

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/CS/HB 1423 Tohopekaliga Water Authority, Osceola County

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N, As CS	Renner	Miller
2) Natural Resources & Public Lands Subcommittee	11 Y, 0 N	Moore	Shugar
3) Government Accountability Committee	18 Y, 0 N, As CS	Renner	Williamson

SUMMARY ANALYSIS

The Tohopekaliga Water Authority (Authority) is an independent special district created by ch. 2003-368, Laws of Florida, as amended. The Authority was established to provide water, wastewater and reclaimed water services in Osceola County. The Authority has jurisdiction over the acquisition, development, operation and management of these systems. The Authority currently serves approximately 97,000 water, 91,000 wastewater, and 14,500 reclaimed water customers in Kissimmee, Poinciana, and unincorporated areas of Osceola County.

The bill makes numerous changes to the Authority. Specifically, the bill:

- Revises the Authority's legislative findings.
- Provides a definition for "partial term" and amends the definition of "pledged funds."
- Reduces the number of members of the Board of Supervisors (Board) from six to five.
- Requires the Polk County Board of County Commissioners to appoint Board Supervisor No. 5, and provides that at the expiration or termination without replacement of an interlocal agreement, Board Supervisor No. 5 must be appointed by joint resolution of the remaining general purpose local governments.
- Provides that, by resolution, additional members of the Board may be appointed by Polk County or an additional general-purpose local government that has entered into an agreement with the Authority.
- Revises expiration dates for Board members and provides for staggered 3-year terms after that.
- Provides that in the event there are only four voting Board members due to the expiration or termination of any interlocal agreement, and the vacancy remains unfilled for 60 days due to the failure of the respective general purpose local government governing body to appoint a successor, the Governor must appoint a successor to serve only for the unexpired term and until a successor is duly appointed.
- Requires Board members to elect a Chairperson, Vice Chairperson, Secretary, and other officers of the Authority annually.
- Removes all Board compensation and expense reimbursements.
- Provides the Authority with the additional power to contract by interlocal agreement with the state or local governments relating to stormwater management.
- Revises the Authority's power to increase rates.
- Requires the Board to adopt or update a master plan at least once every four years after 2018.
- Makes stylistic changes and updates cross references.

The Economic Impact Statement submitted with the bill states that it is projected to have no fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1423e.GAC

DATE: 2/9/2018

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, special act, local ordinance, or by rule of the Governor and Cabinet.¹ 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.²

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.³ An "independent special district" is any district that is not a dependent special district.⁴

Tohopekaliga Water Authority

The Tohopekaliga Water Authority (Authority) is an independent special district created by ch. 2003-368, Laws of Florida, as amended. The Authority was established to provide water, wastewater, and reclaimed water services in Osceola County.⁵ The Authority has exclusive jurisdiction over the acquisition, development, operation, and management of these systems.⁶ The Authority currently serves approximately 97,000 water, 91,000 wastewater, and 14,500 reclaimed water customers in Kissimmee, Poinciana, and unincorporated areas of Osceola County.⁷

The Authority is governed by a six-member Board of Supervisors (Board). The Osceola Board of County Commissioners appoints supervisors for positions one and three. The City Commission of the City of Kissimmee appoints positions two and four. Both entities collectively appoint by joint resolution position five, who also serves as the chairperson. Each general purpose local government that has adopted a resolution authorizing the Authority to provide services and facilities within its boundary and has entered into an interlocal agreement with the Authority may appoint one additional supervisor.⁸

Board members serve no more than three consecutive 3-year terms, not including any initial term as provided for in ch. 2003-368, Laws of Florida, as amended.⁹ Should there be a vacancy in the term of office of a Board member and that vacancy remains unfilled for 60 days due to the failure of the respective general purpose local government governing body to duly appoint a successor, the

¹ Section 189.012(6), F.S.

² 2017 – 2018 *Local Gov't Formation Manual*, p. 64, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911> (last accessed 1/11/2018).

