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CS/CS/HB 1423, Engrossed 1

2018 Legislature

1
2 An act relating to Tohopekaliga Water Authority,
3 Osceola County; amending ch. 2003-368, Laws of
4 Florida, as amended; revising legislative findings;
5 providing a definition; providing for the Polk County
6 Board of County Commissioners to appoint one member of
7 the board under an interlocal agreement; providing for
8 a fifth member of the board to be appointed under
9 certain circumstance; providing for additional members
10 of the board in certain circumstances; providing for
11 term limits; providing for the Governor to appoint a
12 fifth member of the board under certain circumstance;
13 requiring board members to elect a chairperson;
14 deleting compensation and reimbursement for board
15 members; updating cross references; providing
16 additional powers of the authority; revising authority
17 power to increase rates and acquire water or
18 wastewater facilities or systems; requiring the board
19 to adopt or update a master plan every 4 years;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsections (2), (3), and (4) of section 2,
25 subsections (6) through (9) of section 3, subsection (2) of

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26 | section 4, subsections (1), (2), (3), (4), (5), (7), and (8) of
27 | section 6, section 8, section 9, paragraph (m) of subsection (1)
28 | of section 10, subsection (4) of section 12, subsection (6) of
29 | section 13, subsections (1) and (5) of section 18, subsection
30 | (1) of section 19, and section 20 of chapter 2003-368, Laws of
31 | Florida, as amended by chapters 2013-266 and 2007-287, Laws of
32 | Florida, are amended, and a new subsection (6) is added to
33 | section 3 of that chapter, to read:

34 | Section 2. Legislative Findings.

35 | (2) It is declared as a matter of legislative
36 | determination that the extensive growth of population and
37 | attendant commerce throughout Osceola County and surrounding
38 | counties has caused affected general purpose local governments
39 | within Osceola County to recognize the need to consider,
40 | advance, and develop a regional approach to the governmental
41 | delivery and provision of potable water, wastewater, nonpotable
42 | water, and reclaimed water facilities and services, the
43 | protection of the environment, and the use of valuable water
44 | resources.

45 | (3) Each of the affected general purpose local governments
46 | within Osceola County and surrounding counties must meet the
47 | comprehensive planning requirements of chapter 163, Florida
48 | Statutes, which mandate that local governments coordinate their
49 | plans for future growth with available resources of funding and
50 | availability of infrastructure. The provision of potable and

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51 nonpotable water and wastewater services and facilities is a
52 major factor in such infrastructure coordination. A focused
53 regional approach to local governmental ownership and provision
54 of potable and nonpotable water and wastewater utility
55 facilities is desirable and will readily allow Osceola County
56 and the City of Kissimmee, and certain adjacent areas upon
57 approval of any affected general purpose local government, to
58 more effectively meet their statutory mandate with respect to
59 the utilities element of their respective comprehensive plans.

60 (4) The Authority was created and established by the
61 Legislature in 2003. It was, and continues to be, ~~is~~ the intent
62 of the Legislature to create an independent special district in
63 Osceola County that, with the concurrence and approval of
64 affected general purpose local governments, can address and
65 carry out the provision of potable and nonpotable water and
66 wastewater services and facilities in certain areas of Osceola
67 County and certain adjacent areas upon the approval of any
68 affected general purpose local government, as hereinafter
69 provided, to provide economies of scale; eliminate duplicative
70 functions and expenditures; protect the local and regional
71 environment; more efficiently use, preserve, address, protect,
72 and have standing in all respects to use, preserve, address, and
73 protect, valuable local and regional water resources; and
74 advance regional and comprehensive planning.

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75 Section 3. Definitions. When used in this act, unless a
 76 different meaning appears clearly from the context:

77 (6) "Partial term" means, in relation to the designated 3-
 78 year term of a member on the Board of Supervisors, any term in
 79 which a person appointed to the Board of Supervisors serves or
 80 takes office as a result of resignation, removal, or vacancy,
 81 and serves or fulfills less than the 3-year term of office. For
 82 the purposes of determining term limitations, however, service
 83 of 548 days or more of any partial term shall be construed as
 84 service of a full term.

85 (7)-(6) "Pledged funds" means:

86 (a) The revenues, fees, charges, special assessments, and
 87 other moneys received by the Authority or its designee relating
 88 to its ownership or operation of the Authority facilities, or
 89 some portion thereof.

90 (b) Until applied in accordance with the terms of the
 91 financing documents, all moneys in the funds, accounts, and sub-
 92 accounts established thereby, including investments therein.

