

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/CS/HB 1255 Lehigh Acres Municipal Services Improvement District, Lee and Hendry Counties

SPONSOR(S): Local & Federal Affairs Committee, Local Government Affairs Subcommittee, Caldwell

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Miller	Miller
2) Finance & Tax Committee	16 Y, 0 N	Wolfgang	Langston
3) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Miller	Kiner

SUMMARY ANALYSIS

Lehigh Acres is an older platted subdivision lying in eastern Lee County and a small portion of western Hendry County. Currently the community receives some municipal services from a water control district, a fire control district, and a municipal services taxing unit of Lee County.

The bill makes specific legislative findings and statements of legislative intent in determining the most effective and efficient manner in which to provide a broader range of public services to the people in Lehigh Acres is through an independent special district with powers enumerated under ch. 189, F.S. The bill creates the Lehigh Acres Municipal Services Improvement District with power and authority sufficient to operate and maintain drainage improvements and other services, as well as providing the District with authority to implement additional services such as local streets and sidewalks, streetlights, water and wastewater services, control and maintenance of signs and monuments, and certain planning duties. The powers other than drainage and community improvements cannot be exercised by the District without a prior agreement with Lee County.

The bill provides all necessary elements for the charter of the new District, including membership and terms for the Board of Commissioners, elections, and financing. The District will not have the authority to impose or collect ad valorem taxes. The Board of Commissioners is comprised of the members of the former board of the East County Water Control District.

With the creation of the Lehigh Acres Municipal Services Improvement District, the bill repeals the acts pertaining to the East County Water Control District and dissolves that district. All property, obligations, and liabilities of the former water control district are transferred to the new Improvement District.

The economic impact statement projects total costs of \$15,000 to transition from the water control district to the new Improvement District. No other costs are projected.

The act is effective upon becoming law, except certain powers do not go into effect until December 31, 2016.

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.

Article III, s. 11(a)(21), of the State Constitution prohibits any special law pertaining to any subject when prohibited by general law passed by 3/5 vote of the membership of the House and of the Senate. Because general law requires the local government in the jurisdiction of which an independent special district is being created to state its consent or that the creation complies with local planning, and because Lee County has not provided such a statement, the 3/5 vote requirement may be implicated.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Water Control Districts

Chapter 298, F.S., governs the creation and operation of water control districts (WCD). A WCD has authority and responsibility to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan adopted by that district.¹ A WCD may build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district. A WCD also may acquire, construct, operate, maintain, use, purchase, sell, lease, convey, or transfer real or personal property, including pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices, or equipment.²

Section 298.76(1), F.S., prohibits special laws or general laws of local application granting additional authority, powers, rights, or privileges to any WCD formed pursuant to ch. 298, F.S. Exceptions are special or local legislation:

- Amending an existing special act providing for the levy of an annual maintenance tax of a district;
- extending the corporate life of a district;
- Consolidating adjacent districts; or
- Authorizing the construction or maintenance of roads for agricultural purposes.

The statute expressly does not prohibit special or local legislation:

- Changing the method of voting for a board of supervisors for any WCD;³
- Changing the term of office for board members and the qualifications to serve on the board of supervisors in a WCD;⁴ and
- Changing the governing authority or governing board of any WCD.⁵

Any special or local law enacted by the Legislature pertaining to a WCD prevails on the district and has the same force and effect as if it was a part of ch. 298, F.S., at the time the district was created and organized.⁶

Independent Special Districts

Chapter 189, F.S., defines a "special district" as "a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."⁷ A special district has only those powers expressly provided by, or which can be reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁸

Formation and Charter of an Independent Special District

¹ S. 298.22, F.S.

² S. 298.22(3), F.S.

³ S. 298.76(2), F.S.

⁴ S. 298.76(3), F.S.

⁵ S. 298.76(4), F.S.

⁶ S. 298.76(5), F.S.

⁷ S. 189.012(6), F.S. *See*, ch. 2014-22, s. 10, Laws of Fla.

⁸ 2015 – 2016 *Local Government Formation Manual*, p. 67, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2836> (accessed 3/15/2015).

