and includes, without reservation or enclave, all of that certain real property described legally in the district charter. The charter of the district is this act and may be amended, terminated, or repealed only by special act of the Legislature amending or repealing this act.

The board may ask the Legislature through its local legislative delegation in and for Okeechobee County to amend this act to contract or expand the boundaries of the district. The district will remain in existence until:

1. The district is terminated and dissolved pursuant to amendment to this act by the Legislature;
- or
2. The district has become inactive pursuant to s. 189.4044, F.S.

The jurisdiction of this district, in the exercise of its general and special powers and in the carrying out of its single, narrow, and special purpose, is both within the external boundaries of the legal description of this district and extraterritorially, when limited to, and as authorized expressly elsewhere in, the charter of the district in this act or applicable general law.

### **District Governing Board**

This bill creates the Board of Supervisors of the Grove Community District, which is the governing board and body of the district. Except as otherwise provided, each member holds office for a term of 4 years and until his or her successor is chosen and qualifies. There are five members of the board who must, in order to be eligible, be residents of the state and citizens of the United States. Three members constitute a quorum.

All members of the board, regardless of how elected, are public officers, known as supervisors, and, upon entering into office, must take and subscribe to the oath of office as prescribed by general law. All members of the board, regardless of how elected, and regardless of whether they are qualified electors themselves, are public officials and subject to ethics and conflict of interest laws of the state that apply to all public officers. They hold office for the terms for which they were elected and until their successors are chosen and qualified.

Any elected member of the board may be removed by the Governor for malfeasance, misfeasance, dishonesty, incompetency, or failure to perform the duties imposed upon him or her by this act. Any vacancies which may occur in such office must be filled by the Governor, as soon as practicable, unless filled by the board.

All governing board members elected by qualified electors must be qualified electors elected at large. Candidates seeking election as qualified electors must conduct their campaigns in accordance with general law requirements.

a. Election of Board by Landowners

Within 45 days after the effective date of this act, a specially noticed meeting of the landowners of the district must be held for the purpose of electing the members to the first board. At the meeting, for the election of each person to be elected, each and every acre of land, or any fraction thereof, within the boundary of the district represents one vote and each owner of that acre or fraction thereof is entitled to one vote for every such acre or fraction thereof. Persons who qualify to serve as board members must be nominated at the noticed meeting and prior to the initial election at the noticed meeting. A landowner may vote in person or by proxy in writing. A landowner who sells land to a bona fide purchaser may by written lawful instrument retain the voting rights for that acreage.

At the landowners' meeting for the election of the members of the board on a one-acre, one-vote basis, the two candidates receiving the highest number of votes must be elected for terms expiring November 30, 2008, and the three candidates receiving the next highest number of votes must be elected for terms expiring November 30, 2010. The members of the first board elected by the landowners must serve their respective 4-year or 2-year terms; however, the next election by the landowners must be held on the first Tuesday in November 2008 to elect members to fill those vacancies to 4-year terms. Thereafter, there must be an election of supervisors for the district every 2 years in November on a date established by the board and subject to public notice.

In case of a vacancy in the office of any member of the board, the remaining members of the board must, by majority vote, elect a person to serve as a member of the board for the unexpired portion of the term.

b. Election of the Board by Qualified Electors

Elections of the members of the board must be conducted on a one-acre, one-vote basis until and unless a referendum is called by the board on the question of whether certain members of the board should be elected by qualified electors, providing each of the following conditions has been satisfied at least 60 days prior to the general or special election at which the referendum is to be held:

1. The district has at least 500 qualified electors based on the most recent state population estimate.
2. A petition signed by 10 percent of the qualified electors of the district has been filed with the board. The petition must be submitted to the Supervisor of Elections of Okeechobee County who must, within 30 days after receipt of the petition, certify to the board the percentage of signatures of qualified electors contained in the petition.

Upon verification by the supervisor of elections that 10 percent of the qualified electors of the district have petitioned the board, a referendum election must be called by the board at the next regularly scheduled election of governing board members occurring at least 60 days after verification.

If the qualified electors approve the election procedure described below, the governing board of the district will remain five members and elections must be held pursuant to the criteria described below, beginning with the next regularly scheduled election of board members or at a special election called within 6 months after the referendum and final unappealed approval of district urban area maps as provided in this section, whichever is earlier. If the qualified electors of the district reject the election procedure, elections of the members of the board continue as described in this act on a one-acre, one-vote basis. No further referendum on the question may be held for a minimum period of 2 years after the referendum.

Within 30 days after approval of the election process by qualified electors of the district, the board must direct district staff to prepare and to present maps of the district describing the extent and location of all urban areas within the district. The determination must be based upon the criteria contained in the definition of urban area in this act. "Urban area" is defined as "a developed and inhabited urban area within the district within a minimum acreage resident population density of least 1.5 persons per acre as

defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas must be designated by the board of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the jurisdiction of the district.”

Within 60 days after approval of the election process by qualified electors of the district, the maps describing urban areas within the district must be presented to the board.

