

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1303 Brevard and Volusia Counties

**SPONSOR(S):** State Affairs Committee, Plasencia

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration Subcommittee	9 Y, 0 N	Moehrle	Miller
2) Ways & Means Committee	15 Y, 0 N	Berg	Langston
3) State Affairs Committee	21 Y, 0 N, As CS	Moehrle	Williamson

### SUMMARY ANALYSIS

Special districts are units of local government created for a particular purpose, with jurisdiction to operate within a limited geographical 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 creates the Deering Park Stewardship District (District) in Brevard and Volusia Counties and the City of Edgewater. The District's purpose is to install, operate, and maintain community infrastructure.

The Economic Impact Statement projects expenditures of \$0 in Fiscal Year (FY) 2020-21 and \$0 in FY 2021-22. The District is authorized to levy special assessments, fees, and non-ad valorem assessments and is 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 effects upon becoming a law, except that provisions authorizing the levy of ad valorem taxes 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

##### 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,<sup>1</sup> special act,<sup>2</sup> local ordinance,<sup>3</sup> or rule of the Governor and Cabinet.<sup>4</sup> 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.<sup>5</sup>

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 the governing body of a single county or municipality.<sup>6</sup> An “independent special district” is any district that is not a dependent special district.<sup>7</sup>

##### *Formation and Charter of an Independent Special District*

With the exception of community development districts (CDDs),<sup>8</sup> the charter for any new independent special district must include the minimum elements required by ch. 189, F.S.<sup>9</sup> 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.;<sup>10</sup>
- Exempt district elections from the requirements of s. 189.04, F.S.;<sup>11</sup>
- Exempt a district from the requirements for bond referenda in s. 189.042, F.S.;<sup>12</sup>
- Exempt a district from certain requirements relating to<sup>13</sup> issuing bonds if no referendum is required,<sup>14</sup> requiring special district reports on public facilities,<sup>15</sup> notice and reports of special district public meetings,<sup>16</sup> or required reports, budgets, and audits;<sup>17</sup> or
- Create a district for which a statement documenting specific required matters is not submitted to the Legislature. The statement must include:
  - The purpose of the proposed district;

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<sup>1</sup> S. 189.031(3), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> S. 189.02(1), F.S.

<sup>4</sup> S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.

<sup>5</sup> 2018 – 2020 *Local Gov’t Formation Manual* at p. 64, available at

<https://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3074> (last visited Jan. 2, 2020).

<sup>6</sup> S. 189.012(2), F.S.

<sup>7</sup> S. 189.012(3), F.S.

<sup>8</sup> S. 189.0311, F.S. *See* s. 190.004, F.S. (providing that ch. 190, F.S., governs the functions and powers of independent CDDs).

<sup>9</sup> S. 189.031(1) and (3), F.S.

<sup>10</sup> S. 189.031(2)(a), F.S.

<sup>11</sup> S. 189.031(2)(b), F.S.

<sup>12</sup> S. 189.031(2)(c), F.S.

<sup>13</sup> S. 189.031(2)(d), F.S.

<sup>14</sup> S. 189.051, F.S.

<sup>15</sup> S. 189.08, F.S.

<sup>16</sup> S. 189.015, F.S.

<sup>17</sup> S. 189.016, F.S.

- 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 the proposed district is consistent with approved local government plans and the local government does not object to creation of the district.<sup>18</sup>

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

The charter of a newly created district must state whether it is dependent or independent.<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup>

### *Election of Special District Boards*

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

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.<sup>26</sup> A petition signed by 10 percent of the qualified electors must be filed with the governing body of the district requesting a referendum.<sup>27</sup> 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.<sup>28</sup>

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

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.<sup>31</sup> For the

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<sup>18</sup> S. 189.031(2)(e), F.S.

<sup>19</sup> Ch. 89-169, s. 67, Laws of Fla.

<sup>20</sup> Art. III, s. 11(a)(21), Fla. Const.

<sup>21</sup> S. 189.031(5), F.S.

<sup>22</sup> S. 189.031(3), F.S.

<sup>23</sup> Art. VII, s. 9(a), Fla. Const.

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

<sup>25</sup> 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).

<sup>26</sup> S. 189.041(2)(a)1.a., F.S.

<sup>27</sup> S. 189.041(2)(a)1.b., F.S.

<sup>28</sup> S. 189.041(2)(a)2., F.S.

