

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/CS/HB 1075 Nassau County

SPONSOR(S): Government Accountability Committee; Local, Federal & Veterans Affairs Subcommittee; Byrd

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 2 N, As CS	Darden	Miller
2) Ways & Means Committee	18 Y, 0 N	Aldridge	Langston
3) Government Accountability Committee	21 Y, 0 N, As CS	Darden	Williamson

SUMMARY ANALYSIS

Special districts are units of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. A special district has only those powers expressly provided by, or 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.

The bill would create the East Nassau Stewardship District in Nassau County, covering approximately 24,000 acres. The District's purpose is to install, operate and maintain community infrastructure.

The Economic Impact Statement does not project any fiscal impact for FYs 2017-18 and 2018-19; however, the District is authorized to levy special assessments, fees, non-ad valorem assessments. The District is also authorized to levy ad valorem taxes upon approval at referendum after the entire board is elected by qualified electors of the District. The amount of revenues that would be generated by these assessments, fees, and taxes is indeterminate. The District is authorized to perform numerous functions and undertake a wide range of projects within the District; therefore, expenditures are expected but the amount of expenditures is indeterminate.

The bill takes effect upon becoming a law, except that provisions authorizing the levy of ad valorem taxation take effect only upon approval by a majority vote of qualified electors in a referendum to be held after such time when all members of the board are qualified electors of the district.

Pursuant 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) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Independent Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,¹ special act,² local ordinance,³ or by rule of the Governor and Cabinet.⁴ A special district has only those powers expressly provided by, or 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.⁵

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.⁶ An "independent special district" is any district that is not a dependent special district.⁷

Formation and Charter of an Independent Special District

With the exception of community development districts,⁸ the charter for any new independent special district must include the minimum elements required by ch. 189, F.S.⁹ Any special laws or general laws of local application relating to any special district may not:

- Create a special district with a district charter that does not conform to the minimum requirements in s. 189.031(3), F.S.;¹⁰
- Exempt district elections from the requirements of s. 189.04, F.S.;¹¹
- Exempt a district from the requirements for bond referenda in s. 189.042, F.S.;¹²
- Exempt a district from certain requirements relating to¹³ issuing bonds if no referendum is required,¹⁴ requiring special district reports on public facilities,¹⁵ notice and reports of special district public meetings,¹⁶ or required reports, budgets, and audits;¹⁷ or

¹ Section 189.031(3), F.S.

² *Id.*

³ Section 189.02(1), F.S.

⁴ Section 190.005(1), F.S. *See, generally,* s. 189.012(6), F.S.

⁵ *2017 – 2018 Local Gov't Formation Manual* at p. 64, available at

<http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911> (last visited Mar. 14, 2017).

⁶ Section 189.012(2), F.S.

⁷ Section 189.012(3), F.S.

⁸ Section 189.0311, F.S. *See* s. 190.004, F.S. (providing that chapter 190, F.S., governs the functions and powers of independent community development districts).

⁹ Section 189.031(1), F.S. Section 189.031(3), F.S., sets forth the minimum charter requirements for an independent special district.

¹⁰ Section 189.031(2)(a), F.S.

¹¹ Section 189.031(2)(b), F.S.

¹² Section 189.031(2)(c), F.S.

¹³ Section 189.031(2)(d), F.S.

¹⁴ Section 189.051, F.S.

¹⁵ Section 189.08, F.S.

¹⁶ Section 189.015, F.S.

¹⁷ Section 189.016, F.S.

- Create a district for which a statement documenting specific required matters is not submitted to the Legislature:
 - The purpose of the proposed district;
 - The authority of the proposed 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 that the proposed district is consistent with approved local government plans and the local government does not object to creation of the district.¹⁸

These prohibitions were passed by a three-fifths majority in the House and Senate when ch. 189, F.S., originally was adopted.¹⁹ They may be amended or repealed only “by like vote.”²⁰

The charter of a newly-created district must state whether it is dependent or independent.²¹ 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.²²

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.²³

Election of Special District Boards

Members of a special district board are generally elected by the qualified electors of the district.²⁴ Some district boards, however, are elected according to a one-acre/one-vote methodology.²⁵

Section 189.041, F.S., provides a process for transitioning a special district governing board elected on a one-acre/one-vote basis to election by the qualified electors of the district. A referendum may be called at any time once the district has at least 500 qualified electors.²⁶ A petition signed by 10 percent of the qualified electors must be filed with the governing body of the district requesting a referendum.²⁷ Upon verification of the petition, the governing board of the district must call for a referendum at the earlier of the next regularly scheduled election of governing body members occurring at least 30 days after the verification of the petition or within six months of verification.²⁸

If the qualified electors approve of the transition, the size of the board is increased to five members and elections for the board are held at the earlier of the next regularly scheduled general election or a special election held within six months following the referendum approving transition and the finalization

¹⁸ Section 189.031(2)(e), F.S.