Any district landowner or elector may contest the accuracy of the urban area maps prepared by district staff within 30 days after submission to the board. Upon notice of objection to the maps, the governing board must request the county engineer to prepare and present maps of the district describing the extent and location of all urban areas within the district. The determination must be based exclusively upon the criteria contained in the definition “urban area”. Within 30 days after the governing board submits its request, the county engineer must present the maps to the governing board.

Upon presentation of the maps by the county engineer, the governing board must compare the maps submitted by both the district staff and the county engineer and make a determination as to which set of maps to adopt. Within 60 days after presentation of all such maps, the governing board may amend and must adopt the official maps at a regularly scheduled board meeting. Any district landowner or qualified elector may contest the accuracy of the urban area maps adopted by the board after adoption in accordance with the provision for judicial review as provided in the Administrative Procedure Act. Accuracy must be determined pursuant to the definition of “urban area”.

Upon adoption by the board or certification by the court, the district urban area maps must serve as the official maps for determination of the extent of urban area within the district and the number of members of the board to be elected by qualified electors and by one-acre, one-vote at the next regularly scheduled election of governing board members.

Upon a determination of the percentage of urban area within the district as compared with total area within the district, the governing board must determine the number of electors in accordance with the percentages pursuant to this paragraph. The maps must be updated and readopted every 5 years or sooner at the discretion of the board.

The five members of the governing board of the district must be elected in accordance with the following determinations of urban area:

- If urban areas constitute 25 percent or less of the district, one governing board member must be elected by the qualified electors and four governing board members elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute more than 25 percent but less than 50 percent of the district, two governing board members must be elected by the qualified electors and three governing board members elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute at least 50 percent but less than 70 percent of the district, three governing board members must be elected by the qualified electors and two governing board members elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute at least 70 percent but less than 90 percent of the district, four governing board members must be elected by the qualified electors and one governing board member must be elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute at least 90 percent or more of the district, all governing board members must be elected by the qualified electors.

All governing board members elected by qualified electors have a term of 4 years each except for governing board members elected at the first election and the first landowners' meeting following the referendum described above. Governing board members elected at the first election and the first landowners' meeting following the referendum serve as follows:

- If one governing board member is elected by the qualified electors and four are elected on a one-acre, one-vote basis, the governing board members elected by the qualified electors are elected for a term of 4 years each. Governing board members elected on a one-acre, one-vote basis are elected for terms as otherwise prescribed in the provisions governing elections by landowners.
- If two governing board members are elected by the qualified electors and three are elected on a one-acre, one-vote basis, the governing board members elected by the qualified electors are elected for a term period of 4 years each. Governing board members elected on a one-acre, one-vote basis must be elected for terms of 1, 2, and 3 years, respectively, as otherwise prescribed in the provisions governing elections by landowners.
- If three governing board members are elected by the qualified electors and two are elected on a one-acre, one-vote basis, two of the governing board members elected by the qualified electors are elected for a term of 4 years and the other governing board member elected by the electors must be elected for a term of 2 years. Governing board members elected on a one-acre, one-vote basis must be elected for periods of 1 year and 2 years, respectively, as otherwise prescribed in the provisions governing elections by landowners.
- If four governing board members are elected by the qualified electors and one is elected on a one-acre, one-vote basis, two of the governing board members elected by the electors are elected for terms of 2 years each and the other two for term of 4 years each. The governing board member elected on a one-acre, one-vote basis are elected for a term of 1 year as otherwise prescribed in the provisions governing elections by landowners.
- If five governing board members are elected by the qualified electors, three must be elected for terms of 4 years each and two for terms of 2 years each.

If any vacancy occurs in a seat occupied by a governing board member elected by the qualified electors, the remaining members of the governing board must, within 45 days after the vacancy occurs, appoint a person who would be eligible to hold the office for the unexpired term. Each election by qualified electors of members of the board must be conducted in the manner and at a time prescribed by law for holding general elections or prescribed by the Supervisor of Elections in and for the Okeechobee County political subdivision.

An annual landowners' meeting must be held and at least one governing board member must be elected on a one-acre, one-vote basis for so long as 10 percent or more of the district is not contained in an urban area. In the event all district governing board members are elected by qualified electors, there will be no further landowners' meetings.

At any landowners' meeting called for the purpose of addressing elections issues, 50 percent of the district acreage is not be required to constitute a quorum and each governing board member is elected by a majority of the acreage represented either by owner or proxy present and voting at said meeting. All landowners' meetings of districts operating pursuant to this section must be set by the board within the month preceding the month of the election of the governing board members by the electors.

### **General Powers of the District**

The following broad general powers of the district must be construed liberally in order to carry out effectively the single specialized purpose of this act and to secure for the district its ability to be innovative:

- To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire by purchase, gift, devise, or otherwise, and to dispose of, real and personal property or any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To apply for coverage of its employees under the state retirement system in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the state retirement fund.