With the exception of community development districts,⁹ the charter for any new independent special district must include the minimum elements required by ch. 189, F.S.¹⁰ The statute¹¹ expressly prohibits any special laws or general laws of local application from the following:

- Creating special districts that do not conform to the minimum requirements for district charters under s. 189.031(3), F.S.;¹²
- Exempting district elections from the requirements of s. 189.04, F.S.;¹³
- Exempting a district from the requirements for bond referenda in s. 189.042, F.S.;¹⁴
- Exempting a district from any requirements for reporting, notice, or public meetings under the following:¹⁵
 - S. 189.051, F.S. (requirements for issuing bonds if no referendum required);
 - S. 189.08, F.S. (requiring special district reports on public facilities);
 - S. 189.015, F.S. (notice and reports of special district public meetings); or
 - S. 189.016, F.S. (required reports, budgets, and audits); and
- Creating a district for which a statement documenting specific required matters is not submitted to the Legislature.¹⁶

These prohibitions on specific types of special laws or general laws of local application were passed by a 3/5 majority in the House and Senate when ch. 189, F.S., was adopted originally.¹⁷ They may be amended or repealed only “by like vote.”¹⁸

The charter of a newly-created district must state whether it is dependent or independent.¹⁹ Charters of independent special districts must address and include a list of required provisions, including the purpose of the district, its geographical boundaries, taxing authority, bond authority, and selection procedures for the members of its governing body.²⁰

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.²¹

Lehigh Acres

Lehigh Acres lies primarily in the unincorporated area of eastern Lee County. One of the largest platted subdivisions in the state, the area has undergone periods of growth and development since the 1950s. According to the U.S. Census, the population of Lehigh Acres in 2010 was 86,784.²² In contrast, the

⁹ S. 189.0311, F.S.; *See also* s. 190.004, F.S.

¹⁰ S. 189.031(1), F.S. The minimum charter requirements for an independent special district are listed in s. 189.031(3), F.S.

¹¹ S. 189.031(2), F.S.

¹² S. 189.031(2)(a), F.S.

¹³ S. 189.031(2)(b), F.S.

¹⁴ S. 189.031(2)(c), F.S.

¹⁵ S. 189.031(2)(d), F.S.

¹⁶ S. 189.031(2)(e), F.S. Each required statement filed with the Legislature must include the purpose of the proposed district, the authority of the district, an explanation of why the district is the best alternative, and a resolution or official statement from the local general-government jurisdiction where the proposed district will be located stating the district is consistent with approved local planning and the local government does not object to creation of the district.

¹⁷ Ch. 89-169, s. 67, Laws of Fla.

¹⁸ Art. III, s. 11(a)(21), Fla. Const.; *School Board of Escambia Co. v. State*, 353 So. 2d 834, 839 (Fla. 1977). The exact text of Art. III, s. 11(a)(21), Fla. Const., is “SECTION 11. Prohibited special laws.— (a) There shall be no special law or general law of local application pertaining to: ... (21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.”

¹⁹ S. 189.031(5), F.S.

²⁰ S. 189.031(3), F.S., lists the minimum charter requirements in 15 separate paragraphs.

²¹ Art. VII, s. 9(a), Fla. Const.

²² At <http://www.census.gov/quickfacts/table/PST045214/1239925> (accessed 3/15/2015).

estimated population in 2014 for all of Lee County was 653,485, including municipalities such as Cape Coral (163,599) and Fort Myers (69,437).²³

“Lehigh Acres is located in eastern Lee County and encompasses 96 square miles, about 12% of Lee County’s land area.²⁴ Initial development of Lehigh Acres began in the 1950s. Lehigh Acres was originally an 18,000-acre cattle ranch purchase as a tax shelter by Chicago businessman Lee Ratner. The Lehigh Development Corporation platted most of Lehigh Acres into separate single-family lots in the 1960s. As a result, Lehigh Acres is one of the largest platted communities in Florida – over 120,000 lots and a projected population of over 350,000 people.”²⁵

In 1996 and again in 2008, the voters of Lehigh Acres rejected proposed municipal incorporations.²⁶ The area receives some municipal services from the following providers:

- Lee County, including law enforcement, through the Sheriff’s office, and planning.
- Fire protection and emergency services through the Lehigh Acres Fire Control District (LAFCD), an independent district under chs. 189 and 191, F.S.
- Streetlights in some areas, provided by a municipal services taxing unit created by the County known as the Lehigh Acres Streetlighting Unit.
- Although most of the developed home sites in Lehigh Acres use private well for potable water and septic tank for wastewater disposal, some areas closer to the main arterial roads receive central water and sewer services from the county.
- Water control and drainage management from the East County Water Control District, an independent special district under chs. 189 and 298, F.S.

