

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1231

Key Largo Wastewater Treatment District, Monroe County

SPONSOR(S): Saunders

TIED BILLS:

IDEN./SIM. BILLS:

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban &amp; Local Affairs</u>	<u>9 Y, 0 N</u>	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency &amp; Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

The Key Largo Wastewater Treatment District was created by the Legislature in 2002 as an independent special district to construct and operate facilities for the collection and treatment of wastewater in an area within Monroe County consisting of all lands east of Tavernier Creek, including Key Largo and Cross Key, with the exception of Ocean Reef. The district is authorized to employ all powers within its boundaries for the collection and treatment of wastewater formerly exercised by the Florida Keys Aqueduct Authority.

HB 1231 amends the Key Largo Wastewater Treatment District's special act to exempt the district from county regulations governing the discharge of effluent. The bill further provides that the district is not obligated to obtain licenses, permits or authorizations required by state and local regulating agencies for development, and is not subject to regulation by any state agency or political subdivision with respect to rate setting.

The bill provides an effective date of upon becoming law.

According to the Economic Impact Statement, the bill will result in reduced costs for construction of district wastewater facilities.

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Provide Limited Government**

This bill would exempt an independent special district from state and local regulations.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Florida Keys Area Protection Act

Florida's area of critical state concern program was created in 1972 as part of ch. 380, F.S., "The Florida Environmental Land and Water Management Act of 1972."<sup>1</sup> This program protects areas of the state where unsuitable land development would endanger resources of regional or statewide significance, and ensures orderly and well-planned growth of these areas by regulating development. The Governor and Cabinet, sitting as the Administration Commission, designate areas of critical state concern upon recommendation of the Department of Community Affairs.<sup>2</sup> Designation may be made for areas with significant environmental resources, historical resources or sites, or areas affected by an existing or proposed major public facility.<sup>3</sup>

In 1979, the Legislature enacted s. 380.0552, F.S., designating by statute the Florida Keys Area of critical state concern.<sup>4</sup> The Legislature later substantially amended s. 380.0552, F.S., designating that section as the "Florida Keys Area Protection Act."

The legislative intent of this act is to:

- establish a land use management system that protects the natural environment of the Florida Keys;
- establish a land use management system that conserves and promotes the community character of the Florida Keys;
- establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services;
- provide for affordable housing in close proximity to places of employment in the Florida Keys;
- establish a land use management system that promotes and supports a diverse and sound economic base;
- protect the constitutional rights of property owners to own, use and dispose of their real property; and
- promote coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

Section 380.0552(7), F.S., establishes "principles for guiding development" in the Florida Keys Area. State, regional and local agencies and units of government are required to coordinate their plans and conduct their programs and regulatory activities consistent with the following:

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<sup>1</sup>Chapter 72-317, L.O.F.

<sup>2</sup>Section 380.95(1), F.S.

<sup>3</sup>Section 380.05(2), F.S.

<sup>4</sup>Chapter 79-73, L.O.F.

- to strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation;
- to protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat;
- to protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat;
- to ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;
- to limit the adverse impacts of development on the quality of water throughout the Florida Keys;
- to enhance natural scenic resources, promote the aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys;
- to protect the historical heritage of the Florida Keys;
- to protect the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including:
  - the Florida Keys Aqueduct and water supply facilities,
  - sewage collection and disposal facilities,
  - solid waste collection and disposal facilities,
  - Key West Naval Air Station and other military facilities,
  - transportation facilities,
  - federal parks, wildlife refuges and marine sanctuaries,
  - state parks, recreation facilities, aquatic preserves and other publicly-owned properties,
  - city electric service and the Florida Keys Electric Co-op, and
  - other utilities, as appropriate;
- to limit the adverse impacts of public investments on the environmental resources of the Florida Keys;
- to make adequate affordable housing available for all sectors of the population of the Florida Keys;
- to provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan; and
- to protect the public health, safety and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

For the purposes of reviewing consistency of an adopted plan or any amendments to that plan, the principles are to be construed as a whole.

Section 380.0552(4), F.S., provides a procedure for removing the designation of the Florida Keys Area as an area of critical state concern. Between July 12, 2008, and August 30, 2008, the Department of Community Affairs (DCA) must submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of a work program<sup>5</sup> and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the program have been achieved. Subsequent to receipt of the report, the Commission must determine, prior to October 1, 2008, whether substantial progress has been achieved. The designation of the Florida Keys Area as an area of critical state concern will be removed on October 1, 2009, unless the Commission finds no substantial progress.