¹⁹ Chapter 89-169, s. 67, Laws of Fla.

²⁰ Article III, s. 11(a)(21), Fla. Const. (“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.”).

²¹ Section 189.031(5), F.S.

²² Section 189.031(3), F.S. (setting forth the minimum charter requirements).

²³ Article VII, s. 9(a), Fla. Const.

²⁴ See e.g. ch. 2015-202, s. 4(4)(2)(a), Laws of Fla. (election provisions for Lehigh Acres Municipal Services Improvement District).

²⁵ See s. 189.04(4), F.S. (providing an exception for special district governing board elected on a one-acre/one-vote basis); also see e.g. ch. 2007-306, s. 5, Laws of Fla. (election provisions for the Babcock Ranch Community Independent Special District).

²⁶ Section 189.041(2)(a)1.a., F.S.

²⁷ Section 189.041(2)(a)1.b., F.S.

²⁸ Section 189.041(2)(a)2., F.S.

of the district urban area map.²⁹ If the qualified electors do not approve of the transition, a new referendum may not be held for at least two years.³⁰

Within 30 days after the transition referendum, the governing body of the district must direct the district’s staff to prepare and present maps describing all urban areas contained in the district.³¹ For the purposes of this determination, an “urban area” is a contiguous, developed, and inhabited urban area within a district with a minimum density of at least:

- 1.5 persons per acre, as defined in the latest census or other official population count;
- 1 single-family home per 2.5 acres, with access to improved roads; or
- 1 single-family home per 5 acres within a recorded plat subdivision.³²

The maps describing the urban areas must be presented to the governing body of the district within 60 days after the referendum.³³ The determination of urban areas is made with the assistance of local general-purpose governments and district landowners or electors may contest the accuracy of the map.³⁴ If a landowner or elector raises an objection to the map, the map is submitted to the county engineer for review.³⁵ After all objections to the map have been addressed, the governing body of the district must adopt either its initial map or the map as amended by the county engineer as the official map at a regular scheduled meeting of the governing body held within 60 days of the presentation of all such maps.³⁶ A landowner or elector may contest the accuracy of the map by filing a petition in circuit court within 30 days.³⁷

After the adoption of the official map or a certification by the circuit court, the district urban area map must determine the extent of urban area within the district and the composition of the board pursuant to s. 189.041(3)(a), F.S.³⁸ The maps must be readopted every five years, but may be readopted sooner at the discretion of the governing body of the district.³⁹

The composition of the board is determined by the percentage of the district that is urban area, as follows:⁴⁰

Urban Area as Percentage of District	Number of Board Members Elected by Landowners	Number of Board Members Elected by Qualified Electors
Less than 25%	4	1
26%-50%	3	2
51%-70%	2	3
70%-90%	1	4
More than 91%	0	5

²⁹ Section 189.041(2)(a)3., F.S.

³⁰ Section 189.041(2)(a)4., F.S.

³¹ Section 189.041(2)(b)1. F.S.

³² Section 189.041(1)(b), F.S.

³³ Section 189.041(2)(b)2., F.S.

³⁴ Sections 189.041(1)(b), (2)(b)3., F.S.

³⁵ Section 189.041(2)(b)3., F.S.

³⁶ Section 189.041(2)(b)4., F.S.

³⁷ Section 189.041(2)(b)5., F.S.

³⁸ Section 189.041(2)(b)6., F.S.

³⁹ Section 189.041(2)(b)8., F.S.

⁴⁰ Section 189.041(3)(a), F.S.

