

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1229 Port of Palm Beach District, Palm Beach County

SPONSOR(S): Local & Federal Affairs Committee; Rooney, Jr.

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N, As CS	Dougherty	Rojas
2) State Affairs Committee			

SUMMARY ANALYSIS

This bill codifies, amends, reenacts, and repeals all special acts and court decrees relating to Port of Palm Beach District (District) to create a single, unified charter. In addition to the current provisions from prior special acts, CS/HB 1229 makes the following substantive changes to the District's charter:

- adding regulation of port facilities to the District's purpose;
- updating boundary description details;
- granting proprietary and regulatory authority to the District as a subdivision of Florida;
- increasing commissioner salaries to \$15,000 with allowable annual adjustments of up to 3 percent by a majority vote of the commission (current compensation is \$9,500 annually);
- adding board authority to act for the development and regulation of projects and facilities;
- adding board authority to construct and maintain wharfs and piers;
- removing provisions for insurance coverage for the immediate dependents of the District's employees, agents, and officers;
- removing board authorization to obtain a group travel insurance plan for the District's employees, agents, and officers;
- removing provision ratifying and approving all previously adopted insurance plans;
- removing requirement that any commissioner participating in any insurance plan must pay for their own pro rata premium;
- adding language allowing for the City of Riviera Beach to conduct plan review and inspection of port facilities or alternatively allowing the District to use the provisions of s. 553.791, F.S., for these purposes;
- changing allowable rate of interest on bonds, revenue bonds, and outstanding obligations to comply with s. 215.84, F.S.;
- specifically authorizing the District to use s. 553.791, F.S., for project or facility plan review and inspection and providing that the District is not subject to any local government plan review or inspection fees; and
- removing the \$200,000 assessment limit on the special ad valorem tax.

According to the Economic Impact Statement, the commissioner's salary increase will cost \$27,500 in Fiscal Year 2014-2015 and \$28,325 in Fiscal Year 2015-2016. These increases are paid for by proceeds of port tenant user fees and not through the District's taxing authority. The District may levy up to two mills of ad valorem tax.

This act is effective upon becoming law.

According 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. EFFECT OF PROPOSED CHANGES:

Present Situation

The Port of Palm Beach

The Port of Palm Beach District (District) is an independent special taxing district established by ch. 7081, L.O.F, in 1915. The District covers a land area of 971 square miles, approximately 50 percent of Palm Beach County. A board of five commissioners is elected at large by the voters within the District. Its administration is through an executive director and professional staff. The District has statutory authority to levy ad valorem millage tax but has not done so since 1975.

Exports

Unlike most ports in the United States, the Port of Palm Beach is an export port, with approximately 80 percent of its cargo being exported. The majority of the exported cargo goes toward supporting the island nations of the Caribbean. The Port of Palm Beach supplies 60 percent of everything consumed in the Bahamas and is an essential shipping nexus to the rest of the Caribbean.

In addition to intermodal capacity, the port is a major modal point for the shipment of bulk sugar, molasses, cement, utility fuels, water, produce, and breakbulk items. All of the exported raw sugar that is produced in the Glades area, almost 900,000 tons, is shipped through the Port of Palm Beach.

The port also handles diesel fuel, molasses, liquid asphalt, and other bulk commodities. There is also substantial tonnage involved in the movement of heavy lift and project cargos.

Employment and Port Operations

The District and its tenants combine to be one of the larger employers in Palm Beach County and is an economic engine for the county. Approximately 2,400 people are employed directly and indirectly because of the port, which contributes \$260 million in business revenue and \$12 million in state and federal taxes.

The Port of Palm Beach is the fourth busiest container port of Florida's 14 deepwater ports and is the 18th busiest container port in the United States. Over \$7 billion worth of commodities moves through the port each year. The Bahamas Celebration cruise ship is based at the port. Sailing every other day for the Bahamas, it brings 275,000 passengers to the port, which is an additional significant economic impact for Palm Beach County.

