

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 479 Pasco County
SPONSOR(S): Littlefield and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Smith	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates the Lake Padgett Estates Independent Special District (District) in Pasco County for the purpose of maintaining, operating, and improving recreational amenities and associated infrastructure in the area. The bill provides the minimum requirements which must be included in the charter when creating an independent special district. The bill authorizes the District to provide for and fund: recreational amenities, including the operation, maintenance, and improvement of the amenities and associated infrastructure.

The District may levy user charges, rentals and fees, special assessments, maintenance special assessments, and non-ad valorem assessments. The District also is authorized to impose ad valorem taxes not to exceed 3 mills upon voter approval at referendum conducted after the entire governing board of the District is elected by qualified electors of the District.

The bill creates a board of five supervisors to govern the District. Upon the effective date of the bill, the Pasco County Board of Commissioners will be the initial governing board of the District and remain so until the succeeding board of supervisors is elected at the general election of November 2006.

The Economic Impact Statement does not project any fiscal impact in FY 06-07 and FY 07-08; however, the District is authorized to levy ad valorem taxes (upon approval at referendum), non-ad valorem assessments, maintenance special assessments, special assessments, fees, rentals, and user charges. The amount of revenue which may be generated by these assessments and when is indeterminate.

This bill may provide an exemption 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/Ensure lower taxes - This bill creates an independent special district with the power to levy ad valorem taxes, if approved at referendum, non-ad valorem assessments, maintenance special assessments, special assessments, fees, rentals, and user 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(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, the 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. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and Board selection procedures. 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.

Section 189.404, F.S., also 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.).

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

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"¹ 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 or municipal 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.

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

Lake Padgett Estates Independent Special District

Resolution 2006-20, regarding the "Creation of the Proposed Independent Special District to be known as the Lake Padgett Estates Independent Special District", was passed unanimously by the Pasco Board of County Commissioners and adopted on November 8, 2005. This resolution supports the creation of the Lake Padgett Estates Independent Special District. The resolution states that:

¹ 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."

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

“currently, said lands and amenities are maintained by the Pasco County Parks and Recreational Department on behalf of the residents of Lake Padgett Estates and funded through the Lake Padgett Municipal Service Unit, established by Pasco County Ordinance No. 78-19, for the benefit of the residents of Lake Padgett Estates. There is a particular special need to use a specialized and limited single-purpose independent special district unit of local government to prevent deterioration of existing infrastructure to continue to provide recreational amenities and associated infrastructure, improvements and service, and to prevent needless and counterproductive local government duplication and involvement in the maintenance and operation of the Lake Padgett Estates recreational amenities.”³

Effect of Proposed Changes

This bill creates the Lake Padgett Independent Special District (District), a limited single-purpose local government and independent special district whose jurisdictional boundaries are located within Pasco County. Creation of the District appears to comply with the requirements for creating special districts found in ch. 189, F.S., including the minimum charter requirements listed in s. 189.404(3), F.S. The exclusive charter of the District is created by this bill.

This bill creates the District for the purpose of maintaining, operating, and improving recreational amenities and associated infrastructure in the area. The bill authorizes the District to provide for and fund: recreational amenities, including the operation, maintenance, and improvement of the amenities and associated infrastructure.

The bill includes a policy statement which states that the creation of the District by this act, and its exercise of its management and related financing powers to implement its limited, single, and special purpose, is not a development order and does not trigger or invoke any provision within the meaning of chapter 380, F.S., and all applicable governmental planning, environmental, and land development laws, regulations, rules, policies, and ordinances apply to all development of the land within the jurisdiction of the District as created by this act.

Modification of District Boundaries and Termination of the District

The bill specifies that the charter of the District, as created in this bill, may only be amended by special act of the Legislature. The Board may ask the Legislature through its local legislative delegation in Pasco County to amend the charter created by this bill to expand or to contract the boundaries of the District. The District will remain in existence until the District is terminated and dissolved by the Legislature or the District has become inactive pursuant to s. 189.4044, F.S. The inclusion of any or all territory of the District within a municipality does not change, alter, or affect the boundary, territory, existence, or jurisdiction of the District.

