

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1035 Loxahatchee River Environmental Control District, Martin and Palm Beach Counties

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee; Roth and Snyder

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

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1035 passed the House on April 15, 2021, and subsequently passed the Senate on April 29, 2021.

The Loxahatchee River Environmental Control District (District) is an independent special district created in 1971 by special act. The charter of the District was most recently codified in 2002. The District operates a sewer and wastewater system serving the Towns of Jupiter and Juno Beach, the Village of Tequesta, and unincorporated portions of southern Martin County and northern Palm Beach County.

The bill provides for the codification of existing special acts concerning the District, makes conforming changes, and repeals the existing special acts governing the District.

The bill also make the following revisions to the charter of the District:

- Clarifies that the District's authority to provide necessary laboratories and facilities for testing of operating systems includes the ability to assess water quality, critical habitats, and environmental health within the Loxahatchee River watershed;
- Authorizes the District to conduct environmental education to minimize damage to the area's resources and environment, prevent additional environmental problems from being created, and providing education regarding solutions to existing problems;
- Authorizes the District to conduct environmental enhancements as necessary and appropriate to minimize damage to the area's resources and environment, to prevent additional environmental problems from being created, and to provide solutions to existing environmental problems;
- Explicitly authorizes the board of the District to lease or otherwise convey any temporary interests or rights in lands to which the district has title, including the ability to enter into public or private partnerships, and conduct a public hearing before approving any agreement; and
- Provides a limitation on the District's liability for use of District lands for passive outdoor recreation activities.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-249, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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

An “independent special district” is characterized by having a governing board comprised of members which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality.⁵ Additionally, a district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.

Formation and Charter of an Independent Special District

With the exception of community development districts,⁶ the charter for any new independent special district must include the minimum elements required by statute.⁷ Special laws or general laws of local application relating to any special district may not create a special district with a charter that does not conform to the minimum statutory requirements,⁸ create a district for which a statement documenting specific required matters is not submitted to the Legislature,⁹ or exempt a district from certain other statutory requirements.¹⁰ These prohibitions were passed by a three-fifths majority in the House and Senate when ch. 189, F.S., originally was adopted.¹¹ They may be amended or repealed only “by like vote.”¹²

¹ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

² See ss. 189.031(3), 189.02(1), and S. 190.005(1), F.S. See generally s. 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 2020-2022 *The Local Government Formation Manual*, p. 70, at <https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf>, (last visited Mar. 4, 2021) (hereinafter *Local Government Manual*).

⁴ *Local Government Manual* at 65.

⁵ S. 189.012(3), F.S.

⁶ S. 189.0311, F.S. See s. 190.004, F.S. (providing that ch. 190, F.S., governs the functions and powers of independent community development districts).

⁷ S. 189.031(1), F.S. S. 189.031(3), F.S., sets forth the minimum charter requirements for an independent special district.

⁸ S. 189.031(2)(a), F.S.

⁹ S. 189.031(2)(e), F.S. (providing that each required statement filed with the Legislature must include the purpose of the proposed district, the authority of the 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 district is consistent with approved local planning and the local government does not object to creation of the district).

¹⁰ These include election requirements (s. 189.04, F.S.), requirements for issuing bonds, including referenda (ss. 189.042, 189.051, F.S.), reports on public facilities (s. 189.08, F.S.), notice and reports of public meetings (s. 189.015, F.S.), or required reports, budgets, and audits (s. 189.016, F.S.). See s. 189.031(2), F.S.

¹¹ Ch. 89-169, s. 67, Laws of Fla.

¹² Art. III, s. 11(a)(21), Fla. Const.

The charter of a newly created district must state whether it is dependent or independent.¹³ Charters of independent special districts must include the purpose of the district, its geographical boundaries, taxing authority, bond authority, and selection procedures for the members of its governing body.¹⁴

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.¹⁵

Codification

Codification is the process of bringing a special district’s charter up-to-date by consolidating it in one place. After a special district is created, special acts often amend or alter the special district’s charter provisions. To ascertain the current status of a special district’s charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters allows readers to more easily determine the current charter of a district.

Current law provided for codification of all special district charters by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district.¹⁶ Reenactment of existing law should not be construed to grant additional authority nor to supersede the authority of an entity; modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; or affect a district’s ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district’s bonded indebtedness.¹⁷ However, such reenactment will maintain exceptions to law contained in special acts reenacted pursuant to s. 189.019, F.S.