East County Water Control District

The East County Water Control District (ECWCD) provides water control services under ch. 298, F.S., for over 70,000 acres in Lehigh Acres and a small portion of western Hendry County impacted by the drainage structures for Lehigh Acres.²⁷ The district is funded through non-ad valorem sources, including installment assessments levied under s. 298.36, F.S.,²⁸ maintenance assessments levied under s. 298.54, F.S.,²⁹ and other assessments authorized under the chapter. The district commissioners serve 4 year terms and are elected in even-numbered years.³⁰ Vacancies occurring on the board before a general election are filled through appointment by the Governor.³¹

By providing the broadest range of services to the entire Lehigh Acres area, ECWCD was seen as the logical entity to which additional authority could be extended in order to provide better services needed within the community, particularly sidewalks and streetlights. In 2013, HB 1281 proposed to provide ECWCD with additional powers pertaining to public streetlights and sidewalks. The bill passed both the House and the Senate without opposition but was vetoed by the Governor.³² Principle reasons given for the veto included:

- The additional powers were outside the specific grant of authority for a water control district.

²³ Bureau of Economic and Business Research, University of Florida, *Florida Estimates of Population 2014*, p. 14, at <http://edr.state.fl.us/Content/population-demographics/reports/index.cfm> (accessed 3/15/2015).

²⁴ See area maps attached as Appendix A.

²⁵ “New Horizon 2035: Lee Plan Update Local Planning Agency Position Paper Lehigh Acres Issue Paper,” (12/16/2011), at <http://www.leegov.com/gov/dept/dcd/Planning/NewHorizon/Pages/IssuePapers.aspx> (accessed 3/15/2015).

²⁶ In non-binding referenda held on 11/5/1996 and 1/29/2008. “Referendum Archives (Present through 1956)” at <http://www.leeelections.com/content.php?l=206> (accessed 3/15/2015).

²⁷ Ch. 2000-423, Laws of Fla., as amended by chs. 2003-315, 2005-308, 2006-319, 2009-260, and 2012-254, Laws of Fla., comprise the charter of ECWCD.

²⁸ An installment assessment is an annual levy imposed on lands owned by the state within the district. S. 298.36(1), F.S.

²⁹ A maintenance assessment is an annual levy imposed on each parcel of property in the district apportioned on the basis of certain benefits to that particular parcel by certain improvements. S. 298.54, F.S.

³⁰ Ch. 2000-423, s. 4, of s. 3, Laws of Fla.

³¹ Ch. 2012-254, s. 1, Laws of Fla., amending ch. 2000-423, s. 4(4) of s. 3, Laws of Fla.,

³² Veto message dated July 2, 2013, at <http://www.flgov.com/governor-rick-scott-vetoes-three-bills-2/> (accessed 3/15/2015).

- The authority to install streetlights and sidewalks traditionally is a function of local general government such as a county or municipality.
- Expanding the district's authority created the potential for multiple governments to provide similar services and impose duplicative taxes.

Water and Wastewater Facilities: The FGUA

Counties have the general authority to create/acquire/operate public water and wastewater systems.³³ In 1999, Lee County joined three other counties to create the Florida Governmental Utility Authority (FGUA).³⁴ One of the principle purposes for the agreement was the coordinated purchase and management of those water and wastewater utility facilities and services owned by a land developer known as Avatar Holdings, Inc., in each of the member counties.³⁵ The 1999 Interlocal Agreement provided for admission of other local entities and allowed each member "or other Public Agency in whose jurisdiction the Authority owns a Utility System..."³⁶ the exclusive right to acquire that system from the FGUA.

Lee County subsequently left the FGUA. In 2003 the county adopted a resolution approving the purchase by FGUA of the water and wastewater system serving part of Lehigh Acres known as the Lehigh System, preferring such utilities to be in public control rather than private hands.³⁷ Thereafter, in 2005 Lee County sought and received readmission to the FGUA.³⁸ Hendry County was admitted to the FGUA in 2008.³⁹

Effect of Proposed Changes

The bill creates and authorizes the Lehigh Acres Municipal Services Improvement District (District) as an independent special district under ch. 189, F.S. The bill provides a charter for the District and creates its boundaries co-extensive with the present boundaries of the ECWCD. The District will have all authority, power, and duty to provide:

- Drainage and water control as specified in the charter;
- Public improvements and community facilities as specified in the charter;
- Water and wastewater services (subject to agreement);
- Local streets and sidewalks (subject to agreement);
- Streetlights (subject to agreement); and
- Certain authority over outdoor signage and monuments (subject to agreement).