Election of the Governing Board by Landowners

The District is governed by a Board of Supervisors (Board) consisting of 5 members. Board members must be residents of the state and citizens of the United States. 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.” Initial Board members will be the Pasco County Board of Commissioners until the succeeding board of supervisors is elected at the general election in November 2006. With respect to the elections of initial board members, the board members will hold office for a 2-year term limit. Board members will assume office on the second Tuesday following their election.

The Board may not exercise the ad valorem taxing power authorized by this bill until such time as all members of the Board are qualified electors who are elected by qualified electors of the District.

³ See Resolution from Pat Mulieri, Chairman, Pasco County Board of County Commissioners, Florida (November 9, 2005) (on file with House of Representatives, Local Government Council).

General Administration of the Board

Members of the Board, regardless of how elected, are public officers and, upon entering into office, must take and subscribe to the oath of office as prescribed by s. 876.05, F.S. Members of the Board are subject to ethics and conflict of interest laws of the state that apply to all local public officers. If, during the term of office, a vacancy occurs, the remaining members of the Board must fill each vacancy by an appointment for the remainder of the unexpired term. Any elected member of the Board may be removed by the Governor for malfeasance, misfeasance, dishonesty, incompetence, or failure to perform the duties imposed upon him or her by this bill, and any vacancies that may occur in such office for such reasons must be filled by the Governor as soon as practicable.

A majority of the members of the Board constitutes a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the District must be upon a vote of a majority of the members' present, but not less than three votes, unless general law or a rule of the District requires a greater number.

Each Board member is entitled to receive for his or her services an amount not to exceed \$50 per meeting of the Board of Supervisors, not to exceed \$1,200 per year per member, or an amount established by the electors at referendum. In addition, each supervisor receives travel and per diem expenses as provided in s. 112.061, F.S.

Records of the Board are subject to the Public Records Act in ch. 119, F.S., and the District is subject to the open meetings provisions in ch. 286, F.S. The District must provide financial reports in such form and such manner as prescribed pursuant to this bill and chapters 189 and 218, F.S., and s. 190.008, F.S.

The bill specifies that by December 31, 2006, the board will enter into intergovernmental agreements, as authorized by ch. 163, F.S., with the Pasco County Property Appraisers and the Pasco County Tax Collector for the assessment, collection, and distribution of ad valorem taxes, special assessments, and maintenance special assessments as may be imposed by the board.

The District must take affirmative steps to provide for the full disclosure of information relating to the public financing and maintenance, operation, and improvement of the recreational amenities and associated infrastructure of improvements to real property undertaken by the District. Such information must be made available to all existing residents and all prospective residents of the District. The District must furnish each landowner within the district a copy of this information.

General Powers

This bill grants the District general powers consistent with those granted to community development districts under s. 190.011, F.S., where not inconsistent with the following:

- 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 pursuant to general law.
- To maintain an office at such place or places as the board of supervisors designates in Pasco County, and within the District when facilities are available.
- To borrow money and issue certificates, warrants, notes, or other evidence of indebtedness as hereinafter provided; to levy such taxes and assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.
- To determine, order, levy, impose, collect, and enforce assessments pursuant to this bill and 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 order, levy, impose, or collect special assessments. Such special assessments, in the discretion of the District, 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 bill, or by other means authorized by general law now or hereinafter enacted.

- To exercise special powers and other express powers as may be authorized and granted, including powers provided in any interlocal agreement entered into pursuant to ch. 163, F.S.

The District will not have the power of eminent domain.

