

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.

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

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

Effect of Proposed Changes

Babcock Ranch Community Independent Special District

This bill creates the Babcock Ranch Community Independent Special District (district), an independent, special purpose local government and public body corporate. The boundaries of the district encompass approximately 13,630 acres in Charlotte County. The purpose of the district is to plan, construct, maintain, operate, finance, and improve the provision of systems, facilities, and services necessary to meet the infrastructure needs of the Babcock Ranch Community – a sustainable, compact, mixed-use community.

Modification of District Boundaries and Charter

The territorial boundary of the district embraces and includes all the real property in the legal description in the district charter. The charter may only be amended by subsequent special act of the Legislature. Any amendment that alters the district boundaries or the general or special powers of the district must be accompanied by a resolution or official statement as provided for in s. 189.404(2)(e)4., F.S.

The board may ask the Legislature, through its local legislative delegation in and for Charlotte County, to amend this act to alter 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.
2. The district has become inactive pursuant to s. 189.4044, F.S.

District Governing Board

This bill creates a governing board consisting of five-members who serve for 4 year terms, until a successor is chosen and qualified. The members must be residents of the state and citizens of the United States.

Voting members of the board are public officers, known as members, and, upon entering into office, must take and subscribe to the oath of office as prescribed by general law. Voting members of the board are public officials and subject to ethics and conflict of interest laws of the state that apply to all public officers, except that it shall not be a conflict under ch. 112, F.S., for a board member, district manager, or another employee of the district to be a stockholder, officer or employee of a landowner. They hold office for the terms for which they were elected and until their successors are chosen and qualified. If a voting member vacancy occurs, the remaining voting members of the board shall fill each vacancy by appointment for the remainder of the unexpired term.

Any 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.

Charlotte and Lee Counties, and only these counties, acting through their respective boards of county commissioners, are each entitled, but under no obligation, to appoint one person to act as a representative for the appointing county and liaison to the board. The liaison is entitled to receive all meeting notices and board meeting materials in the same manner as a voting member of the board and

is entitled to be heard at board meetings in the same manner as board members, except that the liaison shall not be a member of the governing board nor be entitled to vote.

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 the Board by Landowners

Within 90 days after the effective date of this bill, 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, each landowner is entitled to cast one vote per acre of land and any owner of a fraction of an acre is treated as owning one acre and can cast one vote for that acre.

The two candidates receiving the highest number of votes shall be elected for terms ending November 30, 2010, and the three candidates receiving the next largest number of votes shall be elected for terms expiring November 30, 2008. The members of the first board elected by the landowners must serve their respective terms; however, the next election of board members shall be held on the first Tuesday after the first Monday in November 2008 to elect members to serve four year terms. Thereafter, there must be an election every two years on the first Tuesday after the first Monday in November.

The board must transition from a board elected from landowners to a board elected by qualified electors, after the first general election following a trigger of the qualified elector population thresholds, such that:

- Once 4,600 qualified electors reside within the district, one voting board member shall be elected by the qualified electors and four voting board members shall be persons who were elected by the landowners;
- Once 8,900 qualified electors reside within the district, two voting board members shall be elected by the qualified electors and three voting board members shall be persons who were elected by the landowners;
- Once 22,000 qualified electors reside within the district, three voting board members shall be elected by the qualified electors and two voting board members shall be persons who were elected by the landowners;
- Once 24,000 qualified electors reside within the district, four voting board members shall be elected by the qualified electors and one voting board member shall be a person who was elected by the landowners;
- Once 25,000 qualified electors reside within the district, all five voting board members shall be persons who were elected by the qualified electors.

However, an election is not required prior to the expiration of an existing board member's term. The bill specifies that this process is in lieu of the process set forth in s. 189.4051, F.S.

General Powers of the District

The bill provides that the following powers of the district must be construed liberally to carry out effectively the specialized purpose of the act.

