

FINAL BILL ANALYSIS

BILL #: HB 1045

FINAL HOUSE FLOOR ACTION:

117 Y's 0 N's

SPONSOR: Rep. Clemens

GOVERNOR'S ACTION: Approved

COMPANION BILLS: N/A

SUMMARY ANALYSIS

HB 1045 was passed by the House on April 27, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 2, 2011, chapter 2011-257, Laws of Florida, and took effect June 2, 2011. The bill creates section 8 of the Loxahatchee Groves Water Control District's (District) charter providing for the dedication of width of four roads located within the District. The section provides that the improvements of the four public roads were approved by the affected landowners participating in four separate referendum elections held between January 1, 2009, and December 31, 2010. As a part of the referendum question, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

The Loxahatchee Groves Water Control District (District) provides surface water management, road maintenance, and related services for the Loxahatchee Groves community¹ and a portion of Royal Palm Beach. Its area covers 12.5 square miles with 29 miles of unpaved roads and 30 miles of canals in Northern Palm Beach County.² The District was founded in 1917³ and all of its prior special acts have been codified into one special act pursuant to ch. 99-425, L.O.F., later amended by ch. 2004-410, L.O.F.

As a water control district, the drainage and water control provisions of state law⁴ governs its enabling special acts and authority.⁵ In addition to the powers provided in state law, the District has the power to construct, maintain, improve, and repair roadways and roads necessary to exercise the powers and duties of the District or the 5-member board of supervisors (Board), including but not limited to, all roads shown on the replat of Loxahatchee Groves. Included in the district's authority is the power to:

- Provide access to and development of areas within the district, or both.
- Provide funds for such construction, maintenance, improvement, or repair through the levying of assessments pursuant to ch. 298, F.S., or special act, or both.

The District's Board may, at its discretion, accept dedication of a road within the boundaries of the District pursuant to the following procedures:⁶

- The landowners possessing the easements to the road must petition the board in writing for dedication of the road. Those signing the petition must agree to give the District their respective easements at no cost to the District, pursuant to policies established by the District.
- At least a simple majority of landowners on the road, on a per-acre basis, must petition the Board to dedicate the road.
- The Board then determines whether or not to accept such petition. If the Board accepts the petition, then the District will project all estimated costs⁷ involved with the dedication of the road.
- The Board provides this estimated cost information to the affected landowners and a referendum must be held among those landowners to create a special taxing unit, consisting of all of the benefited land contiguous to and inclusive of the road to be dedicated to cover such cost. If the referendum passes by majority vote, on a per-acre basis, then the District must create a special taxing unit and levy assessments for the costs associated with the dedication of the road.

¹ There are more than 1,200 homes in the District with an estimated population of 3,500. Loxahatchee Groves Water Control District, About Us, <http://www.lgwcd.org/index.php?go=home.category&categoryId=2> (last visited March 11, 2011).

² *Id.*

³ *Id.*

⁴ Chapter 298, F.S.

⁵ See ch. 298, F.S., and chapters 99-425 and 2004-410, L.O.F.

⁶ Paragraph c., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

⁷ These costs include the cost of planning, designing, and building the road or improving the existing road to meet specifications acceptable to the District, the cost of improving or replacing any culvert crossing or bridge that connects the road to be dedicated to an existing District road or roads, the cost of any eminent domain proceeding to obtain road easements from those landowners who did not sign the petition and give the District their respective easements, the cost of establishing the special taxing unit, and any other costs anticipated to be incurred by the District as a result of any action involved with the road dedication. Chapter 2004-410, L.O.F.

- If the dedication is approved, then the District will acquire, by sale or through eminent domain, the necessary easements and build the road or make the necessary improvements to the existing road to meet all district specifications.
- The road is then dedicated to the District and maintained by the District under its general maintenance assessment.

The charter preserves the District’s ability, under ch. 298, F.S., to create and assess units of development.

As previously stated, the Board must receive approval from the affected landowners for the road improvement and the associated assessments. To that end, the Board must notify the affected landowners and hold a meeting for the purpose of voting on the road construction or improvement. Each affected landowner present, in person or by proxy, is entitled to one vote for each acre of land or fraction of land owned by the landowner. Public notice is provided using the same process required for annual landowners’ meetings⁸ as provided by law.⁹

The District conducted four landowner meetings and referendum elections between January 1, 2009 and December 31, 2010. As a part of the referendum question, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment. The public notice dates and referendum results were reported as follows:¹⁰

North “A” Road and North Road

February 12, 2009 - Affected landowners notified of landowner meeting and referendum election to occur on February 24, 2009. Notice published February 7th and 14th, 2009, in the Palm Beach Post.