Governing board members elected by qualified electors serve four year terms, except for those elected at the first election and the first landowner's meeting following the referendum, who serve the following terms:⁴¹

Urban Area as Percentage of District	Terms of Board Members Elected by Landowners	Terms of Board Members Elected by Qualified Electors
Less than 25%	1 member serving each a 1, 2, 3, and 4 year term	1 member serving a 4 year term
26%-50%	1 member serving each a 1, 2, and 3 year term	2 member serving a 4 year term
51%-70%	1 member serving each a 1 and 2 year term	2 members serving a 4 year term, 1 member serving a 2 year term
70%-90%	1 member serving a 1 year term	2 members serving a 4 year term, 2 members serving a 2 year term
More than 91%	n/a	3 members serving a 4 year term, 2 members serving a 2 year term

Annual landowners meetings continue to be held as long as at least one member of the board is elected on a one-acre/one-vote basis.⁴² There is no requirement for a majority of the acreage of the district to be represented by either owner or an owner's proxy at the landowners meeting.⁴³ Landowner meetings must be held in the month preceding the month of the election of governing body members by electors.⁴⁴

Community Development Districts

Chapter 190, F.S., the "Uniform Community Development District Act of 1980,"⁴⁵ sets forth the exclusive and uniform procedures for establishing and operating a community development district (CDD).⁴⁶ This type of independent special district is an alternative method to manage and finance basic services for community development.⁴⁷ There are currently 622 active CDDs in Florida.⁴⁸

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.⁴⁹ CDDs have certain general powers, including the authority to assess and impose ad valorem taxes upon lands in the CDD, sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders pursuant to the Administrative Procedure Act,⁵⁰ maintain an office, lease property, issue bonds, raise money by user charges or fees, and levy and enforce special assessments.⁵¹

The statute also authorizes additional special powers to provide, construct, and maintain public improvements and facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit

⁴¹ Section 189.041(3)(b), F.S.

⁴² Section 189.041(3)(c)1., F.S.

⁴³ Section 189.041(3)(c)2., F.S.

⁴⁴ Section 189.041(3)(c)3., F.S.

⁴⁵ Section 190.001, F.S.

⁴⁶ Sections 190.004, 190.005, F.S.

⁴⁷ Section 190.003(6), F.S.

⁴⁸ Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last visited March 16, 2017).

⁴⁹ Section 190.004(3), F.S.

⁵⁰ Ch. 120, F.S.

⁵¹ Section 190.011, F.S.

shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.⁵² With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for improvements such as parks and recreational areas, fire prevention and control, school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; and waste collection and disposal.⁵³

The method for establishing a CDD depends upon its size. CDDs of more than 2,500 acres are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)⁵⁴ to adopt an administrative rule creating the district, while CDDs of less than 2,500 acres⁵⁵ are established by ordinance of the county having jurisdiction over the majority of land in the area in which the CDD is to be located.⁵⁶

Communication Services

When a special district operates a high-speed internet or other telecommunication services network, the special district must:

- Separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such service;⁵⁷
- Pay ad valorem taxes to any county in which the service operates;⁵⁸
- Make specific findings and adopt a business plan;⁵⁹
- Establish separate books and records and an enterprise fund to account for the operation of communications services;⁶⁰
- Adopt separate operating and capital budgets for communications services;⁶¹ and
- Operate at a profit within four years.⁶²

If the provision of communications services by the special district is not profitable within four years, the special district must either cease providing services, sell the system used to provide services, partner with a private entity to provide services at a profit, or approve continuing service by a majority vote.⁶³

Districts are prohibited from:

- Setting rates below the cost of providing the communications service;⁶⁴
- Operating outside of the boundaries of the district, without consent of the county and/or municipality in which services would be provided;⁶⁵

⁵² Section 190.012(1), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection. Section 190.005(1)(f), (2)(d), F.S.

⁵³ Section 190.012(2), F.S.

⁵⁴ Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet. This distinction affects the requirements for an affirmative vote by the FLWAC. Unless otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least two Cabinet members.

⁵⁵ Or a CDD of up to 7,000 acres located within a connected-city corridor established under s. 163.3246(14), F.S.

⁵⁶ Sections 190.005(1), (2), F.S.

⁵⁷ Section 125.421(1), F.S.

⁵⁸ Section 125.421(3), F.S.

⁵⁹ Section 350.81(2)(b)-(d), F.S.

⁶⁰ Section 350.81(2)(g)-(h), F.S.