- To sue and be sued in the name of the district, adopt a seal, acquire and dispose of real and personal property, and make and execute contracts or other instruments.
- To apply for coverage in the Florida Retirement System for its employees as if such employees were state employees, subject to employer contributions.
- Contract for professional services after public bidding or applicable competitive negotiations requirements.
- To borrow money and accept gifts.
- To adopt and enforce rules and orders pursuant to the provisions of ch. 120, F.S.

- To maintain an office in Charlotte County and within the district when facilities are available.
- To hold, control, and acquire public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this Act.
- To lease as lessor or lessee to or from any person any projects, facilities or property to carry out the purposes authorized by this Act.
- To borrow money and issue bonds; to levy authorized taxes and assessments; and charge, collect, and enforce fees and other user charges.
- To raise by user fees or charges money necessary to conduct district activities and services, and to enforce and collect such fees.
- To cooperate or contract with other governmental agencies.
- To assess ad valorem taxes as authorized by this Act.
- If and when authorized by general law, to determine, order, levy, impose, collect, and enforce maintenance taxes.
- To hold, control and acquire by donation, purchase, or condemnation, both within and outside the boundaries of the district, any public easements, dedications to public use, etc.
- To exercise within the district, or beyond the district with prior approval of the governing body of the county in which the taking will occur, the right and power of eminent domain, any property except government property, solely for district purposes related to water, sewer, transportation improvement, and water management.
- To exercise such special powers and other express powers authorized by the charter, including powers pursuant to an interlocal agreement, any development order or development of regional impact, or any other agreement with Charlotte County or other governmental entities.
- To carry out any conditions of any development approval, development order, or agreement applicable to the development of the Babcock Ranch Community that relates to the provisions of infrastructure.

Special Powers of the District

The district has the following special powers to implement its lawful and special purpose and to provide pursuant to that purpose systems and infrastructure:

- To provide water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges.
- To provide water supply, sewer, and wastewater management, reclamation, and reuse.
- To provide bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, etc.
- To provide for transportation and transportation related improvements.
- To provide buses, trolleys, transit shelters and services, ridesharing facilities and services, parking improvements and related signage.
- To provide investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district.
- To provide for observation and wildlife areas.
- To provide for parks and facilities for indoor and outdoor recreational, cultural, educational, and library uses.
- To provide for fire prevention and control.
- To establish and maintain emergency medical and rescue response services.
- To provide for school buildings and related structures, which may be leased, sold, or donated to the school district.
- To provide for security, however, 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 services within the district boundaries.
- To provide control and elimination of mosquitoes and other arthropods of public health importance.
- To provide waste collection and disposal.
- To enter into impact fee credit agreements with Charlotte and Lee Counties and their respective school boards.

- To provide buildings and structures for district offices, maintenance facilities, meeting facilities, town centers, or other authorized projects.
- To establish and create, at noticed meetings, such governmental departments of the governing board.
- To provide for any facilities or improvements that may otherwise be provided for by any county or municipality, such as libraries, annexes, substations, and other buildings to house public officials, staff, and employees.
- To provide for affordable housing and affordable housing assistance.
- To provide for the construction and operation of communications systems and related infrastructure.
- To provide electricity and related infrastructure and to enter into public-private partnerships as necessary.
- To provide health care facilities and to enter into public-private partnerships as necessary.
- To coordinate and work with public or private entities for the provision of an institution or institutions of higher education.
- To exercise its general and special powers as set forth in the Act within or without the boundaries of the district when such exercise is approved or required by a development order, or is the subject of an agreement with the county, school district, or any other applicable public or private entity, and is not consistent with the effective local comprehensive plan.

District Borrowing and Issuance of Bonds

The board has the power to issue bond anticipation notes that will bear interest not to exceed the maximum rate allowed by law and that will mature no later than five years from issuance. The board may also obtain loans and issue negotiable notes, warrants, or other evidence of debt, payable at such times and bear such interest as the board determines, but not to exceed the maximum rate allowed by general law and to be sold or discounted at such price or prices not less than 95 percent of par value. Bonds may be sold in blocks or installment at different times, at public or private sale after advertisement, at not less than 90 percent less of the par value, together with accrued interest. The board also has the authority to issue refunding bonds, revenue bonds, and general obligation bonds.

