

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1397 Hardee County Economic Development Authority, Hardee County
SPONSOR(S): Local, Federal & Veteran Affairs Subcommittee; Albritton
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N, As CS	Rivera	Miller
2) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N	Toliver	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The state levies an excise tax on the severance of phosphate rock from Florida soil, a portion of which is distributed to the counties from which the phosphate is severed to be used for phosphate-related expenses. Counties designated as a rural area of opportunity receive a portion without the limitation to use it for phosphate-related expenses. Payment is made to the county or a legislatively-created local authority to promote and direct the economic development of the county.

The Hardee County Economic Development Authority (Authority) is an independent special district created in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County. The Authority can appropriate the phosphate tax revenue received from the state but has no taxing authority.

The Authority is governed by a nine member panel serving staggered terms composed of the director of the Agency for Workforce Innovation, the chair of Enterprise Florida, the president of the Hardee County Farm Bureau, the president of the Hardee County Chamber of Commerce, and the chair of the Phosphate Council, or their designees, and four members appointed by the Hardee County Board of Commissioners. The County Commissioners appoint two members at-large and two from a pool of candidates nominated by the municipalities within Hardee County. Appointed members serve three year terms and receive no compensation but may be reimbursed for travel and per diem expenses if they reside outside of the county. An appointed member serves as interim chair to call the Authority's first meeting and the panel must elect a chair to serve a two year term. The members may elect other officers as provided by the Authority's bylaws.

The bill replaces the five specified entity representatives with the Hardee County Board of Commissioners, and revises how the remaining four members are appointed. The President of the Heartland Workforce Investment Board, Inc., in Hardee County will serve as one member and the municipalities of Bowling Green, Wauchula, and Zolfo Springs, each appoint one member. The bill increases appointed member terms to four years and sets the county commissioner members' terms to run concurrent with their commission seat terms.

The bill designates the chair of the Board of County Commissioners as interim chair to call the Authority's first meeting. The members may elect any sitting member to be the chair. The bill removes the provision that the members may elect other officers as provided by the Authority's bylaws.

The bill removes the provision allowing the authority to reimburse members for their travel or per diem expenses when the members reside outside of the county and the provision requiring the appointed members to reside within Hardee County.

The bill provides the act takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Independent and Dependent 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.¹ A special district may be created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.² A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.³ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁴

A "dependent special district" is a special district in which 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.⁵ The county or municipality upon which the district will be dependent must adopt its charter by local ordinance.⁶ The Legislature may create a dependent special district by special act at the request or with the consent of the local government upon which the special district will be dependent.⁷

An "independent special district" is any district that is not a dependent special district or one that includes more than one county unless the district lies wholly within a single municipality.⁸ Independent special districts are created by the Legislature unless otherwise authorized by general law.⁹ The charter of a newly-created district must meet minimum statutory requirements which includes a statement that it is an independent special district.¹⁰

¹ Section 189.012(6), F.S. The Legislature adopted ch. 189, F.S., in 1989, to provide uniform statutes for the definition, creation, and operation of special districts. *See* s. 189.011(1), F.S.

² Section 189.012(6), F.S.

³ *See* ss. 189.02(4)-(5) and 189.031(3), F.S. Counties and municipalities have "home rule" powers allowing them to enact ordinances not inconsistent with general or special law for governmental, corporate, or proprietary purposes. Special districts do not possess home rule powers and are permitted to impose only those taxes, assessments, or fees authorized by special or general law. *See* art. VIII, ss. 1(f) and (g), 2(b), s. 6(e), Fla. Const. and ss. 166.021 and 125.01, F.S. *See also* 2017 – 2018 *Local Gov't Formation Manual*, p. 70, at <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (accessed 1/26/2018)(hereinafter *Local Government Manual*).

⁴ *Local Government Manual*, p. 64.

⁵ Section 189.012(2), F.S.

⁶ Sections 189.011(1) and 189.02(1), F.S. A county can create dependent special districts within the boundary lines of the county, subject to the approval of the governing body of the incorporated area affected. Section 189.02(2), F.S.