Special Powers

The bill authorizes the District to exercise the following “special powers” 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:

- To provide district parks and open space and the continued maintenance, operation, and improvement thereof. This special power includes, but is not limited to, passive and active recreational areas, lakes, and canals, containing picnic shelters, boat ramps and docks, volleyball, basketball, tennis, horseshoe, and shuffleboard courts, playgrounds and open space, wildlife habitat, including the maintenance of any plant or animal species, mitigation areas, landscaping and irrigation, bicycle lanes, jogging paths, riding trails, regulatory or informational signage, and all other customary elements of such park and open-space areas and any related interest in real or personal property.
- To provide buildings, structures, and like improvements and the continued maintenance, operation, and improvement thereof. This special power includes, but is not limited to, bathroom facilities, maintenance buildings, lighting and security facilities such as walls and guardhouses, parking areas, wildlife observation towers, stables, and stormwater facilities necessary and incidental to the recreational amenities, and associated infrastructure or any other project authorized or granted by this act.
- To establish and create, at noticed meetings, such governmental departments of the Board of Supervisors of the District, as well as committees, task forces, boards, or 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 the Board's general or special powers to implement an innovative project to carry out the special purpose of the District as provided in this bill and to delegate the exercise of its powers to such departments, boards, task forces, committees, or other agencies and 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 that must retain the powers of the Board.

The bill provides the enumeration of special powers is not exclusive or restrictive but incorporates all powers express or implied necessary or incident to carrying out such enumerated special powers, including also the general powers provided by this bill to implement the District's single purpose. Further, these special powers must be construed liberally in order to carry out effectively the special purpose of the District.

District Financing

Borrowing. The District at any time may obtain loans for the purpose of paying any of the expenses of the District or any costs incurred or that may be incurred in connection with any of the projects of the District. The Board must have the right to provide for the payment thereof by pledging the whole or any part of the funds, revenues, taxes, and assessments of the District. The approval of the electors residing in the District is not necessary except when required by the State Constitution.

Ad Valorem Taxation. When the entire Board is elected by qualified electors of the District, the Board is authorized to levy and assess an ad valorem tax on all the taxable property in the District to operate and maintain assessable improvements of recreational amenities and associated infrastructure. An ad valorem tax levied by the Board for operating purposes may not exceed 3 mills. The ad valorem tax

provided for herein is in addition to county and all other ad valorem taxes provided for by law. Ad valorem taxes must be assessed, levied, and collected in the same manner and at the same time as county taxes and as provided for by the intergovernmental agreements. The levy of ad valorem taxes must be approved by referendum as required by s. 9 of Art. VII of the State Constitution.

Enforcement of taxes. The collection and enforcement of all taxes levied by the District must be at the same time and in like manner as county taxes. The provisions of the laws of Florida 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 to the same extent as if such statutory provisions were expressly set forth in the bill. All taxes are subject to the same discounts as county taxes. All taxes become delinquent and bear penalties on the amount of such taxes in the same manner as county taxes.

Maintenance special assessments. To maintain and preserve the recreational facilities and associated infrastructure of the District, the Board may levy a maintenance special assessment.

Special assessments. To operate and improve the recreational facilities and associated infrastructure of the District, the Board may levy a special assessment.

Assessments authorized by this bill constitute a lien on the property against which assessed until paid. These assessments may be collected, at the District's discretion, under ss. 197.363 and 197.3631, F.S., by the tax collector pursuant to the provisions of ss. 197.3632 and 197.3635, F.S., or in accordance with other collection measures provided by law. These assessments may also be enforced pursuant to the provisions of ch. 173, F.S.

The amount of the maintenance special assessment is determined by the board based upon a report of the District's engineer and assessed by the board, which will be on all of the lands within the District benefited by the maintenance, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

Land owned by governmental entity. Except as otherwise required by law, the District may not levy ad valorem taxes or non-ad valorem assessments on property of a governmental entity located within the District.

Tax Liens; Payment of taxes and redemption of tax liens; Sharing in proceeds of tax sale; Foreclosure of Liens. Tax liens, the payment of taxes and redemption of tax liens, sharing in proceeds of a tax sale, and the foreclosure of liens are prescribed in ss. 190.024, 190.025, and 190.026, F.S., and subject to all other requirements of law.

Fees, rentals, and charges; Procedure for adoption and modifications. The District is authorized to prescribe, fix, establish, and collect reasonable user fees, rentals, or other charges, and to revise the same from time to time, for the use of the recreational amenities and associated infrastructure furnished by the District pursuant to the adoption procedure prescribed by s. 190.035, F.S. The user fees, rentals, and charges will be just and 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 average number of persons residing or working in or otherwise occupying the premises served, or 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.