⁶¹ Section 350.81(2)(i), F.S.

⁶² Section 350.81(2)(l), F.S.

⁶³ *Id.*

⁶⁴ Section 350.81(2)(f), F.S.

⁶⁵ Section 350.81(2)(e)1.c., F.S.

- Issuing revenue bonds with maturities of longer than 15 years without voter approval;⁶⁶ and
- Using powers of eminent domain “solely or primarily” for the purpose of providing communications services.⁶⁷

Proposed Development

The Nassau County Board of County Commissioners approved the East Nassau Community Planning Area Sector Plan in 2011, covering 24,000 acres.⁶⁸ A 2013 study by Fishkind and Associates projected that the proposed construction in the sector plan area over the next 20 to 25 years would result in the creation of 20,000 permanent jobs and \$12 million in recurring net fiscal benefit to the county on an annual basis.⁶⁹ The sector plan envisions construction on 12,000 acres, while the remaining 12,000 acres are held in conservation.⁷⁰

Effect of Proposed Changes

The bill creates the East Nassau Stewardship District (District), an independent special district in Nassau County and provides a charter for the district. The District’s purpose is to install, operate, and maintain community infrastructure serving 24,000 acres in development in Nassau County.⁷¹

Legislative Findings, Legislative Intent and Policy (Section 2)

The bill provides Legislative findings and intent, stating that the District provides for a “comprehensive and complete communities development approach” which will allow for integrated stormwater management, an interconnected system of paths and trails, and a Conservation and Habitat Network (CHN) providing “landscape connectivity” and the protection of natural resources.

The bill states that a CDD created under ch. 190, F.S., would not serve the public interest due to the size of the proposed district and need to coordinate adherence with the Nassau County Comprehensive Plan. The bill states that the creation of multiple CDDs would result in inefficient and duplicative layers of local special-purpose government and be harmful to the comprehensive and complete community development approach for the District, particularly the CHN system.

The bill states that the District does not have the power to engage in comprehensive planning, zoning, or development permitting and that the creation of the District is consistent with the Nassau County Comprehensive Plan. The bill states that it is the intent and purpose of the District that no debt or obligation will be placed on any local general purpose government without that government’s consent.

The bill requires the District to receive approval by resolution or official statement from the Nassau County Board of County Commissioners before requesting any amendment to its charter, in a similar manner as is required for the creation of a special district pursuant to s. 189.031(2)(e)4., F.S.

Charter Requirements, Creation, Establishment, Jurisdiction, and Charter (Section 3)

The bill provides a list of sections of the bill that fulfill the requirements for the creation of a special district under s. 189.031(3), F.S.

⁶⁶ Section 350.81(2)(e)2., F.S.

⁶⁷ Section 350.81(2)(j), F.S.

⁶⁸ Suanna Z. Thamm, *Special Bill to create East Nassau Stewardship District advances to Florida Legislature*, The Fernandina Observer, (Dec. 5, 2016), <https://fernandinaobserver.com/2016/12/05/special-bill-to-create-east-nassau-stewardship-district-advances-to-florida-legislature/> (last visited March 16, 2017).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Economic Impact Statement for HB 1075 (2017).

The bill states that the District is a “public body corporate and politic,” an independent special district, and that any additional power granted to a CDD under ch. 190, F.S., after January 1, 2017, also constitute a power of the District to the extent such changes are not inconsistent with the provisions of the bill. The bill provides that the District may exercise its power within the boundaries of the district, or extraterritorially with the consent of Nassau County, as evidenced by an interlocal agreement or a development order.

District Boundaries (Section 4)

The bill provides the legal description of the boundaries of the District.⁷²

Membership, Powers, and Duties of the Board of Supervisors (Section 5)

The bill provides for a five member board of supervisors (Board), with each member serving a four year term. Members of the Board must be both residents of the state and citizens of the United States.

A meeting of the landowners of the District must be held within 90 days of the effective date of the act. Notice of the meeting must be provided once a week for two consecutive weeks in a newspaper of general circulation in the area of the District. The landowners present at the meeting will elect a chair from among attendees to conduct the meeting. The chair may nominate candidates and make motions if he or she is a landowner or holds the proxy of a landowner. The landowners present constitute a quorum, even if they are less than 50 percent of the total acreage of the District, and may elect members of the governing board. The three candidates for the Board receiving the first, second, and third highest number of votes are elected to a term expiring November 17, 2020, while the two candidates receiving the fourth and fifth highest number of votes are elected to a term expiring November 20, 2018.