93 (c) Such other property, assets, and moneys of the
 94 Authority as shall be pledged pursuant to the financing
 95 documents, in each case to the extent provided by the Board of
 96 Supervisors pursuant to the financing documents. The funds
 97 pledged to one series of obligations may be different than the
 98 funds pledged to other series of obligations. Pledged funds
 99 shall not include any ad valorem tax revenues or general fund

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100 account of the Authority unless first approved by a vote of the
 101 qualified electors within the service area of the Authority.

102 (8)-(7) "Project" means any structure, property, or
 103 facility which the Authority, from time to time, may determine
 104 to construct or acquire as part of its Authority facilities,
 105 together with all improvements, equipment, structures, and other
 106 facilities necessary or appropriate in connection therewith.
 107 This term is to be broadly construed so as to include the lawful
 108 undertaking which will accrue, or is reasonably expected to
 109 accrue, to the benefit of the Authority facilities, including
 110 joint ventures and acquisitions of partial interests or
 111 contractual rights. "Project" shall include, but not be limited
 112 to, acquisition or transfer of any water or wastewater utility
 113 system, water or wastewater utility assets, or securing the
 114 right to provide any water or wastewater utility service as
 115 provided for in one or more interlocal agreements between the
 116 Osceola County Board of County Commissioners and the City
 117 Commission of the City of Kissimmee or any other governmental
 118 body. "Project" may also include working capital, as well as any
 119 costs or judgments associated with litigation.

120 (9)-(8) "Ratepayer" means any natural person who pays
 121 rates, fees, or charges on a recurring basis to the Authority,
 122 or who is an official, officer, member, or employee of any
 123 entity, public or private, that pays rates, fees, or charges on
 124 a recurring basis to the Authority.

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125 ~~(10)~~⁽⁹⁾ "Service area" means the geographic boundaries
126 within which the Authority provides, or is otherwise authorized
127 pursuant to the provisions of this act to provide, water or
128 wastewater services or facilities.

129 Section 4. District Establishment and Creation.

130 (2) The District boundary shall embrace and include:

131 (a) The territory within Osceola County consisting of the
132 incorporated area of the City of Kissimmee and including those
133 areas served or provided with water and wastewater service by
134 the City of Kissimmee on June 26, 2003 ~~the effective date~~
135 ~~hereof~~.

136 (b) All unincorporated areas within Osceola County, less
137 and except any areas included within the Reedy Creek Improvement
138 District, on June 26, 2003, ~~the effective date hereof~~, and less
139 and except the territory within Osceola County consisting of the
140 incorporated area of the City of St. Cloud, and including those
141 unincorporated areas authorized by law to be served or provided
142 with water and wastewater service by the City of St. Cloud on
143 June 26, 2003 ~~the effective date hereof~~. This act shall not be
144 construed to prohibit or inhibit the City of St. Cloud from
145 lawfully extending, expanding, or providing authorized municipal
146 services and facilities as provided for in section 180.02(3),
147 Florida Statutes. The Authority shall be estopped in any future
148 proceeding conducted pursuant to section 180.03 or section
149 180.04, Florida Statutes, by the City of St. Cloud, or any

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150 action arising therefrom, from asserting or claiming the
 151 willingness and ability to provide potable water or wastewater
 152 service to:

153 1. All lands in Osceola County, Florida, lying in Section
 154 8, Township 25 South, Range 31 East.

155 2. All lands in Osceola County, Florida, lying in Section
 156 5, Township 25 South, Range 31 East lying easterly of the
 157 eastern boundary of Fells Cove Subdivision, according to the
 158 plat recorded in the Public Records of Osceola County, Florida,
 159 (including specifically the Floridian R.V. Park).

160 3. All lands in Osceola County, Florida lying within
 161 Florida Turnpike right-of-way in the Northwest quarter (NW1/4)
 162 Section 36, Township 27 South, Range 30 East (Canoe Creek DOT
 163 facility).

164
 165 The District boundary may be expanded to include any service
 166 area within the boundaries of an affected general purpose local
 167 government upon the adoption of a resolution by the governing
 168 body of the affected general purpose local government
 169 authorizing the Authority to provide its service and facilities
 170 therein.