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<sup>5</sup> The term "work program" means the 10-year work program set forth in ch. 28-20.110, F.A.C., on January 1, 2006, excluding amendments to the work program that take effect after January 1, 2006.

If the designation of the Florida Keys Area as an area of critical state concern is not removed, the DCA must submit a written annual report to the Administration Commission on November 1 of each year, describing the progress of the area toward accomplishing remaining tasks. The Commission must determine whether substantial progress has been achieved within 45 days after receipt of the report. The designation of the Florida Keys Area as an area of critical state concern will be removed unless the Commission finds no substantial progress has been achieved in which case it must provide the Monroe County Commission, within 30 days after making the finding, a report detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

After removal of the designation as an area of critical state concern, the DCA must review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area for compliance with the following:<sup>6</sup>

Adoption of construction schedules for wastewater facilities improvements in the annually adopted Capital Improvements Element and adoption of standards for the construction of wastewater treatment facilities that meet or exceed the criteria of ch. 99-395, L.O.F.

Chapter 99-395, L.O.F., provided for sewage treatment and disposal system requirements in Monroe County. Section 6 of this act provides that existing sewage facilities that discharge to other than surface waters and existing onsite sewage treatment and disposal systems must cease discharge or comply with specified treatment requirements by July 1, 2010, and with the rules of the Department of Environmental Protection or the Department of Health, as applicable.

#### Key Largo Wastewater Treatment District

The Key Largo Wastewater Treatment District was created by the Legislature in 2002<sup>7</sup> as an independent special district to construct and operate facilities for the collection and treatment of wastewater in an area within Monroe County consisting of all lands east of Tavernier Creek, including Key Largo and Cross Key, with the exception of Ocean Reef. The district is authorized to employ all powers within its boundaries for the collection and treatment of wastewater formerly exercised by the Florida Keys Aqueduct Authority pursuant to ch. 76-441, L.O.F., as amended.

Additionally, the district is authorized to: adopt rules; plan, develop, purchase or otherwise acquire, construct, improve, extend, enlarge, equip and operate any wastewater management system and facilities within the territorial limits of the district; acquire by grant, loan, purchase, gift or devise, or exercise of the right of eminent domain, all property convenient for its purposes, and to sell, convey, rent or assign all or any part thereof; to assess and impose ad valorem taxes and non-ad valorem assessments; to issue revenue bonds to pay the cost of purchasing or acquiring, constructing or otherwise equipping a wastewater management system; issue refunding bonds; to lease, rent or contract for the operation of all or any part of any wastewater management system facilities; fix and collect rates; make and enter contracts and agreements; provide for employee benefits; borrow money; and invest funds. The business and affairs of the district are conducted and administered by a five-member elected governing board.

The district is subject to the jurisdiction of Monroe County, and also must comply with federal and state regulations to construct and operate its wastewater treatment system to ensure that discharges from the system meet applicable water quality standards to protect public health, safety and welfare. The district currently is working to meet the state-imposed 2010 centralized sewer mandate.

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<sup>6</sup> The DCA also is required to review local comprehensive plans under this provision for adoption of goals, objectives and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.

<sup>7</sup> Chapter 2002-337, L.O.F.

## Effect of Proposed Changes

HB 1231 was requested by the Key Largo Wastewater Treatment District in an effort to prevent delays associated with the Monroe County permitting process. The bill confirms that the district will comply with federal and state laws governing the discharge of effluent but exempts the district from local regulations. The bill also provides that the district is not obligated to obtain licenses, permits or authorizations required by state and local regulating agencies for development, but that it will comply with substantive regulations—other than permitting—of the “appropriate agency” in effect at the time of district approval of final plans for development. The bill further provides that the district is not subject to supervision, regulation, or other power of any state agency or political subdivision with respect to rate setting.

The district maintains that the proposed legislation will put the district “on equal footing” with the Florida Keys Aqueduct Authority, which enjoys a statutory exemption from the requirement to obtain permits from Monroe County.<sup>8</sup> It has been suggested that the permitting exemption inadvertently was omitted from the special act creating the Key Largo Wastewater Treatment District.<sup>9</sup>

The bill provides an effective date of upon becoming law.