Each landowner is entitled to one vote for each acre he or she owns. Any fractional acre is treated as one acre for the purposes of the landowner vote. Landowners who are unable to attend may cast their votes by proxy. Subsequent landowners elections must be announced at a public meeting at least 90 days before the landowners meeting and noticed in the same manner as the initial landowners meeting. Subsequent elections to the Board occur on the first Tuesday after the first Monday of November in every two years.

The bill provides for a transition of the Board from being elected by landowners to the qualified electors residing in the district on the following schedule:

Number of Qualified Electors	Number of Board Members Elected by Landowners	Number of Board Members Elected by Qualified Electors
0-8,999	5	0
9,000-17,999	4	1
18,000-26,999	3	2
27,000-35,999	2	3
36,000-40,499	1	4
40,500 or more	0	5

If at the time the District contains at least 22,000 residential units, the entire Board is elected by qualified electors. The bill states that the transition to a Board seat elected by the qualified electors of the District does not require an election to occur prior to the expiration of the existing Board member’s term.

⁷² A copy of American Land Title Association Commitment Form describing the boundaries of the District is on file with Local, Federal & Veterans Affairs Subcommittee.

On or before June 1 of each election year, the Board must determine the number of qualified electors in the District as of April 15 of that year. The Board must consult the records of the Nassau County Supervisor of Elections, Property Appraiser, and Tax Collector when making this determination.

Members of the Board elected by qualified electors are selected at-large in non-partisan elections. Board members must be qualified electors of the District. Candidates to be elected by the qualified electors are required to abide by provisions of the Florida Election Code.

The bill provides that the Governor may remove a Board member for malfeasance, misfeasance, dishonesty, incompetency, or failure to perform the duties imposed upon him or her by this act. In the event of a vacancy, the remaining members of the Board may make an appointment to serve the remainder of the unexpired term, unless the vacancy was created by the Governor removing the Board member, in which case the Governor makes an appointment to fill the vacancy.

The Board is required to elect a chair and a secretary, as well as other officers the Board deems necessary. The secretary does not have to be a member of the Board.

The Board is required to keep a record of its proceedings containing all meeting, resolutions, bonds, and any corporate acts. The record book and other district records must be open to inspection by the public as required by ch. 119, F.S.

Members of the Board are entitled to compensation of no greater than \$200 per meeting and no more than \$4,800 per year, unless a higher amount is approved by electors in a referendum. Members of the Board are also entitled to travel and per diem expenses as provided in s. 112.061, F.S.

Members of the Board must meet ethics and conflict of interest provisions under general law for local public officials.

The bill prohibits the district from levying ad valorem taxes until such time all members of the Board are elected by qualified electors of the District.⁷³

General Duties of the Board (Section 6)

District Manager and Treasurer

The Board is required to employ a district manager to oversee any improvements or facilities constructed by the District. The bill specifies that employing a Board member, district manager, or other employee of a landowner as the district manager for the District does not constitute a conflict of interest under ch. 112, F.S. The district manager is permitted to hire additional employees as necessary and authorized by the Board.

The Board is also required to hire a treasurer, who must be a resident of the state. The treasurer manages the finances of the District and may be granted other powers as the Board finds appropriate. The compensation of the treasurer is set by the Board and the Board may require the treasurer to post a surety bond. The bill requires that the financial records of the board be audited by an independent certified public accountant on at least an annual basis.⁷⁴ The Board, in conjunction with the treasurer, is required to select a qualified public depository for the funds of the District.

⁷³ The Board must also receive voter approval before levying ad valorem taxes. *See* art. VII, s. 9, Fla. Const. (special districts may levy ad valorem taxes at a “millage authorized by law approved by vote of the electors.”)

⁷⁴ As an independent special district, the District will be required to maintain a public website on which it must post its annual budget and any amendments, all financial reports and audits of the District’s finances required by law, and a link to the Department of Financial Services’ website. Sections 189.016, 189.069, F.S. The District must file a separate annual financial statement with the Department of Financial Services, under s. 218.32, F.S., and periodic audited financial statements with the Florida Auditor General, under s. 218.39, F.S.