In the event that 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.

Enforcement and Penalties. The Board or any aggrieved person may have recourse to such remedies in law and at equity pursuant to s. 190.041, F.S.

Procurement. Competitive procurement, bids, and negotiations are pursuant to s. 190.033, F.S., and subject to all other requirements of law.

District Immunity. Any suit or action brought or maintained against the District for damages arising out of tort, including, without limitation, any claim arising upon account of an act causing an injury or loss of property, personal injury, or death, will be subject to the limitations provided in s. 768.28, F.S.

Exemption of District Property from Execution. All District property is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against the property, nor may any judgment against the District be a charge or lien on its property or revenues.

Termination, Contraction, or Expansion of District. The Board may ask the Legislature through its local legislative delegations in and for Pasco County to amend the charter created by this bill to expand or to contract the boundaries of the District. The District will remain in existence until the District is terminated and dissolved by the Legislature or the District has become inactive pursuant to s. 189.4044, F.S. The inclusion of any or all territory of the District within a municipality does not change, alter, or affect the boundary, territory, existence, or jurisdiction of the District.

Sale of Property Within the District. Subsequent to the creation of the District, each contract for the sale of a parcel of real property 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 LAKE PADGETT ESTATES INDEPENDENT SPECIAL DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY FOR THE OPERATION, MAINTENANCE, AND IMPROVEMENT COSTS OF CERTAIN RECREATIONAL AMENITIES AND ASSOCIATED INFRASTRUCTURE AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE BOARD OF SUPERVISORS 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."

Notice of District Creation. Within 30 days after the election of the first Board, the District must cause to be recorded in the grantor-grantee index of the property records of Pasco County a "Notice of Creation and Establishment of the Lake Padgett Estates Independent Special District." The notice must, at a minimum, include the legal description of the property within the District's boundaries.

C. SECTION DIRECTORY:

- Section 1. Provides short title of the Act.
- Section 2. Provides definitions.
- Section 3. Sets forth District boundaries.
- Section 4. Provides for the initial governing board, board of supervisors members and meetings, organization, powers, duties, terms of office, and related election requirements.
- Section 5. Provides for the general duties of the governing board, administrative duties of the board, and general and special powers of the District.
- Section 6. Provides for borrowing; ad valorem taxation; assessments; maintenance special assessments; special assessments; tax liens; fees, rentals, and charges; and other administrative provisions.
- Section 7. Provides for procurement, suits, exemption of District property, modifications to District boundaries, and notice to purchasers.
- Section 8. Provides for severability.
- Section 9. Provides that the bill takes effect upon becoming a law, except that the provisions regarding the levy of ad valorem taxes are not effective until approved at a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? November 8, 2005

WHERE? *The Tampa Tribune*, Tampa, Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

IF YES, WHEN? The bill takes effect upon becoming a law; however, the provisions authorizing the levy of ad valorem taxation do not take effect until express approval by a majority vote of qualified electors of the District voting in a referendum election held at such time as all members of the District's governing board are qualified electors who are elected by qualified electors of the District.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: None.

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:

- The bill specifies that the Pasco County Board of Commissioners will be the initial governing board of the District and remain so until the succeeding board of supervisors is elected at the general election of November 2006.⁴
- The bill establishes a process to transition the governing board to a board elected by qualified electors of the District. The bill specifically provides that "[t]he transition process described herein is intended to be *in lieu of* the process set forth in section 189.4051, Florida Statutes."⁵ [Emphasis added.]

Drafting Issues

- As noted above, in lines 307 – 309 the bill states "the transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes." However, the cited statutory section provides a transition process for a board elected by landowners to one elected by qualified electors. The bill does not provide for a board elected by landowners.
- Lines 634 – 636 of the bill address suits against the district. Line 635 includes the word "and," which appears to be in error.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁴ See lines 303 – 307 of the bill.

⁵ See lines 307 – 309 of the bill.

Not applicable.