February 24, 2009 – Landowners Meeting and Referendum Election

Results: 337 (Yes); 75 (No)

North “C” Road and North Road

February 27, 2009 – Affected landowners notified of landowners meeting and referendum election to occur on March 25, 2009. Notice published March 8th and 15th, 2009, in the Palm Beach Post.

March 25, 2009 - Landowners Meeting and Referendum Election

Results: 419 (Yes); 103 (No)

North “D” Road and North Road

March 6, 2009 - Affected landowners notified of landowners meeting and referendum election to occur on April 22, 2009. Notice published April 5th and 12th, 2009, in the Palm Beach Post.

April 22, 2009 - Landowners Meeting and Referendum Election

⁸ Notice must be published once a week for 2 consecutive weeks in a newspaper of general circulation in each county in which lands of the district are located, the last publication to be not less than 10 nor more than 15 days before the date of the meeting. Section 298.11(1), F.S.

⁹ See s. 298.11(1), F.S., and paragraph e., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

¹⁰ R2 Rampell & Rampell, P.A., *Independent Accountants’ Report on Applying Agreed-Upon Procedures – Loxahatchee Groves Water Control District*; Feb. 24, 2009, March 25, 2009, April 22, 2009, and Feb. 25, 2010; provided to House Community & Military Affairs Subcommittee staff, email received March 9, 2011.

Results: 346 (Yes); 118 (No)

South "C" Road and Collecting Canal Road

January 15, 2010 - Affected landowners notified of landowners meeting and referendum election to occur on February 25, 2010. Notice published February 4th and 11th, 2010, in the Palm Beach Post.

February 25, 2010 - Landowners Meeting and Referendum Election

Results: 137 (Yes); 72 (No)

In addition to the landowner meetings and referendum elections, in 2008, the District held three public workshops regarding the road improvements for three roads:

- North "A" Road and North Road
- North "C" Road and North Road
- North "D" Road and North Road

During the workshops, District staff made presentations, which included an explanation of the project and discussion with attendees. All affected landowners were invited to attend the workshops and were provided an analysis, including supporting documents and related project information such as the total estimated cost of the project and assessment to be levied upon the affected landowners.¹¹

Effect of the Bill:

The bill creates section 8 of the District's charter providing for the dedication of width of four roads located within the District. The section provides that the improvements of the four public roads were approved by the affected landowners participating in four separate referendum elections¹² held between January 1, 2009 and December 31, 2010. Thus, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment. The width of the four roads to the extent that they have been actually constructed and maintained or repaired continuously and without interruption by the District for 7 years, must be dedicated through easement rights to the public pursuant to the District's charter.

The bill dedicates the width of the following roads within the District:

- "A" Road
- "C" Road (South)
- "C" Road (North)
- "D" Road

The filing of a map in the office of the clerk of the circuit court of Palm Beach County showing the lands and reciting on it that the roads have been dedicated pursuant to the method described above or by

¹¹ Loxahatchee Groves Water Control District, *Notice of Landowner Meeting and referendum Election for Open Grade Emulsion Road Improvements*, provided to House Community & Military Affairs Subcommittee staff, email received March 9, 2011. While a workshop was not provided for the South "C" Road petitioners, a survey form and supporting data was provided and the District received positive feedback from the affected landowners. Loxahatchee Groves Water Control District, District Administrator, email received March 14, 2011. It should also be noted that workshops are not part of the public notice requirements. *See* s. 298.11(1), F.S., and paragraph e., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

¹² Paragraph c., section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

any other means of acquisition, duly certified by the District's chair and secretary is prima facie evidence of the public's easement rights. However, this provision does not apply to any electric utility facility located on the four roads dedicated in this section of the District's charter.

The bill includes a statement that the Town of Loxahatchee Groves must have traffic control jurisdiction over all public roads within the District.

The bill took effect upon becoming a law on June 2, 2011.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 27, 2011.

WHERE? *Palm Beach Post*, West Palm Beach, Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes No

D. ECONOMIC IMPACT STATEMENT FILED? Yes No