Florida East Coast Railway Company

The Florida East Coast Railway Company services the docks and piers through the port's industrial rail switching operations. It is the only port facility in south Florida operating a rail system with pier-side box, hopper, and intermodal cars operating 24 hours a day. Located on port property are six miles of trackage for intermodal transfers and handling.

Independent Special Districts

A "special district" is "a local unit of special purpose...government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."¹ Special districts are created to provide a variety of services, such as mosquito control, beach facilities, children's services,²

¹ Section 189.403(1), F.S.

² Section 125.901, F.S.

fire control and rescue,³ or drainage control.⁴ An “independent special district” is characterized by having a governing board the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality.⁵

The Uniform Special District Accountability Act

The 1989 Legislature enacted ch. 189, F.S., the “Uniform Special District Accountability Act,” to consolidate and unify the provisions of existing law relating to the creation and accountability of special districts. The act continues to provide for the general governance of special districts, addressing issues such as the creation and operation of special districts, financial reporting requirements, funding authority, election of board members, compliance with general law provisions such as public records and meetings requirements, and comprehensive planning within special districts.

Codification

Codification is the process of bringing a special district’s charter up-to-date by consolidating it in one place. After a special district is created, special acts often amend or alter the special district’s charter provisions. To ascertain the current status of a special district’s charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Current law provides for codification of all special district charters by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district.⁶ Reenactment of existing law pursuant to s. 189.429, F.S., should not be construed to accomplish the following:

- grant additional authority nor to supersede the authority of an entity;
- modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and
- affect a district’s ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district’s bonded indebtedness.

However, such reenactment will maintain exceptions to law contained in special acts reenacted pursuant to the section.

The special acts and court decrees composing the charter of the District have not been codified into a single, comprehensive act as required by s. 189.429, F.S.

Requirements of Section 189.404(2), F.S.

Section 189.404(2), F.S., prohibits⁷ special laws or general laws of local application which exempt a special district certain from certain statutory requirements.⁸ These include provisions on district elections,⁹ bond referenda,¹⁰ the issuance of bonds without a referendum,¹¹ reporting to affected local

³ Section 191.002, F.S.

⁴ Section 298.01, F.S.

⁵ Section 189.403(3), F.S.

⁶ Section 189.429, F.S.

⁷ Ch. 189, F.S., including s. 189.404(2), F.S., was passed by a 3/5 majority in each chamber. Under the Florida Constitution, a law passed with a 3/5 majority vote may be amended or repealed only by another 3/5 majority vote. Art. III, s. 11(a)(21), Fla. Const.; *School Board of Escambia Co. v. State*, 353 So. 2d 834, 839 (Fla. 1977).

⁸ The entire subsection applies to the creation of a new special district. Only paragraphs 189.404(2)(b), (2)(c), and (2)(d), F.S., appear to apply to the recodification of an existing district’s charter.

⁹ Section 189.405, F.S.

¹⁰ Section 189.408, F.S.

¹¹ Section 189.4085, F.S.

general-purpose governments about district public facilities,¹² requirements for public notice and conducting public meetings,¹³ and budget and financial reporting requirements.¹⁴

Effect of Proposed Changes

CS/HB 1229 amends and codifies special acts and court decrees currently comprising the District's charter, integrating them into a single, unified charter. This charter is reenacted and the remaining special acts and court decrees are repealed. This bill revises, restructures, and reorganizes certain existing charter language, deletes obsolete provisions, removes some restrictions, and provides new authorities to the District.

In addition to the current provisions from prior special acts, CS/HB 1229 makes the following changes to the District's charter:

