

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1337 Loxahatchee Groves Water Control District, Palm Beach County

SPONSOR(S): Local & Federal Affairs Committee; Pafford

TIED BILLS: None **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|---------|--|
| 1) Local & Federal Affairs Committee | 17 Y, 0 N, As CS | Flegiel | Rojas |
| 2) State Affairs Committee | 14 Y, 0 N | Renner | Camechis |

SUMMARY ANALYSIS

The Loxahatchee Groves Water Control District (District) provides surface water management, road maintenance, and related services for the Loxahatchee Groves community 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. The District was founded in 1917 and all of its prior special acts have been codified into one special act pursuant to ch. 99-425, L.O.F., as amended by: ch. 2004-410, L.O.F.; ch. 2011-257, L.O.F.; and ch. 2012-262, L.O.F. In 1918, a hand written right-of-way deed was executed granting the District a sixty-foot wide right-of-way along each of the drainage canals within the District for maintenance purposes.

As a water control district, the drainage and water control provisions of state law govern its enabling special acts and authority. General law grants the District broad powers to construct and maintain canals and other water control works, including the authority to acquire, construct, operate, maintain, use, purchase, sell, lease, convey, or transfer real or personal property. In addition to maintaining and preserving water control works, general law grants the District authority to construct and manage recreational trail facilities within the district. In order to use the right-of-way easements established in 1918 for purposes other than maintenance of the canals and to update the extent of the easements due to changes to the boundaries of the canals over time, the easements must be rededicated to the District.

CS/HB 1337 creates section 10 of the District charter to provide for the dedication of maintenance easements to the District for all lands adjacent to canals that have been maintained by the District for district-related purposes continuously and uninterruptedly for seven years. The bill provides procedures for establishing easement rights. The bill authorizes the public to use any of these maintenance easements for recreational trail purposes, including, but not limited to, equestrian uses. Furthermore, the bill authorizes the district to issue permits to the Town of Loxahatchee Groves to construct and maintain the recreational trails established within the maintenance easements.

The bill provides that the provisions of section 10 do not apply to any facility of an electric utility which is located on property otherwise subject to the section.

The bill provides that the act takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present 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.; ch. 2011-257, L.O.F.; and ch. 2012-262, L.O.F. In 1918, a hand written right-of-way deed (on file with the State Affairs Committee) was executed granting the District a sixty-foot wide right-of-way along each of the drainage canals within the District for maintenance purposes.

As a water control district, the drainage and water control provisions of state law⁴ governs its enabling special acts and authority.⁵ General law grants the District broad powers to construct and maintain canals and other water control works. Those powers include the authority to acquire, construct, operate, maintain, use, purchase, sell, lease, convey, or transfer real or personal property as necessary to maintain and preserve the works in and out of the District. The District also has the right to hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right-of-way, sluice, reservoir, holding basin or franchise, in or out of said district, for right-of-way purposes.⁶

General law further grants the District the authority to construct, manage, or authorize construction and management of resource-based recreational facilities that may include greenways, trails and other associated facilities within the District.⁷ In order to use the right-of-way easements established in 1918 for purposes other than maintenance of the canals and to update the extent of the easements due to changes to the boundaries of the canals over time, the easements must be rededicated to the District.

A dedication is defined as the donation of land or creation of an easement for public use.⁸ Under the common law, to constitute a dedication, whether an express dedication or an implied dedication, there must first be shown a clear intention by the owner to offer the land for public use and then there must be an acceptance of the dedication by the public.⁹

The Legislature has created statutory dedications for public roads in s. 95.361, F.S. Section 95.361, F.S., provides for the presumed dedication of roads constructed by a county, a municipality, or the Department of Transportation, and maintained or repaired continuously and uninterrupted for four years by the county, municipality, or the Department of Transportation. The width of a road falling under the statute is deemed to be dedicated to the public to the extent it has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. An applicable dedication vests all right, title, easement and appurtenances in and to the road in: the county, if it is a county road; the municipality, if it is a municipal street or road; or the state, if it is a road in the State Highway System or State Park Road System.

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 31, 2014).

² *Id.*

³ *Id.*

⁴ Chapter 298, F.S.