Budget and Reporting

The district manager is required to prepare a proposed budget on or before July 15 of each year for consideration by the Board. The budget must contain all expenditures of the District and estimates of projected revenues. The Board may make amendments to the proposed budget before approval. The Board is required to provide adequate notice of the budget hearing. The Board must adopt a final budget before October 1, the beginning of its fiscal year. The Board must submit a copy of the budget to the Nassau County Board of County Commissioners for informational purpose at least 60 days prior to its adoption.

The Board must provide the Nassau County Board of County Commissioners with a copy of the District's public facilities report as required by s. 189.08, F.S.

The District will provide full disclosure of its public financing and maintenance of improvements to real property to all existing and prospective residents of the District. The District must provide each developer of a resident development within the district with sufficient copies of the information to provide to each prospective purchaser. The District must also file the disclosure documents in the property records of the county.

The bill provides that the District must maintain an official website by the end of its first full fiscal year, as required by s. 189.069, F.S.

General Powers

The bill grants the District the following general powers to:

- Conduct business on behalf of the District, including suing or being sued, adopting a seal, and acquiring and disposing of property;
- Apply for Florida Retirement System coverage for its employees;
- Contract for professional services;
- Conduct financial transactions for district purposes;
- Adopt and enforce rules;
- Maintain an office;
- Hold, control, purchase, or dispose of public easements;
- Lease as lessor or lessee any type of project the District is authorized to undertake;
- Borrow money and issue bonds as authorized in the act and to levy taxes and assessments;
- Charge user fees as necessary to conduct district activities;
- Exercise eminent domain;⁷⁵
- Cooperate with other government entities;
- Assess and impose ad valorem taxes, as provided in the act;
- Levy and impose maintenance taxes, if authorized by general law;
- Levy and impose special assessments;
- Exercise special powers; and
- Exercise powers necessary and proper for fulfilling the special and limited purpose of the district as authorized by this act.

⁷⁵ The Board may exercise eminent domain within the boundaries of the District without additional approval. The Board may only exercise eminent domain outside the boundaries of the district with approval from a general purpose local government (the municipality, for lands in an incorporated area; the county, for lands in unincorporated areas).

Special Powers

The bill also grants the District special powers to implement its lawful and special purpose and to provide the following systems and infrastructure for those special and limited purposes:

- Water management and control for the lands within the District and to connect some or any of such facilities with roads and bridges;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- Bridges, culverts, wildlife corridors, or road crossings that may be needed across any drain, ditch, canal, floodway, holding basin, or other body of water;
- District roads equal to or exceeding specifications of the county in which the roads are located and street lighting;
- Buses, trolleys, rail access, mass transit facilities, transit shelters, ridesharing facilities and services, parking improvements, and related signage;
- Investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district;
- Observation and wildlife areas, including the management, maintenance, and ownership of the CHN;
- Parks and facilities for indoor and outdoor recreational, cultural, and educational uses;
- School buildings and related structures, which may be leased, sold, or donated to the school district;
- Security, however, the District may not exercise any powers of a law enforcement agency, but may contract with the appropriate local general purpose government agencies for an increased level of services within the district boundaries;
- Control and elimination of mosquitoes and other arthropods of public health importance;
- Enter into impact fee, mobility fee, or other similar credit agreements with Nassau County or a landowner developer and to see or assign such credits, on terms the district deems appropriate;
- Buildings and structures for district offices, maintenance facilities, meeting facilities, town centers, or other authorized projects;
- Establish and create, at noticed meetings, such governmental departments of the governing board.
- Sustainable or green infrastructure improvements, facilities, and services;⁷⁶
- Fire prevention and control;
- Waste collection and disposal;
- Construction and operation of communications systems and related infrastructure;⁷⁷ and
- Any other project within or without the boundaries of the district when the project is subject to an agreement between the District and the Nassau County Board of County Commissioners or with any other applicable public or private entity, and is not inconsistent with effective local comprehensive plans or the general of special powers contained in the bill.