The board of the District will act as the planning advisory panel for Lehigh Acres (subject to agreement).

The powers and duties "subject to agreement" do not apply in that area of Hendry County included in the District. The charter permits the District to exercise these "subject to agreement" powers only after December 31, 2016, and then only if the District executes an agreement with the Lee County Board of Commissioners, including a provision dissolving the present Lehigh Acres Streetlighting Unit.

The charter provides the District with a five-member board comprised of the members of the present Board of Commissioners for ECWCD. The terms of these commissioners will be coextensive with the present terms of the ECWCD commissioners. Elections will be conducted in even numbered years

³³ S. 125.01, F.S.

³⁴ "Interlocal Agreement Relating to Establishment of the Florida Governmental Utility Authority" (2/1/1999), at <https://lf.govmserv.com/WebLink8/DocView.aspx?id=1214&&dbid=0> (accessed 3/15/2015). The other 3 counties were Brevard, Polk, and Sarasota.

³⁵ 1999 Interlocal Agreement, p. 7.

³⁶ Art. IV, s. 4.02, 1999 Interlocal Agreement, p. 18.

³⁷ Lee County Resolution No. 03-05-05.

³⁸ "Interlocal Agreement Relating to the Re-Admission of Lee County to the Florida Governmental Utility Authority" (10/18/2005).

³⁹ "Interlocal Agreement Relating to the Provision of Central Water and Wastewater Services by the Florida Governmental Utility Authority in Unincorporated Portions of Hendry County" (2/21/2008).

pursuant to the requirements of s. 189.04, F.S., which incorporates the requirements of the Florida Election Code.⁴⁰ Board members will be entitled to reimbursement of their expenses as provided for state employees⁴¹ and will receive a salary of \$250 per month. Officers and employees of the District will be responsible to comply with the statutory requirements for financial disclosure, meeting notices, and public records maintenance.⁴² Vacancies on the Board will continue to be filled by gubernatorial appointment.

The charter authorizes the District to raise funds as provided in general law but expressly prohibits the District Board from imposing or collecting ad valorem taxes. The District will have the same authority as ECWCD to collect installment and maintenance assessments. The District will also have the authority to impose impact fees for new construction. The fiscal year of the District will be from October 1 through September 30.

The bill repeals the special acts comprising the charter of ECWCD, dissolves that water control district, and transfers all rights, title, and possession of property, and all obligations and liabilities of the water control district, to the Lehigh Acres Municipal Services Improvement District. The bill also prohibits any municipal annexation within the territory of the District but allows for future municipal incorporation of the entire area occupied by the District.

The bill provides all terms and conditions required for the creation and chartering of an independent special district.⁴³ However, there is no resolution or other official statement from the Board of Commissioners of Lee County stating either that the Board has no objection to the creation of the District or that the creation of the District is consistent with the county's comprehensive plan. Thus, the bill may require passage by 3/5 vote in the House and in the Senate.⁴⁴

B. SECTION DIRECTORY:

- Section 1: Provides legislative findings on the current status of Lehigh Acres, the various special districts or units providing services and imposing taxes or fees within that community, and the unique needs of the community that may be addressed only through the creation of an independent special district.
- Section 2: Provides legislative intent to create an independent special district for the efficient and effective delivery of services within Lehigh Acres.
- Section 3: Creates the Lehigh Acres Municipal Services Improvement District as an independent special district in Lee and Hendry Counties.
- Section 4: Provides the charter for the Lehigh Acres Municipal Services Improvement District, including provisions for the District's boundaries, powers, Board of District Commissioners, and finances.
- Section 5: Repeals chs. 2000-423, 2003-315, 2005-308, 2006-319, 2009-260, and 2012-254, Laws of Florida.
- Section 6: Dissolves the East County Water Control District.
- Section 7: Transfers all property of whatever kind and all obligations and liabilities of the East County Water Control District to the Lehigh Acres Municipal Services Improvement District.
- Section 8: Prohibits municipal annexations within the territory of the Lehigh Acres Municipal Services Improvement District but allows future municipal incorporation of the entire area occupied by the District.
- Section 9: Provides for liberal construction of the Act.

⁴⁰ Chs. 97 – 106, F.S.

⁴¹ S. 112.061, F.S.

⁴² Chs. 112, 119, 189, and 286, F.S.

⁴³ S. 189.031, F.S.