⁵ See ch. 298, F.S., and chapters 99-425, 2004-410, 2011-257 and 2012-262 L.O.F.

⁶ Chapter 298.22, F.S.

⁷ *Id.*

⁸ Black's Law Dictionary, Seventh Edition.

⁹ See *Hollywood, Inc. v. Zinkil*, 403 So.2d 528 (Fla. 4th DCA 1981).

In order to give persons that might have an interest in property affected by the dedication of a road to the public, the legislature provided a one year period from the date the law went into effect or seven years after the initial date of maintenance or repair of the road, whichever is greater, to file a challenge against the governing authority assuming jurisdiction over the property.

Courts have held that s. 95.361, F.S., does not involve any “taking” of property, but only a “dedication” of property.¹⁰ Furthermore, under the case *Underwood v. Columbia County*,¹¹ the court held that unlike a takings case, in which the property owner is entitled to the fair market value of the land converted to public use, a dedication under s. 95.361, F.S., does not require payment of compensation for the dedicated property.

There is not a similar statutory dedication for maintenance easements over lands adjacent to canals.

Effect of Proposed Changes

CS/HB 1337 adds section 10 to the charter of the District, which is codified in section 2 of ch. 99-425, L.O.F., as amended. The bill provides for the dedication of maintenance easements to the District for lands adjacent to canals that have been maintained by the District for district-related purposes continuously and uninterrupted for seven years. The easement is dedicated over the width of the maintenance area that has actually been used, maintained or repaired for the prescribed period of time, regardless of whether the land has been formally established as an easement in favor of the district. The dedication vests the easement in and to the land to the District, regardless of whether there is a record of conveyance, dedication, or appropriation to the public use. The easement allows the district to travel over, under, across, upon, through and within the underlying real property for maintenance purposes.

The bill also authorizes the public to use any maintenance easement established pursuant to section 10 for recreational trail purposes. The use of recreational trails includes, but is not limited to, equestrian uses. The bill authorizes the district to issue permits to the Town of Loxahatchee Groves to construct and maintain the recreational trails established along the maintenance easements. The bill deems any permit issued by the District for perpetual use by the public for recreational trail purposes to satisfy any and all current or future state grant requirements for property control of the town.

The bill establishes the filing of a map as prima facie evidence of the District’s easement rights. To be valid, the map must be filed in the office of the clerk of the circuit court of the county where the land is located. Furthermore, the map must recite that the land has been dedicated in accordance with the procedures set forth in section 10 and must be certified by the chair and secretary of the District.

The bill provides that the provisions of section 10 do not apply to any facility of an electric utility which is located on property otherwise subject to the section.

B. SECTION DIRECTORY:

Section 1 Amends ch. 99-425, L.O.F., as amended; provides for the dedication of canal maintenance easements to the district; provides requirements for such dedication; provides for prima facie evidence of such maintenance easements; provides for the use of maintenance easements for recreational trail purposes by the public through district permits issued to the Town of Loxahatchee Groves; provides that any permit issued by the district to the town for perpetual use by the public for recreational trail purposes shall satisfy property control requirements for state grant purposes; provides applicability.

Section 2 Provides that the act shall take effect upon becoming law.

¹⁰ See *Boothe v. Manatee County, Fla.*, C.A.11 (Fla) 1987, 812 F.2d 1372, rehearing denied 818 F.2d 871.

¹¹ See *Underwood v. Columbia County*, App. 1 Dist., 868 So.2d 1225(2004)

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 25, 2014

WHERE? *The Palm Beach Post*, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, FL.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? n/a

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:

Under s. 95.361(4), F.S., a person who had an interest in property affected by the dedication of a road to the public was granted a one-year period from the date the law went into effect to file a challenge against the governing authority assuming jurisdiction over the property. The bill does not include a similar provision allowing a person who has an interest in property affected by the dedication established in the bill to file a claim against the District.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3rd, 2014, the Local & Federal Affairs Committee adopted one technical amendment and reported the bill favorably as a committee substitute. The amendment renumbered the section added by the bill from section 9 to section 10, because HB 1335 currently adds section 9 to the Loxahatchee Groves Water Control District Charter.