

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1403 Key Largo Wastewater Treatment District, Monroe County

**SPONSOR(S):** Local & Federal Affairs Committee and Raschein

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 990

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Nelson	Rojas
2) State Affairs Committee	15 Y, 0 N	Moore	Camechis

### SUMMARY ANALYSIS

The Key Largo Wastewater Treatment District is an independent special district, governed by a five-member elected board, which is charged with constructing and operating a wastewater treatment system in Monroe County.

CS/HB 1403 amends this special district's charter to revise the procedures relating to board vacancies. If a vacancy occurs on or after the 30th day immediately before the first day for qualifying for the office, a person appointed to fill the vacant seat serves in the office for the remainder of the unexpired term. If the vacancy occurs before the 30th day before the first day for qualifying, the person appointed to fill the vacant seat serves until the first regular board meeting after the first Monday following the next general election, when the vacancy is filled by election.

The bill additionally requires the annual adjustment of governing board members' compensation, effective October 1 of each year, based upon the United States Department of Commerce, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers.

The bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### The Key Largo Wastewater Treatment District

The Key Largo Wastewater Treatment District (KLWTD) in Monroe County was created by ch. 2002-337, L.O.F., pursuant to the provisions of ch. 189, F.S., known as the “Uniform Special District Accountability Act of 1989.” It is an independent special district, governed by a five-member elected board, which is charged with constructing and operating a wastewater treatment system within the district. District boundaries include the territory consisting of Key Largo, including all lands east of Tavernier Creek, including Tavernier, Key Largo, and Cross Key, with the exception of Ocean Reef.

##### District Governing Board Members

The business and affairs of the KLWTD are conducted and administered by a five-member governing board chosen by the electors of the district in a nonpartisan election to serve four-year terms. An individual desiring to be elected to the board must qualify pursuant to s. 189.405(2)(c), F.S.<sup>1</sup> Additionally, in accordance with s. 189.4051, F.S., each member of the board must be a registered elector, residing within the boundaries of the district at the time he or she qualifies and continually throughout his or her term.<sup>2</sup>

The original charter of the KLWTD provided that any vacancy in the membership of the governing board must be filled, for the remainder of the term, by election within 30 days of such vacancy. However, if the remaining term was 60 days or less, the vacancy was filled by election at the next general election pursuant to s. 189.405(2)(a), F.S., as amended.<sup>3</sup>

Two years later, pursuant to ch. 2004-457, L.O.F, this language was amended to provide that within 45 days of a vacancy, the remaining board members are required to appoint a person who is eligible to hold the office until the end of the unexpired term or until the next general election, whichever occurs first. Any person elected at the next general election to fill such seat serves for the remainder of the predecessor's term.

The charter for the district provides that the members of its governing board receive as compensation for their services a fee of \$300 per meeting, not to exceed three meetings per month. The amount of this compensation is to be revised annually based upon the index provided in s. 287.017(2), F.S., which previously referred to a “nationally recognized price index.” The compensation for board members has never been adjusted.

##### **Effect of Proposed Changes**

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<sup>1</sup> Section 189.405 (2)(c), F.S., provides that a candidate for a position on a governing board of a single-county special district that has its elections conducted by the supervisor of elections is required to qualify for the office in accordance with ch. 99, F.S., with the county supervisor of elections in whose jurisdiction the district is located.

<sup>2</sup> That section defines “[q]ualified elector” to mean any person at least 18 years of age who is a citizen of the United States, a permanent resident of Florida, and a freeholder or freeholder’s spouse and resident of the district who registers with the supervisor of elections of a county within which the district lands are located when the registration books are open.

<sup>3</sup> Section 189.405 (2)(a), F.S., provides that any independent special district located entirely in a single county may provide for the conduct of district elections by the supervisor of elections for that county. Any independent special district that conducts its elections through the office of the supervisor is required to make its election procedures consistent with the Florida Election Code.

CS/HB 1403 amends ch. 2002-337, L.O.F., as amended by ch. 2004-457, L.O.F., to revise the procedure relating to KLWTD board vacancies to accommodate situations where there is insufficient time for candidates to qualify to run for office or for their names to be placed on the ballot.

The bill changes the 45-day deadline for appointing a person to a vacant seat on the board to 60 days. Based upon previous experiences, the current deadline does not allow enough time for the board to advertise for candidates, to interview those candidates, and to deliberate and decide on a replacement.<sup>4</sup>

The bill further specifies that the appointee must be an “eligible” person. This apparently requires that the individual be a registered elector, residing within the boundaries of the district.<sup>5</sup>

Since the creation of the KLWTD in 2002, four commissioners have left office before their terms expired.<sup>6</sup> Three of those four vacancies occurred after the close of the qualifying period for candidates and too late for the names of new candidates to be added to the ballot. Therefore, it is reasonable to assume that this situation will reoccur.