³ Section 189.012(2), F.S.

⁴ Section 189.012(3), F.S.

⁵ Chapter 2003-368, s. 2, Laws of Fla.

⁶ Chapter 2003-368, s. 4(5), Laws of Fla.

⁷ Toho Water Authority, *About Us*, available at <https://www.tohowater.com/AboutUs/Pages/about.aspx> (last accessed 1/11/2018).

⁸ Chapter 2007-287, s. 6, Laws of Fla.

⁹ Chapter 2013-266, s. 6, Laws of Fla.

Governor must appoint a successor to serve only for the unexpired term and until a successor is duly appointed.¹⁰

The Board must elect a Vice Chair, Secretary, and other officers of the Authority as may be designated and authorized by the Board. Chapter 2003-368, Laws of Florida, as amended, provides that the Chairperson, Vice Chairperson and Secretary must conduct meetings and perform other functions. However, ch. 2003-368, Laws of Florida, as amended, does not specify that the Chairperson must be elected or how often. Each must serve for one year commencing as soon as practicable after October 1 and until his or her successor is chosen.¹¹

Board members are compensated for their services by receiving \$100 per meeting, not to exceed three meetings per month. Additionally, supervisors are reimbursed for expenses as provided in s. 112.061, F.S., or otherwise approved by the Board, for travel on Authority business outside of the boundaries and service area of the District.¹² The Board generally meets twice a month, but may hold a special meeting if needed.

The Authority has all powers, functions, and duties necessary to perform its duties and responsibilities, including the power to contract with private or public entities or persons to obtain, provide, treat, distribute, or receive potable and nonpotable water or to provide or receive wastewater disposal, collection, or treatment.¹³

The Board must adopt by resolution a schedule of rates, fees, or other charges for the use of the services, facilities, and products of the Authority to be paid by each customer who is provided service by the Authority's facilities. The Authority may establish separate rates, fees, and charges for different portions of the Authority's facilities, including separate rates, fees, and charges for each utility system. The Board may establish different rates, fees, and charges for services, facilities, and products provided by a portion of a utility system if such rates, fees, and charges are consistent with applicable law.¹⁴

The Board was required to adopt a master plan within three years after its creation in 2003.¹⁵

Effect of the Bill

The bill reduces the Board from six to five members and provides for staggered three-year terms each three years thereafter.

The bill requires the Polk County Board of County Commissioners to appoint Board Supervisor No. 5. At the expiration or termination without replacement of an interlocal agreement between Polk County and the Authority authorizing the Authority to provide its potable or nonpotable water or wastewater management or delivery services or programs to retail customers within Polk County, the term of Board Supervisor No. 5 must terminate immediately, creating a vacancy. At the conclusion of the term in which a vacancy is created, Board Supervisor No. 5 must be appointed by joint resolution of the remaining general purpose local governments then authorized to appoint voting members to the Board of Supervisors.

The bill provides that, by resolution, additional members of the Board may be appointed by Polk County or an additional general-purpose local government that has entered into an agreement with the Authority. The final year of any term of the additional member must be determined such that successive

¹⁰ Chapter 2003-368, s. 6(4), Laws of Fla.

¹¹ Chapter 2003-368, s. 6(5), Laws of Fla.

¹² Chapter 2003-368, s. 6(7), Laws of Fla.

¹³ Chapter 2003-368, ss. 10(1) and (m), Laws of Fla.

¹⁴ Chapter 2003-368, s. 12(1), Laws of Fla.

¹⁵ Chapter 2003-368, s. 18, Laws of Fla.

terms are staggered so no more than a minimum of the Board members are ever due to be appointed in any year.

The bill provides that Board members cannot be appointed to serve more than three consecutive three-year terms, including any partial term that may be held or is served for fewer than 548 days. Furthermore, in the event there are only four voting Board members due to the expiration or termination of any interlocal agreement, and the vacancy remains unfilled for 60 days due to the failure of the respective general purpose local government governing body to appoint a successor, the Governor must appoint a successor to serve only for the unexpired term and until a successor is appointed.