- To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts are subject to public bidding or competitive negotiation requirements.
- To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt rules and orders pursuant to the provisions of ch.120, F.S., prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt administrative rules with respect to any of the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.
- To maintain an office at such place or places as the board designates in Okeechobee County and within the district when facilities are available.
- To hold, control, and acquire by donation, purchase, or condemnation, and to dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act other than public easements conveyed to or accepted by Okeechobee County and to make use of such easements, dedications, or reservations for the purpose mandated by this act.
- To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out the purposes mandated by this act.
- To borrow money and issue bonds, certificates, warrants, notes, or other evidences of indebtedness as hereinafter provided; to levy such tax and assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.
- To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the district activities and services and to enforce their receipt and collection in the manner prescribed by resolution not inconsistent with law.
- To exercise within the district, or beyond the district with prior approval by majority vote of a resolution of the governing body of the county if the taking will occur in an unincorporated area, the right and power of eminent domain, pursuant to the provisions of chs. 73 and 74, F.S., over any property within the state, except municipal, county, state, and federal property, for the uses and purpose of the district relating solely to water, sewer, district roads, and water management, specifically including, without limitation, the power for the taking of easements for the drainage of the land of one person over and through the land of another.
- To cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.
- To assess and impose upon lands in the district ad valorem taxes as provided and limited by this act.
- If and when authorized by general law, to determine, order, levy, impose, collect, and enforce maintenance taxes.
- To determine, order, levy, impose, collect, and enforce assessments pursuant to this act, which sets forth a detailed uniform procedure to implement ch. 170, F.S., and as an alternative to determine, order, levy, impose, collect, and enforce assessments under and pursuant to ch.170, F.S., pursuant to authority granted in s. 197.3631, F.S., or pursuant to other provisions of general law, now or hereinafter enacted, which provide or authorize a supplemental means to impose, levy, and collect special assessments. Such special assessments, in the discretion of the district, as provided in s. 197.3631, F.S., may be collected and enforced pursuant to the provisions of ss. 197.3632 and 197.3635, F.S., and chs. 170 and 173, F.S., or as provided by this act.

- To exercise such special powers and other express powers as may be authorized and granted by this act in the charter of the district, including powers as provided in any interlocal agreement entered into pursuant to ch. 163, F.S., or which are required or permitted to be undertaken by the district pursuant to any development order or development of regional impact, including any interlocal service agreement with Okeechobee County for fair-share capital construction funding for any capital facilities or systems required of the developer pursuant to any applicable development order or agreement.
- To exercise all of the powers necessary, convenient, incidental, or proper in connection with any other powers or duties or the single purpose of the district authorized by this act.

### **Special Powers of the District**

The district is granted the following special powers to implement its special purpose and to provide pursuant to that purpose basic systems, facilities, and services in the district subject to, and not inconsistent with, the regulatory jurisdiction and permitting authority of all other applicable governmental bodies, agencies, and any special districts having authority with respect to any area included therein, and to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, finance, fund, and maintain improvements, systems, facilities, services, works, projects, and infrastructure any or all of the following special powers granted by this act in order to implement the special requirements of this new community within the single special purpose of the district:

- To provide for water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges. In the event that the board assumes the responsibility for providing water management and control for the district which is to be financed by benefit special assessments, the board must adopt plans and assessments pursuant to law or may adopt water management and control plans, assess for benefits, and apportion and levy special assessments in accordance with specified procedures set forth in the bill.
- To provide for water supply, sewer, and wastewater management, reclamation, and reuse or any combination thereof and any irrigation systems, facilities, and services; to construct and operate connecting intercepting or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any street, alley, highway, or other public place or way; and to dispose of any effluent, residue, or other byproducts of such system or sewer system.
- To provide for bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of such works and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut.
- To provide for district roads equal to or exceeding the specifications of the county in which such district roads are located, and streetlights, including conditions of development approval which sometimes may be different specifications than the normal specifications of the county.
- Include as a component thereof roads, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system in general or as tied to the conditions of development approval for the specific district.
- To plan, implement, construct or reconstruct, enlarge or extend, finance, fund, equip, operate, and maintain parking facilities freestanding or as may be related to any innovative strategic intermodal system of transportation pursuant to applicable federal, state, and local laws and ordinances.
- To provide for buses, trolleys, transit shelters, ride-sharing facilities and services, parking improvements, and related signage.
- To cover investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district who caused or contributed to the contamination.
- To provide for conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property.