Loxahatchee River Environmental Control District

The Loxahatchee River Environmental Control District (District) is an independent special district created in 1971 by special act.¹⁸ The charter of the District was most recently codified in 2002.¹⁹ The District operates a sewer and wastewater system serving the Towns of Jupiter and Juno Beach, the Village of Tequesta, and unincorporated portions of southern Martin County and northern Palm Beach County.²⁰

The District is governed by a five-member board elected to four-year terms representing single-member districts.²¹ Members of the board receive \$100 per month as compensation and are entitled to per diem and travel expenses as provided by law.²² Fees and other charges for operating the sewer system primarily finance the District.²³ The District is also authorized to levy special assessments against

¹³ S. 189.031(5), F.S.

¹⁴ S. 189.031(3), F.S. (minimum charter requirements).

¹⁵ Art. VII, s. 9(a), Fla. Const.

¹⁶ S. 189.019, F.S.

¹⁷ S. 189.019(3), F.S.

¹⁸ Ch. 71-822, Laws of Fla.

¹⁹ Ch. 2002-358, Laws of Fla.

²⁰ *Wastewater Treatment Facility*, Loxahatchee River Environmental Control District, <https://loxahatcheeriver.org/about-us/wastewater-treatment-system/> (last accessed Mar. 8, 2021).

²¹ Ch. 2002-358, s. 4 of s. 3, Laws of Fla.

²² S. 112.061, F.S.

²³ *Loxahatchee River Environmental Control District Annual Budget for FY 2021*, Loxahatchee River Environmental Control District, https://loxahatcheeriver.org/wp-content/uploads/2020/09/Budget-Book_Summary_FY21_Final.pdf (last accessed Mar. 8, 2021). Ch. 2002-358, s. s. 6(9) of s. 3, Laws of Fla.

properties that adjoin, or are in close proximity to, the District's water and sewer lines.²⁴ The District does not levy ad valorem taxes.²⁵

Effect of Proposed Changes

The bill provides for the codification of existing special acts concerning the District, makes conforming changes, and repeals the existing special acts governing the district.

The bill also makes the following revisions to the charter of the District:

- Clarifies that the District's authority to provide necessary laboratories and facilities for testing of operating systems includes the ability to assess water quality, critical habitats, and environmental health within the Loxahatchee River watershed;
- Authorizes the District to conduct environmental education to minimize damage to the area's resources and environment, prevent additional environmental problems from being created, and providing education regarding solutions to existing problems;
- Authorizes the District to conduct environmental enhancements as necessary and appropriate to minimize damage to the area's resources and environment, to prevent additional environmental problems from being created, and to provide solutions to existing environmental problems;²⁶
- Explicitly authorizes the board of the District to lease or otherwise convey any temporary interests or rights in lands to which the district has title, including the ability to enter into public or private partnerships, and conduct a public hearing before approving any agreement; and

Provides a limitation on the District's liability for use of District lands for passive outdoor recreation activities.²⁷

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

²⁴ Ch. 2002-358, s. s. 6(12) of s. 3, Laws of Fla.

²⁵ See *Loxahatchee River Environmental Control District Annual Budget for FY 2021*, Loxahatchee River Environmental Control District, https://loxahatcheeriver.org/wp-content/uploads/2020/09/Budget-Book_Summary_FY21_Final.pdf (last accessed Mar. 8, 2021). Subject to voter approval in a referendum, the District may levy an ad valorem tax of up to 0.25 mills. Ch. 2002-358, ss. 7 and 17 of s. 3, Laws of Fla.

²⁶ The bill defines an "environmental enhancement" as physical activities in the waters of the state or on adjacent uplands that involve system repair, redesign or construction, monitoring, planting, propagating, trimming, culturing, shoreline protection, and hydrologic or other water quality improvements.

²⁷ The bill defines "passive outdoor recreation" to include bicycling, hiking, walking, jogging, wildlife viewing, outdoor photography, kayaking, canoeing, and similar activities. This provision mirrors the existing limitation on liability for water management districts under s. 373.1395, F.S.

None.

C. ECONOMIC IMPACT STATEMENT FILED? Yes No

D. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 25, 2020

WHERE? The *Palm Beach Post*, a daily newspaper of general circulation published in Palm Beach County, Florida.

E. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?