### C. SECTION DIRECTORY:

Section 1: Adds subsection (6) to s. 3 of s. 1 of ch. 2002-337, L.O.F., relating to the Key Largo Wastewater Treatment District, exempting the district from specified regulation.

Section 2: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

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<sup>8</sup> The Monroe County Attorney, Suzanne Hutton, has noted that the act creating the Florida Keys Aqueduct Authority (FKAA) was enacted before the Florida Keys were designated as an area of critical state concern. She has indicated that, for current purposes, the county has found that the FKAA legislation has led to disputes regarding repairs to county roads which were torn up for sewer lines, even though the county and FKAA are required by the Administration Commission to partner in accomplishing wastewater treatment/sewer systems. The county had a similar dispute with the Key Largo Wastewater Treatment District (KLWTD), along with issues regarding hardwood hammock disturbance, so there is a history of negative impacts. To date, she is not aware of any environmental issues coming to light after the fact with FKAA projects. These projects occur on county-owned property, and there is a requirement for permits to be obtained from the Army Corps of Engineers and Department of Environmental Protection. Also, there is a working group composed of staff from the county and FKAA that meets regularly to address issues with the projects, so the county is on notice of any proposed development. If the KLWTD is exempted from all permitting, the agencies responsible for protecting the environment will have no mechanism for being placed on notice of potential incursions and violations.

<sup>9</sup> Section 20 of 76-441, L.O.F., relating to the Florida Keys Aqueduct Authority, provides:

Exclusive jurisdiction of projects and finances.—

The board of directors shall have exclusive jurisdiction and control, except as otherwise provided herein and as to the quality and manner of discharge of effluent, over the projects of the Authority without limitation as to expenditures and appropriations except to the extent otherwise provided in this act and to the extent that the board of directors may by agreement with any other public or private body authorize the same to exercise jurisdiction or control of any of the projects of the Authority. It shall not be necessary for the Authority to obtain any certificate of convenience or necessity, franchise, license, permit, or authorization from any bureau, board, commission, or like instrumentality of the state or any political subdivision thereof in order to construct, reconstruct, acquire, extend, repair, improve, maintain, or operate any project and the rates, fees, or other charges to be fixed and collected with respect to the facilities and service of the Authority shall not be subject to supervision, regulation, or the rate-setting power of any bureau, board, commission, or other agency of the state or any political subdivision thereof.

This act also provides, however, that the jurisdiction of the Florida Keys Aqueduct Authority not conflict with ch. 403, F.S., “Environmental Control,” or the rules of the Department of Environmental Protection. Additionally, ch. 2003-304, L.O.F., which amends ch. 76-441, L.O.F., requires that all regulation exercised by the authority comply with the standards and regulations pertaining to same as promulgated by the Department of Health and by the Department of Environmental Protection.

IF YES, WHEN? January 23, 2008

WHERE? *The Key West Citizen*, a daily newspaper of general circulation published in Monroe County.

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

According to the Economic Impact Statement, the bill will result in reduced costs for construction of district wastewater facilities.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Drafting Issues**

The bill provides that “[t]he district shall not be subject to supervision, regulation, or other power of any bureau, board, commission, or other agency of the state or any political subdivision thereof with respect to rate setting.” The district is not subject to regulation by the Florida Public Service Commission pursuant to s. 367.022(2), F.S., which provides an exemption for “[s]ystems owned, operated, managed, or controlled by governmental authorities, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts as defined in s. 153.91, and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.” Section 4 (1)(j) of the district’s charter gives it the power to fix and collect rates. Thus, it appears that the above-cited language serves no purpose.

#### **Other Comments**

##### Monroe County

The Monroe County Board of County Commissioners has not taken a position on this bill. However, county operational people have raised concerns that the absence of permitting requirements means that development (clearing, construction, etc.) may occur without any notice to the county or other state agencies (Department of Environmental Protection, in particular) so that compliance with substantive environmental regulations cannot be enforced.

County staff have suggested an additional provision to the effect that within a certain number of days before commencing work, the appropriate regulatory bodies would be given notice of the work scheduled so that if it is deemed to pose a violation to substantive prohibitions (for example, cutting down protected hardwood hammock or disturbing habitat of a threatened species), the agencies at least are on notice and can take such measures as are allowed by regulations.