<sup>29</sup> S. 189.041(2)(a)3., F.S.

<sup>30</sup> S. 189.041(2)(a)4., F.S.

<sup>31</sup> S. 189.041(2)(b)1., F.S.

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 by 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.<sup>32</sup>

The maps describing the urban areas must be presented to the governing body of the district within 60 days after the referendum.<sup>33</sup> 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.<sup>34</sup> If a landowner or elector raises an objection to the map, the map is submitted to the county engineer for review.<sup>35</sup> 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.<sup>36</sup> A landowner or elector may contest the accuracy of the map by filing a petition in circuit court within 30 days.<sup>37</sup>

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.<sup>38</sup> The maps must be readopted every five years, but may be readopted sooner at the discretion of the governing body of the district.<sup>39</sup>

The composition of the board is determined by the percentage of the district that is an urban area, as follows:<sup>40</sup>

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

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<sup>32</sup> S. 189.041(1)(b), F.S.  
<sup>33</sup> S. 189.041(2)(b)2., F.S.  
<sup>34</sup> S. 189.041(1)(b) and (2)(b)3., F.S.  
<sup>35</sup> S. 189.041(2)(b)3., F.S.  
<sup>36</sup> S. 189.041(2)(b)4., F.S.  
<sup>37</sup> S. 189.041(2)(b)5., F.S.  
<sup>38</sup> S. 189.041(2)(b)6., F.S.  
<sup>39</sup> S. 189.041(2)(b)8., F.S.  
<sup>40</sup> S. 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 meeting following the referendum, who serve the following terms:<sup>41</sup>

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

### Community Development Districts

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

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.<sup>49</sup> 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,<sup>50</sup> maintain an office, lease property, issue bonds, raise money by user charges or fees, and levy and enforce special assessments.<sup>51</sup>

CDDs may also exercise 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 shelters, ridesharing facilities and services, parking improvements, signage, environmental

<sup>41</sup> S. 189.041(3)(b), F.S.

<sup>42</sup> S. 189.041(3)(c)1., F.S.

<sup>43</sup> S. 189.041(3)(c)2., F.S.

<sup>44</sup> S. 189.041(3)(c)3., F.S.

<sup>45</sup> S. 190.001, F.S.

<sup>46</sup> Ss. 190.004 and 190.005, F.S.

<sup>47</sup> S. 190.003(6), F.S.

<sup>48</sup> Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx/> (last visited Jan. 2, 2020).

<sup>49</sup> S. 190.004(3), F.S.

<sup>50</sup> Ch. 120, F.S.

<sup>51</sup> S. 190.011, F.S.

contamination, conservation areas, mitigation areas, and wildlife habitat.<sup>52</sup> 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 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.<sup>53</sup>

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)<sup>54</sup> to adopt an administrative rule creating the district, while CDDs of less than 2,500 acres 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.<sup>55</sup>

### **Effect of Proposed Changes**

The bill creates the Deering Park Steward District (District), an independent special district in Brevard and Volusia Counties and the City of Edgewater, and provides a charter for the District. The District's purpose is to install, operate, and maintain community infrastructure in Brevard and Volusia Counties and the City of Edgewater. Section 1 of the bill provides the short title for the act.

#### Legislative Findings, Legislative Intent and Policy (Charter Section 2)

The bill provides legislative findings and intent, providing that the District will facilitate a comprehensive community development approach that integrates regional transportation, land use, and urban design elements to provide for a mix of housing, employment, and economic development opportunities.

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, that the creation of multiple CDDs would result in inefficient and duplicative layers of local special-purpose government, and a separate independent special district is better able to integrate the management of state resources and allow for coordinated stewardship of natural resources.

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 Brevard County, Volusia County, and City of Edgewater comprehensive plans. The bill creation of the District will not affect any existing conservation easements that have been recorded on portions of the property. The intent and purpose of the District is that no debt or obligation be placed on Brevard County, Volusia County, or the City of Edgewater without the consent of the counties or the City.

The bill requires the District to receive approval by resolution or official statement from the respective Boards of County Commissioners for Brevard County and Volusia County and the City of Edgewater City Council 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 (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.

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

<sup>53</sup> S. 190.012(2), F.S.

<sup>54</sup> 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.

<sup>55</sup> S. 190.005(1) and (2), F.S.