⁴⁴ Art. III, s. 11(a)(21), Fla. Const.; s. 189.031(2), F.S.

Section 10: Provides the provisions of the Act control in the event of any conflict with any other act.

Section 11: Provides the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 21, 2015: The News-Press, Fort Myers, FL

January 29, 2015: The Clewiston News

WHERE? (see above)

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:

Article III, s. 11(a)(21), of the State Constitution prohibits any special law pertaining to any subject when prohibited by general law passed by 3/5 vote of the membership of the House and of the Senate.

Because general law requires the local government in the jurisdiction of which an independent special district is being created to state its consent or that the creation complies with local planning, and because Lee County has not provided such a statement, the 3/5 vote requirement may be implicated.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

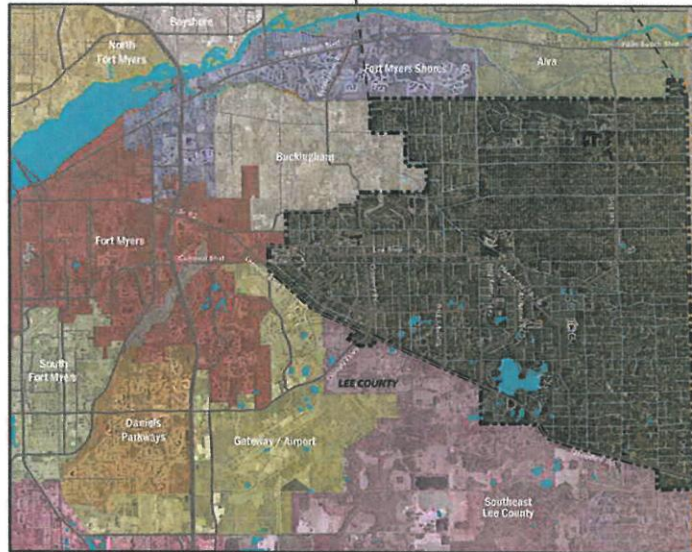
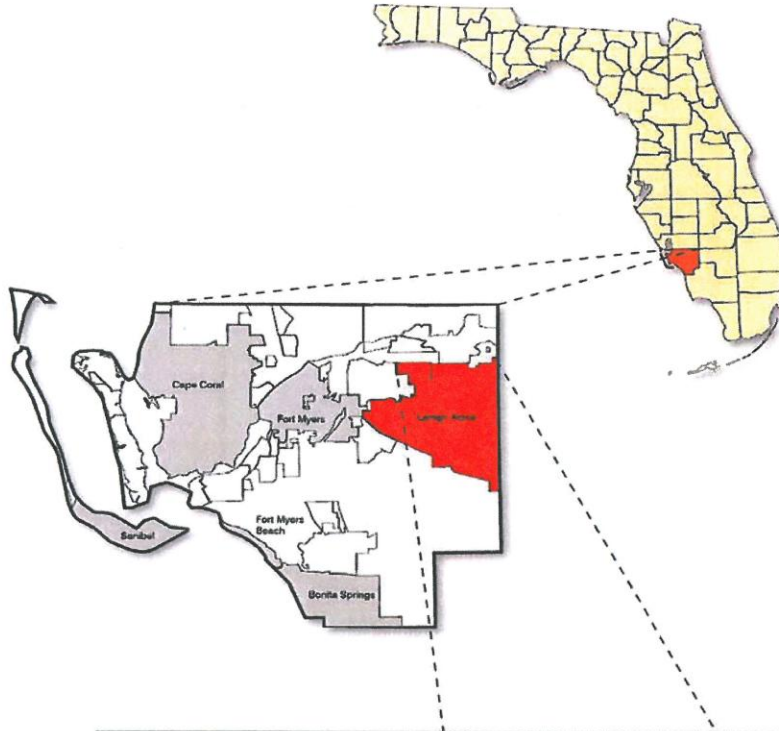
According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Local Government Affairs Subcommittee adopted an amendment correcting 3 technical drafting errors and approved the bill as a committee substitute. This analysis is drafted to the bill as amended.

On April 9, 2015, the Local and Federal Affairs Committee adopted an amendment and approved the bill as a committee substitute. The amendment authorizes the Governor to fill by appointment vacancies on the Board of Commissioners occurring before a general election. The amendment also delayed until December 31, 2016, the District's authority to exercise certain powers and made two technical corrections. This analysis is drafted to the bill as amended.

Appendix A – Lehigh Acres



Lehigh Acres in Context