##### Florida Department of Community Affairs

The Department of Community Affairs has indicated that development could occur within the tropical hardwood hammocks which are habitat for numerous threatened and endangered species (Keys Cotton Mouse, Key Largo Wood rat, White Crowned Pigeons and tree snails which are a Species of Special Concern) as a result of the bill.

The DCA also has opined that the proposed legislation conflicts with ch. 380.05, F. S., and ch. 9J-1, F.A.C., which requires all development permits within areas of critical state concern must be rendered by the local government to the Department of Community Affairs for review prior to becoming effective. During the review period, the DCA is authorized to file an appeal to the Division of Administrative Hearings if it deems the development inconsistent with the Principles for Guiding Development, the comprehensive plan, or local land development regulations. The bill would exempt the Key Largo Wastewater Treatment District from obtaining permits for development from Monroe County and subsequent review by the DCA. The purpose of the review is to ensure that development is consistent with the Principles for Guiding Development. In particular, the DCA believes that the bill conflicts with the three specific Principles:

- *To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.*

The district's wastewater plant is located within approximately 40 acres of tropical hardwood hammock. The site has been cleared to the maximum allowable limits allowed by law. The proposed legislation would undermine the effort to protect the remaining habitat. The Florida Keys Carrying Capacity Study indicates that future development should be located in areas that already have been cleared.<sup>10</sup>

- *To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.*

The District is located within an area that has been designated "Tier One," and as such is the most environmentally sensitive habitat and an area most restricted for development and clearing.

- *To limit the adverse impacts of public investments on the environmental resources of the Florida Keys.*

This principle was specifically crafted to ensure the careful balance between providing infrastructure and protecting the environment.

#### Florida Department of Environmental Protection

The Department of Environmental Protection (DEP) provided the following comments:<sup>11</sup>

The Key Largo Wastewater Treatment District is subject to the jurisdiction of Monroe County, including permitting of the district's wastewater system, and must obtain applicable federal and state permits to construct and operate its wastewater treatment system to ensure that discharges from the system meet applicable water quality standards to protect public health, safety and welfare.

The district is on record as wishing to be relieved of regulation by Monroe County and this bill would appear to be an attempt to accomplish that objective. However, notwithstanding an introductory statement regarding compliance with federal and state regulations dealing with the discharge of effluent, the bill also states that the district is not obligated to obtain any authorizations required by the state for "development" without defining the term. This could be interpreted to exempt the district from the need to obtain state permits for the construction and operation of the wastewater system, including any permits related to stormwater treatment at a wastewater treatment plant or environmental permits for works in waters of the state.

As noted the bill is unclear as to whether the intent is to relieve the district from regulation by Monroe County, the district's previously stated intent, or to more broadly relieve the district from virtually all

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<sup>10</sup> The attorney for the Key Largo Wastewater Treatment District, Thomas Dillon, has observed in a March 24, 2008, e-mail, that the DCA concern about the hardwood hammock is unfounded. The district has conveyed a conservation easement preventing development on all but 4.2 acres of the 21-acre site. The permit allowing development of the 4.2 acre portion already has been granted and reviewed by the DCA. The district does not own any other land in the adjacent hardwood hammock. Therefore, there is no risk that the proposed legislation would subject the surrounding hammock to development pressure.

<sup>11</sup> Department of Environmental Protection draft bill analysis received on March 13, 2008.

state regulation. The apparently inadvertent exemption from state environmental oversight, in particular, must be corrected.

Florida Department of Health

The Florida Department of Health has indicated that it does not see an impact from this bill.<sup>12</sup>

Florida Public Service Commission

The bill does not affect this agency.<sup>13</sup>

Exemptions to General Law

HB 1231 may provide various exemptions to general law by allowing the Key Largo Wastewater District to forgo obtaining permits or other authorizations required by state agencies.

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.**

D. STATEMENT OF THE SPONSOR

No Sponsor Statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

At its meeting on April 2, 2008, the Committee on Urban & Local Affairs adopted a strike-all amendment which: removes language that provides that the district is not required to obtain licenses, permits or authorizations required by state agencies; removes unnecessary language which states that the district is not subject to regulation by any state agency or political subdivision with respect to rate setting; and adds language which requires the district to provide the county with 30 days notice prior to the installation of wastewater infrastructure.

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<sup>12</sup> March 24, 2008, e-mail from Terry L. Davis, Department of Health Office of Legislative Planning.

<sup>13</sup> March 18, 2008, e-mail from Ryder Rudd, Legislative Affairs, Public Service Commission.