171 Section 6. Governing Body.

172 (1) The governing body of the Authority shall consist of
 173 voting five permanent members, appointed as provided herein, and
 174 ~~one or more interlocal members, as may be appointed,~~ acting as

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175 the Board of Supervisors, each of whom shall serve a term of 3
176 years commencing on October 1, provided the procedure for
177 appointment of the voting members of the Board of Supervisors
178 and their respective ~~initial~~ terms of office shall be as
179 follows:

180 (a) Board Supervisor No. 1 and Board Supervisor No. 2
181 shall serve terms ending on September 30, 2020, and staggered 3-
182 year terms each 3 years thereafter ~~for initial terms of~~
183 ~~approximately 2 years, ending on September 30, 2005.~~ Board
184 Supervisor No. 1 shall be appointed by the Osceola County Board
185 of County Commissioners. Board Supervisor No. 2 shall be
186 appointed by the City Commission of the City of Kissimmee.

187 (b) Board Supervisor No. 3 and Board Supervisor No. 4
188 shall serve terms ending on September 30, 2018, and staggered 3-
189 year terms each 3 years thereafter ~~initial terms of~~
190 ~~approximately 3 years, ending on September 30, 2006.~~ Board
191 Supervisor No. 3 shall be appointed by the Osceola Board of
192 County Commissioners. Board Supervisor No. 4 shall be appointed
193 by the City Commission of the City of Kissimmee.

194 (c) Board Supervisor No. 5 shall serve a ~~an initial~~ term
195 ~~of approximately 4 years,~~ ending September 30, 2018, and
196 staggered 3-year terms each 3 years thereafter ~~2007.~~ Board
197 Supervisor No. 5 shall be ~~collectively~~ appointed by ~~joint~~
198 ~~resolution of the~~ Polk ~~Osceola~~ County Board of County
199 Commissioners ~~and the City Commission of the City of Kissimmee~~

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200 ~~and shall serve as the Chairperson of the Board of Supervisors.~~
 201 At the expiration or termination without replacement of an
 202 interlocal agreement between Polk County and the Authority
 203 authorizing the Authority to provide its potable or nonpotable
 204 water or wastewater management or delivery services or programs
 205 to retail customers within Polk County, the term of Board
 206 Supervisor No. 5 shall terminate immediately, creating a
 207 vacancy. In the event there are only four voting members of the
 208 Board of Supervisors due to expiration or termination of any
 209 interlocal agreement, a fifth voting member shall be appointed
 210 by joint resolution of the remaining general purpose local
 211 governments then authorized to appoint voting members to the
 212 Board of Supervisors.

213 (d) By resolution, ~~one~~ additional members of the Board of
 214 Supervisors ~~Supervisor~~ may be appointed by Polk County or an
 215 ~~each~~ additional general-purpose local government that has
 216 adopted a resolution authorizing the Authority to provide
 217 services and facilities within a service area within its
 218 boundaries and that has entered into an interlocal agreement
 219 with the Authority authorizing the Authority to provide its
 220 potable or nonpotable water or wastewater management or delivery
 221 services or programs to retail customers within such service
 222 area, provided such interlocal agreement expressly provides for
 223 the appointment of such interlocal voting member of the Board of
 224 Supervisors. Such appointment shall be effective only for so

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225 long as the interlocal agreement is effective. Any interlocal
 226 voting member appointed to the Board of Supervisors shall serve
 227 an initial term of not more than 3 years, ending on September 30
 228 of the final year of the term. The final year of any such term
 229 shall be determined such that successive terms are staggered so
 230 no more than a minimum of members of the Board of Supervisors
 231 are ever due to be appointed in any year.

232 (2) All members of the Board of Supervisors shall be
 233 ratepayers and qualified electors of Osceola County or of the
 234 service area ~~adjacent to Osceola County~~ in which the District
 235 has been authorized to operate. Each of the general purpose
 236 local governments responsible for appointing members shall
 237 consider but is not required to appoint members with business,
 238 real estate development, engineering, accounting, financial,
 239 scientific, utility, governmental, or public service
 240 backgrounds.

241 (3) Board members shall not be appointed to or serve no
 242 more than three ~~3~~ consecutive 3-year terms, not including any
 243 partial initial term which may be held or is served for fewer
 244 than 548 days ~~as provided for herein.~~

245 (4) Upon the occasion of a vacancy for any reason in the
 246 term of office of a member of the Board of Supervisors or in the
 247 event there are only four voting members of the Board of
 248 Supervisors due to expiration or termination of any interlocal
 249 agreement, which vacancy occurs prior to the replacement of the

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250 member by appointment and which remains unfilled for 60 days
251 after such vacancy due to the failure of the respective general
252 purpose local government governing body to duly appoint a
253 successor as provided in subsection (1), a successor shall be
254 appointed by the Governor. Any person appointed to fill a
255 vacancy shall be appointed to serve only for the unexpired term
256 and until a successor is duly appointed.