Taxes, Special Assessments, Fees, and Charges

Ad valorem taxes. A board elected and consisting of qualified electors is authorized to levy and assess an ad valorem tax on all the taxable property in the district subject to referendum required by s. 9 of Art. VII of the Fla. Const.

Benefit Special Assessments. The board annually shall determine, order, and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance assessable improvements. These assessments are collected annually in the same manner as county taxes. The board may determine a formula for the determination of an amount, which when paid by a taxpayer with respect to any tax parcel, shall constitute a prepayment of all future annual installments of the benefit special assessment.

Non-ad valorem maintenance taxes. If and when authorized by general law, the board may levy non-ad valorem maintenance taxes to maintain and preserve the physical facilities and services constituting the works, improvements, or infrastructure provided by the district, and to defray current expenses of the district. Upon the completion of the facilities, services, works, improvements, or infrastructure, the district may annually levy a non-ad valorem and nonmillage tax upon each tract or parcel of land within the district. The tax would be a lien upon the property until paid and enforceable in the same manner as county ad valorem taxes.

Maintenance Special Assessments. The board may levy a maintenance special assessment to preserve the facilities and projects of the district. The amount of the assessment is determined by the board upon a report of the district's engineer and assessed by the board upon the land within the district benefited by the maintenance, or apportioned between the benefited lands in proportion to the benefits received by each tract of land. The assessment is a lien on the assessed property until paid and enforceable in the same

manner as county taxes. However, this does not prohibit the district from using the method prescribed in ss. 197.363, 197.3631, or 197.3632, F.S., for enforcing and collecting these assessments.

Fees, Rentals, and Charges. The district may establish and collect rates, fees, rentals, or other charges, referred to as “revenues”, for the system and facilities furnished by the district such as: recreational facilities, water management and control facilities, water, sewer, and reuse systems, and solid waste collection and disposal. The district must hold a public hearing concerning the proposed rates, fees, rentals, or other charges, which shall not apply to district leases, prior to adoption under the administrative rulemaking authority of the district.

Any rates, fees, rentals, charges, or delinquent penalties not paid within 60 days, will be in default and the unpaid balance together with reasonable attorney’s fees and costs may be recovered by the district in a civil action. In addition, in the event fees, rentals, or other charges for water and sewer, or either of them, are not paid when due, the district may, under rules and regulations of the board, 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 restoration of service are fully paid.

Waiver of Sovereign Immunity

Any suits against the district for damages arising out of tort are subject to the limitations provided in s. 768.28, F.S.

Enforcement of Taxes and Assessments

The collection and enforcement of all taxes levied by the district is in the same manner as county taxes, and the provisions of general law relating to the sale of lands for unpaid and delinquent county taxes. Benefit special assessments, maintenance special assessments, and special assessments are non-ad valorem assessments as defined by s. 197.3632, F.S. Maintenance taxes are non-ad valorem taxes and not special assessments.

Any property of a governmental entity subject to a ground lease as described in s. 190.003(13), F.S., is not subject to lien or encumbrance on the underlying fee interest for a levy of ad valorem taxes or non-ad valorem assessments under this bill.

Competitive Bidding and Public Notice Regarding District Purchases

Any contract for goods, supplies, or materials that exceeds \$150,000¹ is subject to competitive bidding through notice of bids once in a newspaper of general circulation in Charlotte County. In addition, if the board seeks to construct or improve a public building, structure or other public works it must comply with the bidding procedures in s. 255.20, F.S., and other applicable general law. The board must accept the bid of the lowest responsive and responsible bidder unless all bids have been rejected. 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.

Contracts for maintenance services that exceed \$150,000² are subject to competitive bidding. All contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure to apply competitive bidding procedures to those contracts. The board may require bidders to supply a bond.

¹ See s. 287.017(1)(d), F.S.

² See s. 287.017(1)(d), F.S.

Notice to Purchasers of Property Within the District

Within 30 days after the election of the first governing board of the district, the district shall record in the grantor-grantee index of the property records a "Notice of Creation and Establishment of the Babcock Ranch Community Independent Special District."

Public Access

Any 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 may establish rules regulating the use of the property and imposing reasonable charges or fees for such use.

C. SECTION DIRECTORY:

Section 1: Provides short title of the Act.

Section 2: Provides legislative intent and definitions.

Section 3: Establishes the district and jurisdiction.

Section 4: Sets forth legal description.

Section 5: Establishes governing board and related election requirements.

Section 6: Provides for governing board powers and duties; bonding authority; taxing and assessment authority; grants authority to levy fees, rentals, and charges; establishes competitive procurement requirements; requires public access.

Section 7: Provides for severability.

Section 8: Provides landowner with one vote for each assessable acre or fraction of an acre.

Section 9: Provides an effective date of upon becoming law for sections 8 and 9. The remaining sections are effective upon approval of a majority vote of landowners at a landowners' meeting to be held within 90 days after the effective date of this bill.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 19, 2007.

WHERE? In the *Sun Newspapers* published in Charlotte County and the *News-Press* published in Lee County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? A landowner's meeting must be held 90 days after the effective date of the bill. In addition, a referendum must be held when all members of the board are qualified electors, elected by qualified electors, if the board seeks to levy ad valorem taxation or issue general obligation bonds.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement indicates that the 23 year net total impact discounted to present value is \$30,056,968.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

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.
- The operation of guardhouses by the district or any other unit of local government to serve security purposes.
- 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.
- The regulation of the use of district public property and the imposition of reasonable charges or fees for such use.

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 transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes.³
- Notwithstanding any provisions of any other law to the contrary, all bonds issued under the provisions of this act shall constitute 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 shall be and constitute security that 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.⁴
- Notwithstanding any provision of this act or of chapter 170 or section 170.09, Florida Statutes, 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 shall not be applicable to any district assessments, whether imposed, levied, and collected pursuant to the provisions

³ See subsection (3)(a)2.d. of section 5 of HB 1515.

⁴ See subsection (10)(j).1. of section 6 of HB 1515.

of this act or other provisions of general law, including, but not limited to, chapter 170, Florida Statutes.⁵

- On page 46, the bill indicates that the district is eligible for the financial enhancements available to educational facilities district and that “[t]his act, in the place of an educational facilities benefit district, authorizes the affected school board to designate the district.” However, s. 1013.355, F.S., authorizing educational facilities benefits districts, only authorizes community development districts under ch. 190 eligible for the financial enhancements available to educational facilities benefit districts.

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

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. This bill contains a supremacy clause that in the event of a conflict between applicable general laws and this act, the provisions of this act will control.⁶ 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.

⁵ See subsection (13)(b) of section 6 of HB 1515.

⁶ See subsection (3) of section 3 of HB 1515.

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, 2007, granting 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 Babcock Ranch Community Independent Special District.⁷

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.

Drafting Issues

On page 29 line 783. "The amount of the filing fee is 3 percent of \$4,8000;" the correct amount is the salary paid for the office, which is \$200 per meeting up to a maximum of \$4,800.

On page 29 lines 789 through 794 purports to assign duties to the supervisor of elections and canvassing board.

Page 88 lines 2440 through 2444 contains the following provision:

The board may ask the Legislature through its local legislative delegations in and for Charlotte County "to amend this act to contract, to expand or to contract, and to expand the boundaries of the district by amendment of this section." The following change is recommended: delete the phrase "by amendment of this section."

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁷ See subsection (1) of section 3 of HB 1515.