Financing and Bonds

The Board has the power to issue bond anticipation notes that will bear interest not to exceed the maximum rate allowed by law and that will mature no later than five years from issuance. The Board may also obtain loans and issue negotiable notes, warrants, or other evidence of debt, payable at such times and bearing such interest as the Board determines, but not to exceed the maximum rate allowed by general law and to be sold or discounted at such price or prices not less than 95 percent of par

⁷⁶ The bill provides that this provision does not authorize the District to provide electric services or otherwise impair electric utility franchise agreements.

⁷⁷ Section 350.81, F.S., provides a statutory framework for communications services offered by governmental entities, including special districts. Section 350.81(7), F.S., provides that “[t]his section does not alter or affect any provision in the charter, code, or other governing authority of a governmental entity that imposes additional or different requirements on provision of communications service by a governmental entity. Any such provisions shall apply in addition to the applicable provisions in this section.” (emphasis supplied) Therefore, the statutory framework contained in s. 350.81, F.S., would apply to the special district created by this act.

value. Bonds may be sold in blocks or installment at different times, at public or private sale after advertisement, at not less than 90 percent of the par value, together with accrued interest. The Board also has the authority to issue refunding bonds, revenue bonds, and general obligation bonds.

The bill authorizes the Board to levy ad valorem taxes on all taxable property in the district, but only after the Board is elected by and consists of qualified electors of the district and the levy has been approved at a referendum as required by Art. VII, s. 9 of the Florida Constitution. This levy may not exceed 3.0 mills.

The Board annually must determine, order, and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance assessable improvements. These assessments are collected annually in the same manner as county taxes. The board may determine a formula for the determination of an amount, which when paid by a taxpayer with respect to any tax parcel, constitutes a prepayment of all future annual installments of the benefit special assessment.

The Board is authorized to levy a non-ad valorem maintenance tax, if such tax is ever authorized by general law, to maintain and preserve physical facilities and services in the District and to defray current expenses. Upon the completion of the facilities and services, the District would be able to levy annually a non-ad valorem and non-millage tax upon each tract or parcel of land within the District, based on the net assessment of benefits accruing from the original construction of the improvements. This tax would be paid and enforceable in the same manner as county ad valorem taxes.

The Board may levy a maintenance special assessment to preserve the facilities and projects of the District. The amount of the assessment is determined by the Board upon a report of the District's engineer and assessed by the Board upon the land within the District benefited by the maintenance, or apportioned between the benefited lands in proportion to the benefits received by each tract of land. The assessment is a lien on the assessed property until paid and enforceable in the same manner as county taxes. However, this does not prohibit the District from using the method prescribed in ss. 197.363, 197.3631, or 197.3632, F.S., for enforcing and collecting these assessments.

The District may establish and collect rates, fees, rentals, or other charges, referred to as "revenues", for the system and facilities furnished by the District such as: recreational facilities, water management and control facilities, and water, sewer, and reuse systems. The District must hold a public hearing concerning the proposed rates, fees, rentals, or other charges, which do not apply to District leases, prior to adoption under the administrative rulemaking authority of the District.

Any rates, fees, rentals, charges, or delinquent penalties not paid within 60 days, will be in default and the unpaid balance together with reasonable attorney's fees and costs may be recovered by the District in a civil action. In addition, in the event fees, rentals, or other charges for water and sewer, or either of them, are not paid when due, the District may, under rules and regulations of the Board, discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and restoration of service are fully paid.

Enforcement of Taxes and Assessments

The collection and enforcement of all taxes levied by the District is in the same manner as county taxes, and the provisions of general law relating to the sale of lands for unpaid and delinquent county taxes pertain to the collection of such taxes. Benefit special assessments, maintenance special assessments, and special assessments are non-ad valorem assessments as defined by s. 197.3632, F.S. Maintenance taxes are non-ad valorem taxes and not special assessments.

Any property of a governmental entity subject to a ground lease as described in s. 190.003(13), F.S., is not subject to lien or encumbrance on the underlying fee interest for a levy of ad valorem taxes or non-ad valorem assessments under this bill.

Competitive Bidding and Public Notice Regarding District Purchases

Any contract for goods, supplies, or materials that exceeds \$195,000⁷⁸ is subject to competitive bidding through notice of bids published once in a newspaper of general circulation in Nassau County. In addition, if the Board seeks to construct or improve a public building, structure or other public works it must comply with the bidding procedures in s. 255.20, F.S., and other applicable general law. The Board must accept the bid of the lowest responsive and responsible bidder unless all bids have been rejected. The provisions of the Consultants Competitive Negotiation Act in s. 287.055, F.S., apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services.