Under the new procedure, in the case of a vacancy, the remaining members of the governing board would appoint a replacement. This would avoid the possibility of needing to hold a special election (when a term expired), which would cost approximately \$35,000.<sup>7</sup>

If a vacancy occurs on or after the 30th day immediately before the first day set by law for qualifying for election to a special district office,<sup>8</sup> the person appointed to fill the vacant seat serves for the remainder of the unexpired term. This “cut-off date” was determined by the KLWTD board, which found that for a small district like the KLWTD, if a vacancy occurs on or after the 30<sup>th</sup> day immediately preceding the first day for qualifying, it is impractical and impracticable for that vacancy to be filled by the qualified electors in the next general election. In such a situation, there is not sufficient time to notify potential candidates of the vacancy. Moreover, in many cases, there is not enough time for candidates to qualify or for their names to be put on the ballot.<sup>9</sup>

If the vacancy occurs before the 30th day immediately before the first day set by law for qualifying for the office, the person appointed to fill the vacant seat serves until the first regular board meeting after the first Monday after the next general election, when the vacancy is filled by election pursuant to s. 189.405(2)(a), F.S.

In the general election, the candidates receiving the highest totals, consistent with s. 189.405(4), F.S., are deemed elected to the available seats on the governing board. The governing board member elected with the lowest vote total fills the vacant seat for the remainder of the unexpired term of the governing board member who previously held that seat and is eligible to hold the office until the end of the unexpired term or until the next general election, whichever occurs first. Any person elected at the general election serves for the remainder of the predecessor's term.

The bill additionally requires that the compensation for governing board members be adjusted annually, effective October 1 of each year, based upon the United States Department of Commerce, Bureau of

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<sup>4</sup> March 19, 2013, e-mail from Ray Giglio, Key Largo Wastewater Treatment District general counsel, on file with the House Local & Federal Affairs Committee.

<sup>5</sup> See section 5 (2) of the district's charter.

<sup>6</sup> Jerry Wilkinson—October 20, 2004; Glenn Patton— May 18, 2006; Gary Bauman— November 4, 2008; and Susie Hammaker— August 8, 2012.

<sup>7</sup> This figure was provided by the Monroe County Supervisor of Elections. It is based upon a cost of approximately \$5000 per precinct and the fact that there are seven precincts located in the Key Largo Wastewater Treatment District.

<sup>8</sup> Pursuant to s. 99.061(3), F.S., notwithstanding the provisions of any special act to the contrary, each person seeking to qualify for election to a special district office must qualify between noon of the 71st and noon of the 67<sup>th</sup> day prior to the primary election. Candidates for single-county special districts must qualify with the supervisor of elections in the county in which the district is located. All special district candidates qualify by paying a filing fee of \$25, or qualify by the petition process pursuant to s. 99.095, F.S.

<sup>9</sup> *Id.*

Labor Statistics, Consumer Price Index for All Urban Consumers.<sup>10</sup> This revision is needed because the reference to a price index in s. 287.017(2), F.S., was removed by ch. 2010-151, L.O.F.

The bill takes effect upon becoming a law.

**B. SECTION DIRECTORY:**

Section 1: Amends ss. (6) of s. 5 and s. 7 of section 1 of ch. 2002-337, L.O.F., as amended by ch. 2004-457, L.O.F., relating to the Key Largo Wastewater Treatment District.

Section 2: Provides an effective date.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 27, 2013

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

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

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>10</sup> The Consumer Price Index (CPI) is a measure of the average change in prices over time of goods and services purchased by households. The Bureau of Labor Statistics publishes CPIs for two population groups: (1) the CPI for Urban Wage Earners and Clerical Workers (CPI-W), which covers households of wage earners and clerical workers that comprise approximately 29 percent of the total population and (2) the CPI for All Urban Consumers (CPI-U) and the Chained CPI for All Urban Consumers (C-CPI-U), which cover approximately 88 percent of the total population and include in addition to wage earners and clerical worker households, groups such as professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force. See <http://www.bls.gov/cpi/>.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Local & Federal Affairs Committee adopted an amendment, which removed a provision increasing the compensation of governing board members from \$300 to \$382 per meeting that was not included in the notice for the bill. This analysis is drafted to the CS.