- Using its general and special powers as set forth in this act, to provide for any other project within or without the boundaries of a district when the project is the subject of an agreement between the district and the Board of County Commissioners of Okeechobee County or with any applicable other public or private entity, including a homeowner association, and is not inconsistent with the Okeechobee County Comprehensive Plan and the Growth Management act which implement the single special purpose of the district.
- To provide for parks and facilities for indoor and outdoor recreational, cultural, and educational uses.
- To provide for fire prevention and control, including fire stations and buildings, water mains and plugs, fire trucks, and other vehicles and equipment, and for emergency medical services, including stations and buildings, vehicles, and equipment.
- To provide for school buildings and related structures, which may be leased, sold, or donated to the school district, for use in the educational system when authorized by the district school board. The district is granted the special power to contract with the Okeechobee County School Board and, as applicable, the Board of County Commissioners of Okeechobee County, and with the applicable landowner developer of the lands within the jurisdiction of the district, to assess the school district educational facilities plan, and to implement a management and financing plan for timely construction, maintenance, and acquisition, at the option of the district, of school facilities, including facilities identified in the facilities work programs or those proposed by charter schools. The district is granted the special power to determine, order, levy, impose, collect, or arrange for the collection and enforcement of assessments, as defined in and pursuant to this act, for such school facilities. The district is eligible for the financial enhancements available to educational facility benefit districts to provide for financing the construction and maintenance of educational facilities pursuant to s. 1013.356, F.S., and, if and when authorized by general law, to acquire such educational facilities.
- To provide for security, including, but not limited to, guardhouses, fences and gates, electronic intrusion detection systems, and patrol cars, when authorized by proper governmental agencies, except that the district may not exercise any powers of a law enforcement agency but may contract with the appropriate local general-purpose government agencies for an increased level of such services within the district boundaries. Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.
- To provide for control and elimination of mosquitoes and other arthropods of public health importance.
- To provide for waste collection and disposal.
- To enter into impact fee credit agreements with Okeechobee County and the Okeechobee County School Board. Under such agreements, where the district constructs or makes contributions for public systems, facilities, services, projects, improvements, works, and infrastructures for which impact fee credits would be available to the landowner developer under the Okeechobee County and Okeechobee County School Board applicable impact fee ordinance, the agreement authorized by this act must provide that such impact fee credit must inure to the landowners within the district in portion to assessments or other burdens levied and imposed upon the landowners with respect to assessable improvements giving rise to such impact fee credits, and the district must, from time to time, execute such instruments, such as assignments of impact fee credits, as may be necessary, appropriate, or desirable to accomplish or to confirm the foregoing.
- To establish and create, at noticed meetings, such government departments of the board of the district, as well as committees, task forces, boards, commissions, or other agencies under the supervision and control of the district, as from time to time the members of the board may deem necessary or desirable in the performance of the acts or other things necessary to exercise its general or special powers to implement an innovative project to carry out the special purpose of the district as provided in this act and to delegate to such departments, boards, task forces, committees, or other agencies such administrative duties and other powers as the board may

deem necessary or desirable, but only if there is a set of expressed limitations for accountability, notice, and periodic written reporting to the board, which must retain its powers.

- So long as not inconsistent with the applicable local government comprehensive plan and development entitlements, to coordinate with the landowner developer on the phasing of the delivery of infrastructure and to create phase entities or units for its charter purpose. Toward this end, and so long as it implements the purpose of the district under this act, the board may designate, therefore, units of development and adopt systems of progressive phased development by units with related management planning, implementation, construction, maintenance, and financing within its phased unit. If the board proceeds to designate such phased units of development, it must adopt at a noticed meeting pursuant to ch. 120, F.S., a rule setting forth detailed procedures and authorizations for such phase unit processes. A committee, department, or agency of the board must be given express duty of oversight with monthly written reports to the board. No such phased units can begin or operate until or unless the required noticed rule has been promulgated. With regard to any phased unit, there must be no bonded indebtedness and no levy of any lienable or nonlienable revenue, whether to amortize bonds or not, within the boundary of a phased unit other than by the board and pursuant to the powers, procedures, and provisions of this act and other applicable laws.
- To plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, maintain, finance, and fund buildings and structures for district offices, maintenance facilities, meeting facilities, town centers, or any other project authorized or granted by this act upon a showing at a noticed meeting of its efficacy to the specialized single purpose of this district for the new community.
- To plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, maintain, finance, and fund edifices and facilities for the provision of health care when authorized by applicable public or private agencies providing health care and upon a showing of efficacy to carry out the purpose of the district.
- To coordinate, work with, and, as the board deems appropriate, enter into interlocal agreements subject to the provisions of this charter with any public or private institution of higher education, including the Indian River Community College and any public or private university. The purpose of such coordination and agreements is to help sustain high-quality infrastructure in, around, and for the universities as may be appropriate under the law on the basis that the provision of such systems, facilities, and services, including classrooms or other buildings for such institutions, constitutes enhancement of the intrinsic value and marketability of property within the new community and also provides for increased enjoyment and enhanced use of the property. These systems, facilities, and services, including buildings, must be first liens on the property within the community and serve a lawful public purpose upon a showing by the board in a nonarbitrary and informed manner of special and peculiar benefits that flow to the property within the community as a logical connection from the systems, facilities, and services, resulting in added use, enhanced enjoyment, decreased insurance premiums on, or enhanced value in the marketability of the property.
- To adopt and enforce appropriate rules following the procedures of ch. 120, F.S., in connection with the provisions of one or more its systems, facilities, services, projects, improvements, works, and infrastructure.

