

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1495 Immokalee Water and Sewer District, Collier County

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Melo

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N, As CS	Leshko	Miller
2) State Affairs Committee	22 Y, 0 N	Leshko	Williamson

SUMMARY ANALYSIS

The Immokalee Water and Sewer District (District) is an independent special district in Collier County created in 1978 and the charter was recodified in 1998 (enabling act). The District is authorized to operate and maintain water and sewer systems.

The bill codifies, reenacts, amends, and repeals the special acts relating to the District and makes the following revisions to its charter:

- Adds a definition for “costs.”
- Clarifies the quorum and voting requirements for action by the commissioners.
- Allows the District to disburse funds over the sum of \$5,000 via credit card, providing no interest is incurred and the annual cumulative processing fees are less than the annual credit card rebate.
- Allows the District to write off certain uncollectable customer debt.
- Expands the public entities with which the District may contract to provide or receive a water supply or for sewage disposal, collection, or treatment.
- Revises requirements for District procurements.
- Revises certain District bonding and collection requirements.
- Provides for audits, financial disclosure, meeting notices, reporting, public records maintenance, and planning as required by chs. 189 and 286, F.S.
- Provides tort and personal liability immunity for the District and its officers, agents, and employees.

According to the Economic Impact Statement, the district will incur minimal costs associated with implementing the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.² The charter of a special district created by special act may be altered or amended by subsequent special acts.³ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.⁴ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁵ A “dependent special district” is a special district subject to significant control by the governing body of a single county or municipality.⁶ An “independent special district” is any district that is not a dependent special district.⁷

Formation and Charter of an Independent Special District

With the exception of community development districts,⁸ the charter for an independent special district must include the minimum elements required by ch. 189, F.S.⁹ 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.;¹⁰
- Exempt district elections from the requirements of s. 189.04, F.S.;¹¹
- Exempt a district from the requirements for bond referenda in s. 189.042, F.S.;¹²
- Exempt a district from certain requirements relating to issuing bonds¹³ if no referendum is required,¹⁴ requiring special district reports on public facilities,¹⁵ notice and reports of special district public meetings,¹⁶ or required reports, budgets, and audits;¹⁷ or

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

² See ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; see generally s. 189.012(6), F.S.

³ Local Administration & Veterans Affairs Subcommittee, *Local Bill Policies and Procedures Manual 2020 – 2022*, p. 23, <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Bill+Policy+and+Procedures+Manual.pdf> (last accessed Jan. 29, 2022).

⁴ *Halifax Hospital Medical Center, supra* at 547.

⁵ Local Administration & Veterans Affairs Subcommittee, *The Local Gov’t Formation Manual 2020 – 2022*, pp. 60-61, <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last accessed Jan. 29, 2022).

⁶ S. 189.012(2), F.S. Types of such control include the county or municipality governing body acting as the district governing body, having the authority to appoint or remove at will district board members, or having final approval authority over the district’s budget.

⁷ S. 189.012(3), F.S.

⁸ 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).

⁹ S. 189.031(1), F.S.; Section 189.031(3), F.S., sets forth the minimum charter requirements for an independent special district.

¹⁰ S. 189.031(2)(a), F.S.

¹¹ S. 189.031(2)(b), F.S.

¹² S. 189.031(2)(c), F.S.

¹³ S. 189.031(2)(d), F.S.

¹⁴ S. 189.051, F.S.

¹⁵ S. 189.08, F.S.

¹⁶ S. 189.015, F.S.

¹⁷ S. 189.016, F.S.

- Create a district for which a statement documenting specific required matters is not submitted to the Legislature.¹⁸

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

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.²¹

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.²²

Codification

Codification is the process of consolidating multiple special acts comprising a special district’s charter in one act. After a special district is created, subsequent special acts may amend the district’s charter. Codification of the multiple acts making up a special district’s charter allows readers to more easily determine the boundaries and authority of a district.

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.²³ Reenactment of existing law should not be construed either as granting additional authority nor superseding current authority of the district; modifying or amending any covenants, contracts, or other obligations with respect to bonded indebtedness; or affecting 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.²⁴ However, such reenactment will maintain exceptions to law contained in the charter.

Immokalee Water and Sewer District

The Immokalee Water and Sewer District (District) is an independent special district in Collier County created in 1978²⁵ and the charter was recodified in 1998 (enabling act).²⁶ The District is authorized to operate and maintain water and sewer systems.²⁷ The District levies special assessments and user fees but does not have ad valorem taxation authority.²⁸

The District is governed by a seven-member board of commissioners, appointed by the Governor for four-year terms. A commissioner may continue to serve until a successor is appointed by the Governor. Appointments to fill vacancies on the board must be for the unexpired term only.²⁹

¹⁸ 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).

¹⁹ Ch. 89-169, s. 67, Laws of Fla.

²⁰ Art. III, s. 11(a)(21), Fla. Const. (“SECTION 11. Prohibited special laws.— (a) There shall be no special law or general law of local application pertaining to: ... (21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.”).

²¹ S. 189.031(3), F.S. (setting forth the minimum charter requirements).

²² Art. VII, s. 9(a), Fla. Const.

²³ S. 189.019, F.S.

²⁴ S. 189.019(3), F.S.

²⁵ Ch. 78-494, Laws of Fla.

²⁶ Ch. 98-495, Laws of Fla.

²⁷ Ch. 98-495, s. 4 of section 2, Laws of Fla.

²⁸ Ch. 98-495, ss. 8(5), 9, and 10 of section 2, Laws of Fla.

²⁹ Ch. 98-495, s. 5 of section 2, Laws of Fla.

Effect of Proposed Changes

The bill codifies, reenacts, amends, and repeals the special acts comprising the charter of the District³⁰ and makes the following revisions to the charter:

- Adds a definition for “costs.”
- Clarifies that a quorum is four commissioners physically present at a meeting and that a majority vote of members is required for board action.
- Allows the District to disburse funds over the sum of \$5,000 via credit card, in addition to checks and warrants.
- Provides that the District may only use a credit card if no interest is incurred and if the annual cumulative processing fees are less than the annual credit card rebate.
- Allows the District to write off any customer debt that is older than two years and has been determined to be uncollectable.
- Allows the District to contract with other districts, towns, counties, public subdivisions, and public agencies, in addition to municipalities and private or public corporations or persons, to provide or receive a water supply or for sewage disposal, collection, or treatment.
- Provides that the District will make procurements pursuant to ss. 255.103, 255.20, and 287.055, F.S.
- Increases the threshold at which the District must advertise and receive bids for any service, material, or construction cost from \$1,000 to \$10,000.
- Provides an exception to the requirement to advertise and receive bids for the purchase of supplies, materials, equipment, or construction costs when emergency action is required.
- Provides that s. 153.63, F.S.,³¹ is applicable to assessment bonds.
- Provides that s. 153.67, F.S.,³² is applicable to any unpaid fees owed to the District.
- Expressly provides for audits, financial disclosures, meeting notices, reporting, public records maintenance, and planning as required by chs. 189 and 286, F.S.
- Clarifies the statutory tort and personal liability immunity for the District and its officers, agents, and employees.

According to the Economic Impact Statement, the district will incur minimal costs associated with implementing the bill.

B. SECTION DIRECTORY:

- