

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1517 North Port Orange Hammock Improvement District, City of North Port, Sarasota County
SPONSOR(S): Government Efficiency & Accountability Council and Grant
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u>8 Y, 0 N</u>	<u>Fudge</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>12 Y, 0 N, As CS</u>	<u>Fudge</u>	<u>Cooper</u>
3) <u>Policy & Budget Council</u>	<u>(W/D)</u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates the North Port Orange Hammock Improvement District (district) in the City of North Port, Sarasota County, as an independent special district and public body corporate. The boundaries of the district contain approximately 5,771 acres in Sarasota County. The district will be governed by a five-member board elected on a one acre/one vote basis.

This bill is effective upon becoming 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. The provisions of House Rule 5.5(b) appear to apply to this bill.

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 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

North Port Orange Hammock Improvement District

This bill creates the North Port Orange Hammock Improvement District (district) in the City of North Port, Sarasota County, as an independent special district and public body corporate.

Pursuant to section 189.404(3), Florida Statutes, the North Port Orange Hammock Improvement District's charter must address and require certain provisions in its charter. The following describes the requirements and whether this bill meets those requirements.

District purpose: The purpose of the district is to acquire, develop, operate, and maintain public infrastructure works and services as authorized by the bill.

Powers, functions, and duties of the district regarding ad valorem taxation, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other similar issues: The bill authorizes the issuance of bonds and the collection of non-ad valorem assessments, rates, fees, rentals, fares, or other charges.

The methods for establishing the district: The bill creates and incorporates an independent special district pursuant to ch. 189, F.S. to be known as the North Port Orange Hammock Improvement District.

The method for amending the charter of the district: Under the provisions of this bill, the charter may be amended by special act of the Legislature. However, any amendment that would alter the district boundaries or general or special powers of the district must be accompanied by a resolution or official statement as provided for in section 189.404(2)(e)4., F.S.

The membership and organization of the governing board of the district: This bill creates a governing board of supervisors consisting of five-members. The first board of supervisors is composed of five persons, two whom hold office for 4 years each, one who holds office for 4 years, one who holds office for 3 years, and one who holds office for 1 year. The members must be citizens of the United States.

The maximum compensation of a governing board member: The supervisors shall not receive any compensation for their services.

The administrative duties of the governing board of the district: The bill provides administrative duties of the board.

The applicable financial disclosure, noticing, and reporting requirements: The bill requires budgets, audits, and reports as provided in ss 189.415 and 189.418, F.S.

If the district has authority to issue bonds, the procedures and requirements for issuing bonds: So long as all loans or bonds issues by the district are nonrecourse as to the City of North Port, the bill provides that the board may issue bonds not to exceed the lesser of \$500 million in principal at any time or 90 percent of the total amount of the non-ad valorem assessments levied under the provision of s. 298.305, F.S., or equal to the total amount levied under ch. 170, F.S. The board also has the authority to issue refunding, revenue, and anticipation bonds. The board may also issue warrants or negotiable notes, termed "floating indebtedness" to distinguish them from bonded debt.

The board may issue general obligation bonds not in excess of 35 percent of the assessed value of taxable property within the district. Except for refunding bonds, general obligation bonds can only be issued if the bonds are issued to finance or refinance a capital project and approved at an election held in accordance with the Florida Constitution.

The procedures for conducting any district elections or referendum and the qualifications of an elector of the district: Within 120 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 landowners vote for the two seats for initial terms of 4 years and the person receiving the highest and next highest number of votes shall be declared and elected as the supervisors for those seats. The landowners then vote for the seat for a 3 year term and the person receiving the highest number of votes is declared and elected supervisor for that seat. Landowners shall continue to vote for each remaining seat until all seats are filled. Each year, beginning with the second year following the first election, a supervisor shall be elected to replace the retiring supervisor. If a vacancy occurs, the remaining supervisors of the board shall fill each vacancy by appointment for the remainder of the unexpired term. The bill adequately provides for the District's membership and organization of the governing board of the district, which is in accordance with chapter 191, Florida Statutes.

The methods for financing the district: The district will be financed by non-ad valorem assessments, rates, fees, rentals, fares, or other charges, and bonds.

The method(s) for collecting non-ad valorem assessments, fees, or service charges: The provides the following:

Installment Assessments: The board shall determine, order, and levy the amount of the annual installments of the non-ad valorem assessments levied under s. 298.305, F.S.

Maintenance Assessments: In lieu of any maintenance assessment provision of ch. 298, F.S., the board may levy annually an assessment on specified property.

Acreage Assessments: Acreage assessments are authorized for the payment of expenses incurred or to be incurred in organizing the district.

Geographic boundary limitations: The boundaries of the district contain approximately 5,771 acres in Sarasota County as further described in the bill.

In addition, the City of North Port passed a resolution, pursuant to s. 189.404(2)(e)(4), F.S., which provides that the creation of this District is consistent with the City of North Port Comprehensive Plan.

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 and that in addition to these powers the district has the authority to exercise such powers, functions, and duties as may be set forth in c. 298, F.S. The enumerated duties include:

- To exercise the power of eminent domain to acquire, property and when reasonably necessary for the implementation of district-authorized public infrastructure works, facilities, or services. The district has this power within the district with prior approval of the governing body of the district and the City of North Port Commission and outside the boundaries of the district in Charlotte, Desoto, and Sarasota Counties, subject to the approval of the City of North Port Commission or its designee, or if otherwise required by

another governmental entity or agency. This power does not extend to any municipal, county, School District of Sarasota County, state, and federal property.

- To collect fair share contributions from Sarasota County if Sarasota County approves any development order in Sarasota County that creates impact to concurrency regulated facilities within the district.