The enumeration of special powers is not exclusive or restrictive but must be deemed to incorporate all powers, express or implied, necessary or incident to carrying out such enumerated special powers, including also the general powers provided by this special act charter to the district to implement its single purpose.

### **District Borrowing and Issuance of Bonds**

The district is authorized to obtain loans in any amount and on such terms as the board approves at an interest rate not to exceed the maximum rate allowed by general law. The district is also authorized to issue bond anticipation notes, interim certificates, certificates of indebtedness, assessment bonds, revenue bonds, and refunding bonds. Any general obligation bonds, special assessment bonds, or revenue bonds may be authorized by resolution or resolutions of the board, which must be adopted by

a majority of all the members thereof then in office. Such resolution or resolutions may be adopted at the same meeting at which they are introduced and need not be published or posted.

The district is authorized to issue general obligation bonds to finance or refinance capital projects or to refund outstanding bonds in an aggregate principal amount of bonds outstanding at any one time not in excess of 35 percent of the assessed value of the taxable property within the district as shown on the pertinent tax records at the time of the authorization of the general obligation bonds for which the full faith and credit of the district is pledged. Except for refunding bonds, general obligation bonds may not be issued unless the bonds are issued to finance or refinance a capital project and the issuance has been approved at an election held in accordance with the requirements for such election as prescribed by the State Constitution.

The district may pledge its full faith and credit for the payment of the principal and interest on such general obligation bonds and for any reserve funds provided therefor and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all taxable property in the district, to the extent necessary for the payment thereof, without limitations as to rate or amount.

The power of the district to issue bonds under the provisions of this act may be determined, and any of the bonds of the district maturing over a period of more than 5 years must be validated and confirmed, by court decree, under the provisions of ch. 75, F.S.

To the extent allowed by general law, all bonds, interest paid and all fees, charges, and other revenues derived by the district from the projects are exempt from all taxes by the state or by any political subdivision, agency, or instrumentality thereof; however, any interest, income, or profits on debt obligations issued are not exempt from the tax imposed by ch. 220, F.S. Further, the district is not exempt from the provisions of ch. 212, F.S.

The state pledges to the holders of any bonds issued that it will not limit or alter the rights of the district to own, acquire, construct, reconstruct, improve, maintain, operate, or furnish the projects or to levy and collect the taxes, assessments, rentals, rates, fees, and other charges provided for herein or to fulfill the terms of any agreement made with the holders of such bonds or other obligations and that it will not in any way impair the rights or remedies of such holders.

A default on the bonds or obligations of a district does not constitute a debt or obligation of the state or any local general-purpose government or the state.

### **Taxes, Special Assessments, Fees, and Charges**

Ad valorem taxes. A board elected by and consisting of qualified electors is authorized to levy and assess an ad valorem tax on all the taxable property in the district to construct, operate, and maintain assessable improvements; to pay the principal of, and interest on, any general obligation bonds of the district; and to provide for any sinking or other funds established in connection with any such bonds. An ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3 mills. The ad valorem tax is in addition to county and all other ad valorem taxes provided for by law, and is assessed, levied, and collected in the same manner and at the same time as county taxes. The levy of ad valorem taxes must be approved by referendum when required by the State Constitution.

Benefit Special Assessments. The board must annually determine, order, and levy the annual installment of the total benefit special assessments for bonds issued for and expenses related to financing assessable improvements. Each annual installment of benefit special assessments is a lien on the property against which assessed until paid and is enforceable in a like manner as county taxes. The amount of the assessment for the exercise of the district's powers must be determined by the board based upon a report by the district's engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land.

Non-Ad Valorem Maintenance Tax. In order to maintain and preserve the physical facilities and services constituting the works, improvements, or infrastructure provided by the district, and to repair and restore any one or more of them, when needed, and for the purpose of defraying the current expenses of the district, including any sum which may be required to pay state and county ad valorem taxes on any lands which may have been purchased and which are held by the district, the board may, upon the completion of said systems, facilities, services, works, improvements, or infrastructure, in whole or in part, as may be certified to the board by the engineer of the board, levy annually a non-ad valorem and nonmillage tax upon each tract or parcel of land within the district, to be known as a "maintenance tax." This non-ad valorem maintenance tax must be apportioned upon the basis of the net assessments of benefits assessed as accruing from the original construction.

Maintenance Special Assessments. To maintain and preserve the facilities and projects of the district, the board may levy a maintenance special assessment. These maintenance special assessments are a lien on the property against which assessed until paid and are enforceable in like manner as county taxes. The amount of the maintenance special assessment for the exercise of the district's powers must be determined by the board based upon a report by the district's engineer and assessed by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

Special Assessments. As an alternative method to the levy and imposition of special assessments pursuant to ch. 170, F.S., pursuant to the authority of s. 197.3631, F.S., or pursuant to other provisions of general law that provide a supplemental means or authority to impose, levy, and collect special assessments as otherwise authorized under this act, the board may levy and impose special assessments to finance the exercise of any its powers using the specified uniform procedures.