257 (5) The Board of Supervisors shall annually elect a
258 Chairperson, Vice Chairperson, Secretary, and such other
259 officers of the Authority as may be hereafter designated and
260 authorized by the Board of Supervisors, each of whom shall serve
261 for 1 year commencing as soon as practicable after October 1 and
262 until his or her successor is chosen. The Chairperson, Vice
263 Chairperson, and Secretary shall conduct the meetings of the
264 Authority and perform such other functions as herein provided.
265 The Chairperson, ~~and~~ Vice Chairperson, and any other duly
266 appointed person shall take such actions and have all such
267 powers and sign all documents on behalf of the Authority in
268 furtherance of this act or as may be approved by resolution of
269 the Board of Supervisors adopted at a duly called meeting. The
270 Vice Chairperson, in the Chairperson's absence, shall preside at
271 all meetings. The Secretary, or his or her designee, shall keep
272 minutes of all meetings, proceedings, and acts of the Board of
273 Supervisors, but such minutes need not be verbatim. Copies of
274 all minutes of the meetings of the Authority shall promptly be

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275 sent by the Secretary, or his or her designee, to all members of
276 the Board of Supervisors and to each general purpose local
277 government located within the District or the service area. The
278 Secretary may also attest to the execution of documents. The
279 Secretary shall have such other powers as may be approved by
280 resolution of the Board of Supervisors adopted at a duly called
281 meeting.

282 ~~(7) The members of the Board of Supervisors shall receive~~
283 ~~as compensation for their services a fee of \$100 per meeting,~~
284 ~~not to exceed 3 meetings per month. The amount of compensation~~
285 ~~shall be adjusted annually based upon the index provided in~~
286 ~~section 287.017(2), Florida Statutes, or its successor in~~
287 ~~function. In addition, each member of the Board of Supervisors~~
288 ~~shall be reimbursed for expenses as provided in section 112.061,~~
289 ~~Florida Statutes, or otherwise approved by the Board of~~
290 ~~Supervisors for travel on Authority business outside of the~~
291 ~~boundaries of the District or service area of the District.~~

292 (7)(8) A majority of the Board of Supervisors shall
293 constitute a quorum for the transaction of business of the
294 Authority. The affirmative vote of the majority of the members
295 of the Board of Supervisors present and voting (exclusive of any
296 member having a conflict) shall be necessary to transact
297 business. However, any increase in rates, fees, or charges shall
298 require the affirmative vote of a majority of the entire Board
299 of Supervisors.

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300 Section 8. Meetings; Notice. The Board of Supervisors
 301 shall hold meetings pursuant to section 189.015, ~~sections~~
 302 ~~189.416 and 189.417~~, Florida Statutes.

303 Section 9. Reports; Budgets; Audits. The District shall
 304 prepare and submit reports, budgets, and audits as provided in
 305 section 189.016, ~~sections 189.415 and 189.418~~, Florida Statutes.

306 Section 10. District Powers, Functions, and Duties.

307 (1) The Authority shall have all powers to carry out the
 308 purposes of this act and the functions and duties provided for
 309 herein, including the following powers which shall be in
 310 addition to and supplementing any other privileges, benefits,
 311 and powers granted by this act or general law:

312 (m) To contract with private or public entities or persons
 313 to obtain, provide, treat, distribute, or receive potable and
 314 nonpotable water or to provide or receive wastewater disposal,
 315 collection, or treatment; and, to additionally enjoy all powers
 316 necessary to contract by interlocal agreement with the state or
 317 any general or special purpose local government to manage,
 318 treat, store, or provide for surface run-off or stormwater
 319 management, detention, retention, recovery, protection, use, or
 320 any similar activity which makes available, protects, conserves,
 321 or otherwise uses nonpotable water, including, but not limited
 322 to, the establishment or assistance in the operation of any
 323 reservoir or stormwater utility program, special or non-ad
 324 valorem assessment program, or the imposition, levy, billing,

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325 collection, and enforcement of payment for such projects or
 326 services for any associated rates, fees, or charges therefor.