Contracts for maintenance services that exceed \$195,000⁷⁹ are subject to competitive bidding. All contracts for other services are not subject to competitive bidding unless the District adopts a rule, policy, or procedure to apply competitive bidding procedures to those contracts. The Board may require bidders to supply a bond.

Waiver of Sovereign Immunity

Any suits against the District for damages arising out of tort are subject to the limitations provided in s. 768.28, F.S.

Termination, Contraction, or Expansion of the District

The bill requires the Board of the District to obtain a resolution or official statement of support from the Nassau County Board of County Commissioners before asking the Legislature to expand or contract the District. The bill states that the District exists until dissolved by the Legislature or declared inactive by the Department of Economic Opportunity.⁸⁰

Notice to Purchasers of Property

After the creation of the District, each contract for initial sale of a residential unit within the District must include a disclosure statement informing the purchaser of the existence of the District and that the purchaser will be liable for taxes, assessments, and fees imposed by the District.

Public Access

Any facility, service, works, improvement, project, or other infrastructure owned by the District, or funded by federal tax exempt bonding issued by the District, is public. The District may establish rules regulating the use of the property and imposing reasonable charges or fees for such use.

B. SECTION DIRECTORY:

- Section 1: Provides that the special act may be cited as the "East Nassau Stewardship District Act."
- Section 2: Provides legislative findings and intent, definitions, and list of policy objectives.
- Section 3: Provides for the creation and establishment of the District, minimum charter requirements.
- Section 4: States the legal boundaries of the District.

⁷⁸ See s. 287.017(1)(d), F.S. (creating purchasing categories for procurement of personal property and services).

⁷⁹ See *Id.*

⁸⁰ Section 189.062, F.S.

- Section 5: Provides for board of supervisors; membership and meeting requirements; organization, powers, and duties of the Board; terms of office; election requirements.
- Section 6: Provides for the general duties of the board of supervisors.
- Section 7: Provides for severability of the act.
- Section 8: Provides that the bill is effective upon becoming a law, except that the provisions authorizing the levy of ad valorem taxation take effect only upon approval by a majority vote of qualified voters in a referendum to be held after such time when all members of the board are qualified electors of the district.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 14, 2016.

WHERE? The *Fernandina Beach News-Leader*, a weekly newspaper published in Nassau County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? A referendum must be held when all members of the board are qualified electors, elected by qualified electors, if the board seeks to levy ad valorem taxes.

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:

The bill requires rules and orders adopted by the District pertaining to the powers, duties, and functions of the officers of the District; the conduct of the business of the District; the maintenance of records; the form of certificates evidencing tax liens and all other documents and records of the District; and the operation of guardhouses by the District or any other unit of local government to serve security purposes, to be adopted and enforced pursuant to ch. 120, F.S., the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exceptions to General Law

Section 5(2) and 5(3) of the bill provides for the composition of the Board of the District, including the process for transitioning from a Board elected on a one-acre/one-vote basis to an election by the qualified electors of the District. The transition process provided by the bill is in lieu of the process provided in s. 189.041, F.S.

Pursuant 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) appear to apply to this bill.

Powers of Community Development Districts

Although the District is created pursuant to ch. 189, F.S., the bill proposes to give the District future powers that may be included in ch. 190, F.S., relating to CDDs as follows:

Any amendments to chapter 190, Florida Statutes, after January 1, 2017, granting additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter, sections 190.006-190.041, Florida Statutes, which are not inconsistent with the provisions of this act, shall constitute a general power, special power, authority, or function of the East Nassau Stewardship District.

Therefore, if the Legislature amends ch. 190, F.S., to grant CDDs additional authority at any time in the future, the bill provides that the additional authority will be granted to the District without further Legislative review or enactment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that future changes to the powers of community development districts are incorporated to the extent they are consistent with the District's charter and corrects an erroneous cross-reference.

On April 6, 2017, the Government Accountability Committee adopted one amendment and reported the bill favorably as a committee substitute. The bill clarifies that the special powers of the district may not be exercised in a manner inconsistent with general law concerning the interlocal, territorial and service agreements of utility providers.

This analysis is drafted to the committee substitute as passed by the Government Accountability Committee.