- adding regulation of port facilities to the District's purpose;
- updating boundary description details;
- granting proprietary and regulatory authority to the District as a subdivision of Florida;
- amending election procedures so as to bring them into statutory compliance;
- increasing commissioner salaries to \$15,000 with allowable annual adjustments of up to 3 percent by a majority vote of the commission (current compensation is \$9,500 annually);¹⁵
- updating and expanding definitions;¹⁶
- adding board authority to act for the development and regulation of projects and facilities;
- adding board authority to construct and maintain wharfs and piers;
- removing provisions for insurance coverage for the immediate dependents of the District's employees, agents, and officers;
- removing board authorization to obtain a group travel insurance plan for the District's employees, agents, and officers;
- removing provision ratifying and approving all previously adopted insurance plans;
- removing requirement that any commissioner participating in any insurance plan must pay for their own pro rata premium;
- adding language allowing for the City of Riviera Beach to conduct plan review and inspection of port facilities or alternatively allowing the District to use the provisions of s. 553.791, F.S., for these purposes;¹⁷
- changing allowable rate of interest on bonds, revenue bonds, and outstanding obligations to comply with s. 215.84, F.S.;
- removing requirement that advertisement for bids be published in a financial newspaper in New York City, New York;
- specifically authorizing the District to use s. 553.791, F.S., for project or facility plan review and inspection and providing that the District is not subject to any local government plan review or inspection fees;
- removing the \$200,000 assessment limit on the special ad valorem tax;¹⁸ and
- deleting obsolete language.

According to the Economic Impact Statement, the commissioner's salary increase will cost \$27,500 in Fiscal Year 2014-2015 and \$28,325 in Fiscal Year 2015-2016. These increases are paid for by proceeds of port tenant user fees and not through the District's taxing authority. The District may levy up to two mills of ad valorem tax.

¹² Section 189.415, F.S.

¹³ Section 189.417, F.S. This section expressly references ch. 286, F.S. Section 189.417(2), F.S.

¹⁴ Section 189.418, F.S.

¹⁵ According to the Economic Impact Statement, this will cost \$27,500 in Fiscal Year 2014-2015 and \$28,325 in Fiscal Year 2015-2016. These increases are paid for by proceeds of port tenant user fees.

¹⁶ The charter defines certain costs differently than s. 315.02, F.S.; thus, this may be considered an exemption from general law and House Rule 5.5(b) may apply.

¹⁷ This change is removed in the proposed amendment, the passage of which would require compliance with the Florida Building Code, ch. 553, F.S.

¹⁸ See "III. Comments: C. Drafting Issues or Other Comments," below.

This act is effective upon becoming law.

B. SECTION DIRECTORY:

- Section 1: Provides for codification of all special acts and court decrees relating to the Port of Palm Beach District; and provides legislative intent.
- Section 2: Provides that chapters 74-570, 75-468, 81-459, 87-523, 90-462, 95-467, and 99-457, L.O.F., are amended, codified, reenacted, and repealed as provided.
- Section 3: Provides the recreated and reenacted charter provisions.
- Section 4: Provides for the repeal of chapters 74-570, 75-468, 81-459, 87-523, 90-462, 95-467, and 99-457, L.O.F.
- Section 5: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 2, 2014

WHERE? The *Palm Beach Post*, a daily newspaper published in Palm Beach 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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Potential Tax Increase Requiring Referendum

Current law requires that the annual special ad valorem tax not exceed the lesser of 2 mills or \$200,000. CS/HB 1229 removes the \$200,000 limit, which may be interpreted as a tax increase. Therefore, the District may be required to conduct a referendum if it collects ad valorem tax in excess of \$200,000. According to the Economic Impact Statement, the District does not plan to levy taxes through 2016.

Compliance with s. 189.404(2), F.S.

The bill does not explicitly exempt the Port District from the requirements of s. 189.404(2), F.S. The bill does not address the substance of ss. 189.4085, 189.415, 189.417, or 189.418, F.S., but does provide election requirements in accordance with s. 189.405, F.S. Additionally, the bill specifically provides that revenue bonds are not subject to referendum unless constitutionally required while s. 189.408, F.S., provides that the Constitution or general law may require such referenda. Therefore, if a general law applicable to the District requires a bond referendum, the bill does not comply with s. 189.408, F.S. Thus, CS/HB 1229 may only partially comply with s. 189.404(2), F.S.

Exemption from General Law

According 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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3, 2014, the Local & Federal Affairs Commission considered and adopted an amendment removing new language regarding Florida Building Code compliance and other technical amendments.