Fees, Charges, and Rentals. The district is authorized to prescribe, fix, establish, and collect rates, fees, rentals, or other charges for the systems, facilities, and services furnished by the district within the limits of the district, including, but not limited to, recreational facilities, water management and control facilities, and water and sewer systems; to recover the costs of making connection with any district service, facility, or system; and to provide for reasonable penalties against any user or property for any such rates, fees, rentals, or other charges that are delinquent.

Rates, fees, rentals, or other charges for any of the facilities or services of the district may not be fixed until after a public hearing at which all the users of the proposed facility or service or owners, tenants, or occupants served or to be served thereby and all other interested persons have an opportunity to be heard concerning the proposed rates, fees, rentals, or other charges. Rates, fees, rentals, and other charges adopted under the administrative rulemaking authority of the district do not apply to district leases.

Rates, fees, rentals, and charges must be just, equitable, and uniform for users of the same class and, when appropriate, may be based or computed either upon the amount of service furnished, upon the number of average number of persons residing or working in or otherwise occupying the premises served, upon any other factor affecting the use of the facilities furnished, or upon any combination of the foregoing factors, as may be determined by the board on an equitable basis.

If any rates, fees, rentals, charges, or delinquent penalties are not paid as and when due and are in default for 60 days or more, the unpaid balance thereof and all interest accrued thereon, together with reasonable attorney's fees and costs, may be recovered by the district in a civil action.

If any fees, rentals, or other charges for water and sewer services, or either of them, are not paid when due, the board may, under such reasonable rules and regulations as the board may adopt, discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance of or restoration of such water and sewer services, or both, are fully paid; for such purposes, the board may enter on any lands, waters, or

premises of any person, firm, corporation, or body, public or private, within the district limits. Delinquent fees, rentals, or other charges, together with interest, penalties, and charges for the shutting off and discontinuance of or restoration of such services and facilities, reasonable attorney's fees, and other expenses, may be recovered by the district, which may also enforce payment of such delinquent fees, rentals, or other charges by any other lawful method of enforcement.

### **Enforcement of Taxes and Assessments**

The collection and enforcement of all taxes levied by the district is at the same time and in like manner as county taxes, and the provisions of the Florida Statutes relating to the sale of lands for unpaid and delinquent county taxes; the issuance, sale, and delivery of tax certificates for such unpaid and delinquent county taxes; the redemption thereof; the issuance to individuals of tax deeds based thereon; and all other procedures in connection therewith are applicable to the district. All taxes are subject to the same discounts as county taxes. All taxes provided for in this act become delinquent and bear penalties on the amount of such taxes in the same manner as county taxes.

Any and all assessments, including special assessments, benefit special assessments, and maintenance special assessments; special assessments; and maintenance taxes if authorized by general law, constitute a lien on the property against which assessed from the date of levy and imposition thereof until paid, coequal with the lien of state, county, municipal, and school board taxes.

Any lien in favor of the district arising under this act may be foreclosed by the district by foreclosure proceedings in the name of the district in a court of competent jurisdiction as provided by general law in like manner as is provided in ch. 173, F.S. The provisions of that chapter are applicable to such proceedings. Any act required or authorized to be done by or on behalf of a municipality in foreclosure proceedings under ch. 173, F.S., may be performed by such officer or agent of the district as the board may designate. Such foreclosure proceedings may be brought at any time after the expiration of 1 year from the date any tax, or installment thereof, becomes delinquent; however, no lien may be foreclosed against any political subdivision or agency of the state. Other legal remedies remain available.

### **Competitive Bidding and Public Notice Regarding District Purchases**

The board may not execute any contract for goods, supplies, or materials to be purchased when the amount to be paid by the district exceeds \$150,000, the amount provided in s. 287.017, F.S., for category four unless notice of bids are advertised once in a newspaper of general circulation in Okeechobee County. If the board seeks to construct or improve a public building or structure or other public works, it must comply with the bidding procedures of s. 255.20, F.S. and other applicable general law. In each case, the bid of the lowest responsive and responsible bidder must be accepted unless all bids are rejected because the bids are too high or because the board determines it is in the best interests of the district to reject all bids. The board may require the bidders to furnish bond with a responsible surety to be approved by the board. The board may undertake and perform the construction, operation, and maintenance of any project or facility authorized by this act by the employment of labor, material, and machinery.

The provisions of the Consultants' Competitive Negotiation Act in s. 287.055, F.S., apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services let by the board.

Contracts for maintenance services for any district facility or project must be subject to competitive bidding requirements when the amount thereof to be paid by the district exceeds \$150,000, the amount provided in s. 287.017, F.S., for category four. The district must adopt rules, policies, or procedures establishing competitive bidding procedures for maintenance services. Contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts.

### **Notice to Purchasers of Property Within the District**

Subsequent to the creation of this district, each contract for the initial sale of a parcel of real property and each contract for the initial sale of a residential unit within the district must include, immediately

prior to the space reserved in the contract for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract: "THE GROVE COMMUNITY DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC SYSTEMS, FACILITIES, AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW."