⁷ Section 189.02(5), F.S. Despite the statutory limitations, the Legislature is permitted under the state Constitution to create a dependent special district without the authorization of the local governing body upon which the district will depend. *See* art. VIII, s. 6(b), Fla. Const.

⁸ Section 189.012(3), F.S.

⁹ Section 189.031(4), F.S.

¹⁰ Section 189.031(2),(3) & (5), F.S.

Rural Economic Development Initiative

The Legislature created the Rural Economic Development Initiative (REDI) to encourage and facilitate the location and expansion of major economic development projects in rural communities and regions.¹¹ A “rural area of opportunity” is a rural community,¹² or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.¹³ The Governor may designate up to three rural areas of opportunity by executive order making these areas priority assignments for REDI and allowing the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive.¹⁴

Phosphate Rock Severance Tax

The state levies an excise tax on those severing phosphate rock from Florida soils or waters for commercial use, which tax is collected, administered, and enforced by the Department of Revenue (DOR).¹⁵ Under the current tax scheme, counties designated as rural areas of opportunity that have phosphate mining within the county receive 8.9 percent of the tax revenue created by the county.¹⁶ DOR distributes the tax revenue to the county or the local authority designated to promote and direct the economic development of the county, if the Legislature has established one.¹⁷

Hardee County Economic Development Authority

Hardee County has been designated a rural area of opportunity.¹⁸ The Hardee Economic Development Authority (Authority) is an independent special district created by special act in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County.¹⁹ The Authority must adopt administrative rules and hold public meetings pursuant to general law, establish procedures for soliciting and awarding grants, direct the county clerk to expend funds upon proper authorization, and create a

¹¹ Section 288.0656(1)(a)-(b), F.S. REDI is within the Department of Economic Opportunity and state and regional agencies are authorized to participate. REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems which affect the fiscal, economic, and community viability of Florida’s economically distressed rural communities to find ways to balance environmental and growth management issues with local needs. Section 288.0656(3), F.S.

¹² Section 288.0656(2)(e), F.S. A “rural community” is:

1. A county, or a municipality within a county, with a population of 75,000 or fewer;
2. A county, or a municipality within a county, with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer;
3. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified and verified by the department.

“Economic distress” means conditions affecting the fiscal and economic viability of a rural community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low weekly earned wages compared to the state average, low housing values compared to the state average, high percentages of the population receiving public assistance, high poverty levels compared to the state average, and a lack of year-round stable employment opportunities. Section 288.0656(2)(c), F.S.

¹³ Section 288.0656(2)(d), F.S.

¹⁴ Section 288.0656(7)(a), F.S. REDI may recommend up to three rural areas of opportunity to the Governor. Designation as a rural area of opportunity under this subsection shall be contingent upon the execution of a memorandum of agreement among the department; the governing body of the county; and the governing bodies of any municipalities to be included within a rural area of opportunity. Section 288.0656(7)(b), F.S.

¹⁵ Section 211.3103(1), F.S. The tax is in addition to any ad valorem taxes levied upon the separately assessed mineral interest in land the rock was located, or any other tax, permit, or license fee imposed by the state or counties. Section 211.3103(4), F.S.

¹⁶ Section 211.3103(6)(b), F.S. After December 31, 2022, the percentage will increase to 10 percent. Section 211.3103(6)(a), F.S.

¹⁷ Section 211.3103(6)(a)4., F.S.

¹⁸ Fla. Exec. Order No. 16-150 (June 27, 2016), at https://www.flgov.com/wp-content/uploads/orders/2016/EO_16-150.pdf. (accessed 1/26/18).