The bill states the District is a “public body corporate and politic,” an independent special district, and any additional power granted to a CDD under ch. 190, F.S., after January 1, 2020, also constitutes 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 Brevard County, Volusia County, and the City of Edgewater as evidenced by an interlocal agreement or a development order.

District Boundaries (Charter Section 4)

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

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

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

A meeting of the landowners of the District must be held within 90 days after 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 must elect a chair from among attendees to conduct the meeting. The chair may nominate candidates and make motions if that person is a landowner or holds the proxy of a landowner. The landowners present constitute a quorum, even if they represent less than 50 percent of the total acreage of the District, and such landowners 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 terms expiring November 17, 2024, while the two candidates receiving the fourth and fifth highest number of votes are elected to terms expiring November 20, 2022.

Each landowner is entitled to one vote for each acre owned. 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 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:

<b>Number of Qualified Electors</b>	<b>Number of Board Members Elected by Landowners</b>	<b>Number of Board Members Elected by Qualified Electors</b>
0-15,021	5	0
15,022-30,043	4	1
30,044-45,065	3	2
45,066-60,087	2	3
60,088-75,109	1	4
75,110 or more	0	5

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.

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 Brevard and Volusia 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 and must be qualified electors of the District. In addition, Board members must 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 the act. In the event of a vacancy, the remaining members of the Board may appoint someone 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 must 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 must 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.

Board Members may receive compensation up to the amount authorized for the supervisors of a CDD and are entitled to travel and per diem expenses as provided in s. 112.061, F.S.<sup>56</sup>

In addition, Board members must meet ethics and conflict of interest provisions under general law for local public officials.<sup>57</sup>

The bill prohibits the District from levying ad valorem taxes until all members of the Board are elected by qualified electors of the District.<sup>58</sup>

### General Duties of the Board (Charter 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 Board sets the compensation of the treasurer and may require the treasurer to post a surety bond. The bill requires the financial records of the Board be audited by an independent certified public accountant in accordance with general law requirements.<sup>59</sup> The Board, in conjunction with the treasurer, must select a qualified public depository for the funds of the District.

#### *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, and the Board must submit a copy of its budget to the respective Boards of County Commissioners for Brevard County and Volusia County and the City of Edgewater City Council for informational purposes at least 60 days prior to its adoption.

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<sup>56</sup> S. 190.006(8), F.S., provides that supervisors of a CCD may receive compensation of no greater than \$200 per meeting and no more than \$4,800 per year, unless electors approve a higher amount in a referendum.

<sup>57</sup> See ch. 112, Part III, F.S. (code of ethics for public officers and employees),

<sup>58</sup> The Board must 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.”)

<sup>59</sup> As an independent special district, the District must maintain a public website on which it must post its annual budget and any amendments, all required financial reports and audits of the District’s finances, and a link to the Department of Financial Services’ website. Ss. 189.016 and 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.

The Board must provide both the respective Boards of County Commissioners for Brevard County and Volusia County and the City of Edgewater City Council 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 residential 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;<sup>60</sup>
- 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.

### *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, including irrigation systems and facilities, for the lands within the District and to connect some or any of such facilities with roads and bridges;
- Water supply, sewer, wastewater, and reclaimed water management, reclamation, and reuse, provided it does not impair or alter the City of Edgewater's utility service areas;
- 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;

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<sup>60</sup> 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).

- 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, mitigation, wetland creation, and wildlife habitat areas;
- 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;<sup>61</sup>
- Control and elimination of mosquitoes and other arthropods of public health importance;
- Enter into impact fee, mobility fee, or other similar credit agreements with Brevard County, Volusia County, City of Edgewater, other governmental bodies, 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;
- Governmental departments of the Board, which must be established and created at noticed meetings;
- Sustainable or green infrastructure improvements, facilities, and services;<sup>62</sup>
- Any facilities or improvements that may otherwise be provided by a county or municipality, including, but not limited to, libraries, annexes, substations, and other buildings to house public officials, staff, and employees;
- Waste collection and disposal, provided that it does not impair or alter the City of Edgewater's provision of solid waste management services within the city limits;
- Construction and operation of communications systems and related infrastructure;<sup>63</sup>
- Health care facilities, including the ability to enter public-private partnerships and agreements as necessary to accomplish this task; 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 Brevard and Volusia County Boards of County Commissioners or with any other applicable public or private entity, and is not inconsistent with effective local comprehensive plans or the general or special powers contained in the bill.