The property appraiser and tax collector are entitled to compensation performed in connection with assessment of the district as provided by law.

Unit Development

The bill provides that upon written petition signed by the owners of 51 percent of the acreage in any area, the board may designate an area of the district as a unit. Once the unit is created, the board may adopt a plan of improvements or ch. 170 authorizing documents. Upon the formation of a unit, the board may levy a one-time organizational special assessment tax per acre on the lands in the unit. The district shall not amend any plan of improvement for any unit in which any real property has been sold to the general public at large for residential and noncommercial purposes which would result in any increase in the principal amount of debt authorized for that unit, without an affirmative vote of the a simple majority of electors.

Amending Plan of Improvements, Engineer's Report, or ch. 170 Authorizing Documents

In addition to, and as an alternative to, the provisions of chs. 298 and 170, F.S., a plan of improvements, the engineer's report, or ch. 170 authorizing documents may be amended, modified or corrected, and changed by resolution.

Mitigation

If any of the property within the district is sold to the state or any executive branch department of the state, the seller of the land may use such lands for open space mitigation, wetland mitigation, and stormwater mitigation for development within the district. In addition, any develop within the district required to obtain any permits from any executive branch department of the state or Southwest Florida Water Management District shall receive expedited review of those permits.

C. SECTION DIRECTORY:

- Section 1: Provides popular name for act.
- Section 2: Provides for creation, jurisdiction and purpose of district.
- Section 3: Enumerates limitation on the district's powers.
- Section 4: Provides for powers and duties of board of supervisors.
- Section 5: Provides for board of supervisors including election and organization.
- Section 6: Describes requirements for meetings of landowners.
- Section 7: Provides authority for installment assessment.
- Section 8: Provides for maintenance assessments.
- Section 9: Provides for compensation of property appraiser and tax collector.
- Section 10: Provides for organizing assessments.

- Section 11: Provides bonding authority.
- Section 12: Provides authority for district to designate areas as a unit.
- Section 13: Provides power of eminent domain.
- Section 14: Provides definition of 51 percent of acreage in any area.
- Section 15: Provides method for amending plan of improvements, engineer's report, or ch. 170 authorizing documents.
- Section 16: Provides method for noticing and conducting meetings.
- Section 17: Establishes required reports, budgets, and audits.
- Section 18: Provides territorial description.
- Section 19: Provides for severability.
- Section 20: Establishes public disclosure requirements to the public and current or potential property owners.
- Section 21: Provides for mitigation and requires expedited permit review.
- Section 22: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 23 and 26, 2007.

WHERE? In the *North Port Sun*, *Charlotte Sun*, *DeSoto Sun*, *Charlotte Herald Tribune*, *Sarasota Herald Tribune*, and *Englewood Sun* newspapers published in Charlotte, DeSoto, and Sarasota Counties.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

Anticipated Expenditures

<u>FY 06-07</u>	<u>FY 07-08</u>
\$50,000	\$250,000

Anticipated Revenues

	<u>FY 06-07</u>	<u>FY 07-08</u>
Gifts, loans, and/or special assessments within the district	\$50,000	\$250,000

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Article III, section 11(a)(1) of the Florida Constitution prohibits a special law or general law of local application pertaining to the election, jurisdiction or duties of officers. The bill provides that “[a]ny development within the district that shall be required to obtain any permits from any executive branch department of the state or the Southwest Florida Water Management District shall receive expedited review of those permits.”

However, the Florida Supreme Court has held that where the duties imposed are merely incidental to the main purpose of the act, such act would not be held to violate Section [11] of Article III of the State Constitution.”¹ Here, the expedited review required by this act appears to be incidental to the creation of the district.

B. RULE-MAKING AUTHORITY:

The bill authorizes the district “[t]o adopt by resolution rules as necessary for implementation, regulation, and enforcement as are consistent with the purposes of the district and this act.” The bill also gives authority to adopt, by resolution of the board, rules and regulations for the control of traffic, noise levels, crime, and the use of the roads by those authorized.

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 district is created for all purposes as shall be liberally construed from and set forth in this act, under sections 189.401-189.429 and chapter 298, Florida Statutes, provided that section 189.4045(2), Florida Statutes, is specifically excluded and not applicable to the district or the City of North Port and may perform such acts as shall be necessary, convenient, incidental, or proper for the provision, acquisition, development, operation, and maintenance of those public infrastructure works and services authorized herein, including all facilities necessary and incidental thereto.
- In addition to, and as an alternative to, the provisions of chs. 298 and 170, F.S., a plan of improvements, the engineer’s report, or ch. 170 authorizing documents may be amended, modified or corrected, and changed by resolution.

¹ *Pinellas County Planning Council v. Smith*, 360 So. 2d 371, 373 (Fla. 1978).

Other Comments

As stated above, the city has no objection to the creation of the district. However, while the district is not within the jurisdiction of Sarasota County, the Board of County Commissioners for Sarasota County has issued a letter strongly objecting to the creation of the district. The board contends that the creation of the district is premature, because it is currently part of an active Development of Regional Impact process. The board also believes that an interlocal agreement should be required with Sarasota County to address infrastructure coordination.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Committee on Urban & Local Affairs adopted two amendments that restrict the eminent domain authority to only within the district.

On April 11, 2007, the Government Efficiency & Accountability Council reported HB 1517 favorably with a council substitute to incorporate two amendments adopted by the Committee on Urban & Local Affairs and three amendments adopted by the Council. The three amendments required infrastructure improvements within the district to comply with the comprehensive plans and concurrency requirements of adjacent counties including Charlotte and Desoto Counties.