The bill defines the term “partial term” to mean, in relation to the designated three-year term of Board member, any term in which a person appointed to the Board serves or takes office as a result of resignation, removal, or vacancy, and serves or fulfills less than the three-year term of office. For the purposes of determining term limitations, however, service of 548 days or more of any partial term is construed as service of a full term.

The bill requires the Board to elect annually a Chairperson, and maintains the requirement that the Board elect a Vice Chairperson, Secretary, and other such officers of the Authority must be elected annually. The bill also provides that in addition to the Chairperson and Vice Chairperson, any other duly appointed person has the power to sign all documents on behalf of the Authority at a duly called meeting.

The bill removes all Board compensation and expense reimbursements.

The bill provides the Authority with the additional power to enjoy all powers necessary to contract by interlocal agreement with the state or any general or special purpose local government to manage, treat, store, or provide for surface run-off or stormwater management, detention, retention, recovery, protection, use, or any similar activity that makes available, protects, conserves, or otherwise uses nonpotable water, including, but not limited to:

- The establishment or assistance in operation of any reservoir or stormwater utility program;
- Special or non-ad valorem assessment program; or
- The imposition, levy, billing, collection, and enforcement of payment for such projects or services for any associated rates, fees, or charges thereof.

The bill revises the Authority’s power to increase rates. In the event the Authority acquires, purchases, assumes, or accepts ownership of any publicly or privately owned water or wastewater facility or system, the Authority may agree to set, freeze, and not increase any rates, fees, or charges to any affected class or customers of the acquired facilities for up to four full calendar years following the acquisition, in exchange for such value and concessions as the Board deems reasonable and appropriate. However, the Board cannot set and freeze the rates, fees, and charges for amounts less than similar rates, fees, and charges then charged or imposed upon other Authority customers.

The bill requires the Board to adopt or update a master plan at least once every four years after 2018.

The bill amends the definition of “pledged funds” to provide that pledged funds cannot include any ad valorem tax revenues or general fund account of the Authority unless first approved by a vote of the electors within the service area of the Authority.

Finally, the bill revises the legislative findings, makes stylistic changes, and updates cross-references.

B. SECTION DIRECTORY:

Section 1: Amends ch. 2003-368, Laws of Florida, as amended by chs. 2013-266 and 2007-287, Laws of Florida, relating to the Tohopekaliga Water Authority.

Section 2: Provides that the act takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 10, 2017

WHERE? *The Ledger*, a daily newspaper published in Lakeland, Florida
The Orlando Sentinel, Orlando, 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 authorizes nor requires administrative 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 makes the following revisions:

- Provides that Board members cannot serve more than nine consecutive years;
- Removes all Board compensation and expense reimbursements;
- Removes unnecessary language in the Authority's legislative findings;
- Revises expiration dates for Board members and provides for staggered 3-year terms after that; and
- Provides for the Polk County Board of County Commissioners to appoint Board Supervisor No. 5, provides that at the expiration or termination without replacement of an interlocal agreement between Polk County and the Authority, Board Supervisor No. 5 must terminate immediately, and that at the conclusion of the vacated term subsequent appointees for Board Supervisor No. 5 must be appointed by the Osceola Board of County Commissioners.

On February 8, 2018, the Government Accountability Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made the following three revisions:

- Deleted the term "initial" as it relates to Board member terms;
- Provided that if there are only four voting members due to expiration or termination of an interlocal agreement, a fifth voting member must be appointed by joint resolution of the remaining general purpose local governments then authorized to appoint voting members to the Board of Supervisors; and
- Provided that in the event there are only four voting Board members due to the expiration or termination of any interlocal agreement, and the vacancy remains unfilled for 60 days due to the failure of the

respective general purpose local government governing body to appoint a successor, the Governor must appoint a successor to serve only for the unexpired term and until a successor is appointed.

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