The bill also grants the District the power to enter into interlocal agreements with any public or private entity for the provision of an institution or institutions of higher education.

### *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 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.<sup>64</sup>

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

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<sup>61</sup> The District may contract with the appropriate local general purpose government agencies for an increased level of services within the District boundaries.

<sup>62</sup> The bill provides that this provision does not authorize the District to provide electric services or otherwise impair electric utility franchise agreements.

<sup>63</sup> The bill provides that this provision does not authorize the District to provide communication services to retail customers or otherwise impair existing service provider franchise agreement.

<sup>64</sup> The charter specifies that a default on a bond or obligation of the District does not constitute a debt or obligation on behalf of the state or any general-purpose local government.

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 may 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 fees and costs, may be recovered by the District in a civil action. 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 operates 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 \$195,000<sup>65</sup> is subject to competitive bidding through a notice of bids published once in a newspaper of general circulation in Brevard and Volusia Counties. 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 any other applicable

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<sup>65</sup> See s. 287.017(1)(d), F.S. (creating purchasing categories for procurement of personal property and services).

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<sup>66</sup> apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services.

Contracts for maintenance services that exceed \$195,000<sup>67</sup> are subject to competitive bidding. Any 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 to obtain a resolution or official statement of support from both the respective Boards of County Commissioners for Brevard County and Volusia County and the City of Edgewater City Council before asking the Legislature to expand or contract the District. The bill states the District exists until dissolved by the Legislature or declared inactive by the Department of Economic Opportunity.<sup>68</sup>

#### *Notice to Purchasers of Property*

After 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.

#### *Merger with Community Development Districts*

The bill provides that the District may merge with one or more CDDs situated wholly within its boundaries. Any CDD within the boundaries of the District may initiate the merger process by filing a written request for merger with the District, Brevard and Volusia Counties, and the City of Edgewater.

The District, with Board approval, may enter into a merger agreement with the CDD to provide for the allocation and retirement of debt, transition of the CDD board, and the transfer of all financial obligations and operating and maintenance responsibilities to the District. The bill provides that execution of the merger agreement between the District and the CDD constitutes consent by the landowners within each district.

The District and each CDD requesting merger is required to hold a public hearing within their respective boundaries to provide information and take public comment. The hearing must be held within 45 days after the execution of the merger agreement and must be noticed in a newspaper of general circulation in Brevard County and Volusia County at least 14 days before the hearing. At the conclusion of the hearing, the respective districts are required to adopt a resolution approving or disapproving the merger. If the merger is approved, the resolutions and merger agreement must be filed with Brevard County, Volusia County and the City of Edgewater. Upon receipt of the resolutions and merger

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<sup>66</sup> S. 287.055, F.S.

<sup>67</sup> *Id.*

<sup>68</sup> S. 189.062, F.S.

agreement, the county or city which originally established the CCD must adopt an ordinance dissolving each CDD pursuant to s. 190.046(10), F.S.

*Economic Impact*

The Economic Impact Statement projects expenditures of \$0 in Fiscal Year (FY) 2020-21 and \$0 in FY 2021-22.

**B. SECTION DIRECTORY:**

- Section 1: Provides short title.
- Section 2: Provides legislative findings and intent; definitions.
- Section 3: Creates the Deering Park Stewardship District and provides a charter for the District
- Section 4: Provides the legal description of the District.
- Section 5: Provides membership, meetings, and organization of Board of Supervisors; provides powers, duties, terms of office of Board.
- Section 6: Provides general duties of Board.
- 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 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? November 26 and 27, 2019.

WHERE? The News-Journal, a daily newspaper of general circulation in Volusia County (Nov. 26, 2019), and Florida Today, a daily newspaper of general circulation in Brevard County (Nov. 27, 2019).

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  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes  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, be adopted and enforced pursuant to ch. 120, F.S., the Administrative Procedure Act.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Exceptions to General Law

Sections 5(2) and 5(3) of Section 5 of the bill provide for the composition of the Board, 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, 2020, granting additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter contained in ss. 190.006-190.041, Florida Statutes, which are not inconsistent with this act, shall constitute a general power, special power, authority, or function of the 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 such additional authority will be granted to the District without further Legislative review or enactment.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 13, 2020, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment authorized the District to resell communications at the retail level and clarified that the District must comply with s. 350.81, F.S., when contracting for such resale of services.

The analysis is drafted to the committee substitute as approved by the State Affairs Committee.