327 Section 12. Adoption of Rates, Fees, and Charges.

328 (4) In the event the Authority acquires, purchases,
 329 assumes, or accepts ownership of any publicly or privately owned
 330 water or wastewater facilities or systems, the Authority may
 331 agree to set, freeze, and not increase any rates, fees, or
 332 charges to any affected class or customers of the acquired
 333 facilities for up to 4 full calendar years following such
 334 acquisition, and in exchange for such value and concessions as
 335 the Board deems reasonable and appropriate. Provided, however,
 336 the Board shall not set and freeze such rates, fees, and charges
 337 for amounts less than similar rates, fees, and charges for
 338 amounts less than similar rates, fees, and charges then charged
 339 or imposed upon other Authority customers. ~~Except as required by~~
 340 ~~any covenant to timely meet, perform, or repay any obligations~~
 341 ~~under any financing documents or as described in subsections (7)~~
 342 ~~and (8), no rates, fees, or charges shall be increased or~~
 343 ~~adopted for 2 years after the effective date of this act, unless~~
 344 ~~the Authority causes a rate consultant to review its rates,~~
 345 ~~fees, charges, gross revenue, operating expenses, and methods of~~
 346 ~~operation and determines that such increase is either predicated~~
 347 ~~upon implementing an identified capital improvement plan or~~
 348 ~~meeting state or federal conservation or water demand management~~
 349 ~~requirements.~~

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350 Section 13. System Development Charges; Impact Fees.

351 (6) Nothing in this act shall be construed to invalidate
 352 any system development charges, impact fees, or other capital
 353 contribution charges previously levied or collected by Osceola
 354 County, ~~or~~ the City of Kissimmee, or any other local government
 355 or under any implied authority to levy and collect such charges;
 356 such charges being in the nature of impact fees are hereby
 357 ratified and confirmed.

358 Section 18. Planning Requirements.

359 (1) At least once every 4 years after 2018, ~~Within 3 years~~
 360 ~~after the effective date of this act,~~ the Board of Supervisors
 361 shall adopt or update a master plan which, among other things:

362 (a) Identifies current customers, projects, and future
 363 customers.

364 (b) Profiles customers (residential and non-residential,
 365 e.g. commercial, industrial).

366 (c) Reviews and generally inventories all existing
 367 infrastructure and treatment facilities within the boundaries of
 368 or served by the District.

369 (d) Identifies a capital improvement program for the
 370 Authority.

371 (e) Reviews all current permits and existing regulations
 372 to projected regulations.

373 (f) Identifies and evaluates potential acquisitions or
 374 service expansions.

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- 375 (g) Evaluates Authority staffing.
- 376 (h) Provides for detailed mapping of Authority facilities.
- 377 (i) Provides for hydraulic analysis of Authority
378 facilities, both existing and proposed.
- 379 (j) Evaluates present and future sources of raw water and
380 treatment requirements for those sources in terms of capacity,
381 reliability, and economy.
- 382 (k) Provides for an analysis of all available wastewater
383 alternatives, including surface water discharge, wetlands
384 discharge, percolation facilities, spray irrigation, and deep
385 well injection.
- 386 (l) Identifies reclaimed water storage alternatives and
387 wet weather backup alternatives.
- 388 (m) Identifies current and potential high volume users of
389 reclaimed water.
- 390
- 391 ~~Thereafter,~~ The Board of Supervisors shall review and, if
392 necessary, amend the master plan periodically, but no less often
393 than every 4 years.
- 394 (5) The Authority shall comply with the provisions of part
395 VI of chapter 189, sections 189.415 and 189.4155, Florida
396 Statutes.
- 397 Section 19. Merger; Dissolution.
- 398 (1) In no event shall a merger involving the Authority be
399 permitted unless otherwise approved by resolution of all

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400 affected general purpose local governments. ~~Upon the effective~~
 401 ~~date of this act, any governmental utility authority created by~~
 402 ~~interlocal agreement between Osceola County and the City of~~
 403 ~~Kissimmee as a separate legal authority pursuant to section~~
 404 ~~163.01(7)(g), Florida Statutes, may be merged into the Authority~~
 405 ~~and this act shall be the surviving charter for the Authority in~~
 406 ~~all respects.~~

407 Section 20. Effect of Incorporation or Presence of Another
 408 Special District. To the maximum extent permitted by law, the
 409 subsequent incorporation or annexation of any area included
 410 within the boundaries of the District or service area after June
 411 26, 2003, or the presence or creation of any special district
 412 within the boundaries of the District or service area, shall not
 413 impair or alter the authority, power, obligations, or purpose of
 414 the Authority or its successor in providing water and wastewater
 415 services and facilities within any portion of the District's
 416 boundaries or authorized service area ~~now~~ included within
 417 Osceola County, any municipality, or special district or
 418 subsequently included within any county, municipality, or
 419 special district. Nothing herein shall be construed to limit or
 420 affect the powers of any municipal services benefit unit or
 421 dependent special district established by any charter county.

422 Section 2. This act shall take effect upon becoming a law.