Within 30 days after the election of the first board members, the district must cause to be recorded in the property records in the county in which it is located a "Notice of Creation and Establishment of the Grove Community District." The notice must, at a minimum, include the legal description of the property of the landowners who have consented to establishment of this district and a copy of the disclosure statement specified in subsection (30).

### **Public Access**

Any system, facility, service, works, improvement, project, or other infrastructure owned by the district or funded by federal tax-exempt bonding issued by the district is public; the district by rule may regulate, and may impose reasonable charges or fees for, the use thereof but not to the extent that such regulation or imposition of such charges or fees constitutes denial of reasonable access.

### C. SECTION DIRECTORY:

- Section 1. Provides short title of the Act.
- Section 2. Provides legislative intent and definitions.
- Section 3. Provides minimum charter requirements.
- Section 4. Sets forth district boundaries; grants powers; grants bonding authority; grants taxing authority; grants special assessment authority; grants authority to levy fees, rates, charges, and rentals; requires competitive procurement; requires public access;
- Section 5. Provides for severability.
- Section 6. Provides an effective date.

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

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? February 2, 2006

WHERE? The Okeechobee News, Okeechobee County, Florida

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? This act takes effect upon becoming a law, except that the provisions of the bill that authorize the levy of ad valorem assessments only take effect upon express approval by a majority vote of those qualified electors of the district, as required by Section 9 of Article VII of the State Constitution, voting in a referendum to be called by the Supervisor of Elections of Okeechobee County and held by the Board of Supervisors of the Grove Community District. The election must be held in accordance with the provisions of law relating to elections in force at the time the referendum is held.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### **Separation of Powers**

Sections 2 and 3 of this bill contain approximately 18 pages of legislative findings of fact, ascertainments, determinations, intent statements, and policy statements. On lines 966-968, the bill provides that “[s]ections 2 and 3 of this act are true and correct and are incorporated herein and made a part of this section as dispositive provisions of law.”

Article II, section 3 of the State Constitutional provides that “No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” The Legislature has the authority to enact laws that are presumed to be constitutional. The judicial branch makes the dispositive determination that the presumption has or has not been overcome. An attempt by the Legislature to make a “dispositive” determination may be considered an unconstitutional exercise of judicial powers by the Legislature.

##### **One-Acre, One-Vote Election Mechanism**

It should be noted that the broad grants of power to the district *may* impact the permissibility of conducting elections on a “one-vote-per-acre” basis. In *State v. Frontier Acres Community Development District Pasco County, Florida*, 472 So.2d 455 (Fla.1985), the Florida Supreme Court upheld one-vote-per-acre voting for community development districts created under ch. 190, F.S., based on the decisions of the United States Supreme Court,<sup>13</sup> the narrow purpose of such districts, and the disproportionate effect district operations have on landowners:

The powers exercised by these districts must comply with all applicable policies and regulations of statutes and ordinances enacted by popularly elected state and local governments. Moreover, the limited grant of these powers does not constitute sufficient general governmental power so as to invoke the demands of Reynolds. Rather, these districts' powers implement the single, narrow legislative purpose of ensuring that future growth in this State will be complemented by an adequate community infrastructure provided in a manner compatible with all state and local regulations.

Following this case, the Fourth District Court of Appeal reached a similar conclusion with respect to water control districts which are governed by ch. 298, F.S. *Stelzel v. South Indian River Water Control Dist.*, 486 So.2d 65 (Fla. 4th DCA 1986). In reaching its decision, the court evaluated the functions exercised by the water control district and found that the evidence established that the district does not exercise general governmental functions:

While the record here contains evidence which tends to support appellants' claims that the District exercises municipal functions, it also demonstrates with equal clarity that each of the functions performed by the District directly relate either to its water control function or to its limited road maintenance authority.

These decisions, and the decisions of the United States Supreme Court, suggest a nexus between the nature and number of powers granted to a special district and whether voting may be conducted on a one-vote-per-acre basis. Thus, the more and varied powers a special district has, it seems more likely that one-vote-per-acre voting would be unconstitutional, particularly if the district meets any of the following criteria upon which the courts have based their decisions:

- The district does not have to comply with all applicable policies and regulations of statutes and ordinances enacted by popularly elected state and local governments;
- The district has a grant of power that is not limited and which constitutes “sufficient general governmental power;”
- The district does not have a single, narrow legislative purpose; or
- The functions performed by the district do not directly relate to its single, narrow purpose.