¹⁹ Ch. 2004-394, Laws of Fla., as amended by chs. 2006-349 and 2010-271, Laws of Fla., and ss. 211.3103(6)(a)4. and (5), F.S.

standardized application form for the award of grants by the Authority. The Authority's discretionary power includes the power to appropriate funds paid to the clerk by the state's chief financial officer in distributing county's portion of the state's excise tax on the severance of phosphate rock, conduct business and receive funds on behalf of the Authority, approve or amend time and cost sheets submitted county employees appointed to work for the Authority, and any other acts reasonable and necessary to implement and enforce the charter and rules adopted in accordance with the charter. The Authority may appropriate funds paid to the clerk by the state's chief financial officer in distributing the county's portion of the state's excise tax on the severance of phosphate rock, but cannot levy taxes or impose fees within the county.²⁰

The Authority has a governing body composed of nine members serving staggered terms.²¹ Four members are appointed and five members are designated from the following entities:

1. The President of the Hardee County Farm Bureau, or designee;
2. The director of the Agency for Workforce Innovation, or designee;
3. The chair of Enterprise Florida, or designee;
4. The chair of the Florida Phosphate Council, or designee; and
5. The president of the Hardee County Chamber of Commerce, or designee.²²

The appointed members are selected by the Hardee County Board of Commissioners (County Commission) in the following manner:

- Two members are designated at-large; and
- The remaining two members are selected from a pool of nominees consisting of two persons designated by the governing bodies of each municipality within county.²³

Appointed members serve three year terms and vacancies are filled by the appointing authority.²⁴ Members are not compensated but can be reimbursed for travel and per diem expenses if they reside outside of the county pursuant to the charter and general law.²⁵ Members may serve successive terms.²⁶ Members, other than members who are the heads of state agencies, must reside in the county.²⁷

An appointed member serves as interim chair to call the first meeting of the Authority.²⁸ The members must elect a chair to serve a two year term and may elect other officers as the Authority's bylaws permit.²⁹ A majority of the members constitutes a quorum and each member is entitled to one vote.³⁰

Effect of Proposed Changes

The bill changes the composition of the nine members of the Authority. The five entity representatives are replaced with the commissioners of the County Commission. The first of the four appointed members will be the President of the Heartland Workforce Investment Board, Inc., in Hardee County. The governing bodies of the three municipalities within the county (the City of Bowling Green, City of Wauchula, and Town of Zolfo Springs) each will appoint one of the remaining three members.

²⁰ See Ch. 2004-394, s. 4(1), Laws of Fla.

²¹ Ch. 2004-394, s. 3(1), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²² *Id.*

²³ *Id.* The municipalities within Hardee County are the City of Bowling Green, City of Wauchula, and Town of Zolfo Springs. See Local Government Manual, *supra*, n. 3, at page 99.

²⁴ Ch. 2004-394, s. 3(2), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁵ Ch. 2004-394, s. 3(4), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁶ Ch. 2004-394, s. 3(2), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁷ Ch. 2004-394, s.3(1)(f), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

²⁸ Ch. 2004-394, s. 3(3), Laws of Fla., as amended by ch. 2006-349, Laws of Fla. The member at-large designated to be the interim chair is the member that would serve an initial terms of 3 years whereas the other at-large member served an initial term of 2 years.

²⁹ Ch. 2004-394, s. 3(3), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

³⁰ Ch. 2004-394, s. 3(3), Laws of Fla., as amended by ch. 2006-349, Laws of Fla.

The bill increases the terms of the appointed members to four years and sets the terms of the County Commission members to run concurrent with their commission terms. The bill replaces the appointed member designated to serve as interim chair with the chair of the County Commission to call the first meeting. The bill provides the members may elect any sitting member to be chair.

The bill removes the clause providing that members may elect other officers as designated by the Authority's bylaws and the clause requiring that members must reside in the county. The bill removes the provision allowing the Authority to reimburse members who reside out of the county for their travel and per diem expenses.

The bill provides the act takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends ch. 2004-394, as amended by ch. 2006-349, replacing the five named members of the Authority with the Hardee County Board of Commissioners, re-defining how the remaining four members will be appointed to the Authority, and disallowing members residing outside of the county to be reimbursed for travel and per diem expenses.

Section 2. Providing the act will take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 9 and December 10, 2017

WHERE? *The Ledger*, Lakeland, Polk County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changes the County Commission appointment of the at-large member to the appointment of the President/CEO of the Heartland Workforce Investment Board, Inc., in Hardee County.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.