B. RULE-MAKING AUTHORITY: The bill authorizes the district to adopt rules under ch. 120, F.S., the Florida Administrative Procedure Act to provide for:

- The powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district.
- Any of the projects of the district and define the area to be included therein.
- The operation of guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board.
- The designation of phased units of development. The rule must set forth detailed procedures and authorizations for such phase unit processes. A committee, department, or agency of the board must be given express duty of oversight with monthly written reports to the board. No such phased units can begin or operate until or unless the required noticed rule has been promulgated.
- One or more its systems, facilities, services, projects, improvements, works, and infrastructure.
- Notice, levy, imposition, equalization, and collection of assessments.
- Competitive bidding procedures for maintenance services. Contracts for other services may not be subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts.
- Rates, fees, rentals, and other charges.
- Discontinuation of both water and sewer services until delinquent fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance of or restoration of such water and sewer services, or both, are fully paid.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Possible Exemptions from General Law**

The bill includes the following provisions, all of which appear to be exemptions from general law:

- Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.
- Notwithstanding the provisions of any other law to the contrary, all bonds issued under the provisions of this act constitutes legal investments for savings banks, banks, trust companies, insurance companies, executors, administrators, trustees, guardians, and other fiduciaries and for any board, body, agency, instrumentality, county, municipality, or other political subdivision of the state and is a security which may be deposited by banks or trust companies as security for deposits of state, county, municipal, or other public funds or by insurance companies as required or voluntary statutory deposits.
- Notwithstanding any provision of this act or of ch. 170 or s. 170.09, F.S., which provide that assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted by the governing authority, such provision is not applicable to any district assessments, whether imposed, levied, and collected pursuant to the provisions of this act or other provisions of Florida law, including, but not limited to, ch.170, F.S.

#### **Broad Powers of the District**

The “specialized functions and related prescribed powers,” which are a defining characteristic for a special district, are extremely broad for this particular district, including the power to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, hardscaping,

landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the district; conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements; and provide buildings and structures for district offices, maintenance facilities, meeting facilities, town centers, or any other project authorized by this bill.

However, such broad powers, have been upheld by the courts as demonstrated by the leading case on this issue, *State v. Reedy Creek Imp. Dist.*, 216 So.2d 202 (Fla. 1968):

So long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose. In the present case, the numerous and diverse powers granted to the District by the enabling act appear to be logically related and essential to the realization of the valid public purposes by the District. In reaching this conclusion, we reject the State's argument that the powers granted the District are commensurate in scope with those characteristic of a local municipal government rendering the enabling act a mere subterfuge to avoid the creation of a municipality.

### **Supremacy Clause**

This bill includes the following supremacy clause:

This single-purpose district is created for all public body corporate, politic, and local government authority and power limited by the charter and subject to the provisions of other general laws, including expressly chapter 189, Florida Statutes, except that an inconsistent provision in this act shall control and the district has jurisdiction to perform such acts and exercise such projects, functions, and powers as shall be necessary, convenient, incidental, proper, or reasonable for the implementation of its limited, single, and specialized purpose regarding the sound planning, provision, acquisition, development, operation, maintenance, and related financing of those public systems, facilities, services, improvements, projects, and infrastructure works as authorized herein including those necessary and incidental thereto.

Supremacy clauses are provisions that attempt to resolve conflicts between legislative enactments by assigning supremacy or prominence to one provision or set of provisions over another. If a bill includes a general supremacy clause, such as the one contained in this bill, the judiciary determines superiority between general and special law provisions, rather than the Legislature. In addition, general supremacy clauses do not inform interested persons or members of the Legislature of the specific laws containing potential conflicts. Unless the specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

### **Extraterritorial Services and Projects**

This bill provides authority for the district to exercise its powers outside the district boundaries as follows:

The jurisdiction of this district, in the exercise of its general and special powers and in the carrying out of its single, narrow, and special purpose, is both within the external boundaries of the legal description of this district and extraterritorially, when limited to, and as authorized expressly elsewhere in, the charter of the district in this act or applicable general law.

The district is also authorized to, “[u]sing its general and special powers as set forth in this act, to provide for any other project within *or without the boundaries* of a district when the project is the subject of an agreement between the district and the Board of County Commissioners of Okeechobee County or with any applicable other public or private entity, including a homeowner association, and is not inconsistent with the Okeechobee County Comprehensive Plan and the Growth Management act which implement the single special purpose of the district.”

The ability of the district to exercise its general and special powers outside its boundaries may raise questions regarding the levy of special assessments on property owners within the district if proceeds of the special assessments, fees, or non-ad valorem taxes are used to fund projects outside the district. The charter is unclear as to when and under what circumstances the district may exercise its powers extraterritorially or how assessments, taxes, and fees will be apportioned to fund projects outside district boundaries.

#### **New Powers to Community Development Districts**

Although the district is created pursuant to chapter 189, Florida Statutes, the bill attempts to give the district future powers that may be included in ch. 190, F.S., relating to Community Development Districts as follows:

Any amendments to chapter 190, Florida Statutes, after January 1, 2006, which grant additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter, sections 190.006-190.041, Florida Statutes, shall constitute a general power, special power, authority, or function of the Grove Community District, except that as to any such additional powers, authorities, or projects, this act shall control if there are any related provisions in such additional powers, authorities, or projects inconsistent with the provisions of this act.

Therefore, if the Legislature amends ch. 190, F.S., to grant community development districts additional authority at any time in the future, that additional authority will be automatically granted to the district without further legislative review or enactment.

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

Not applicable.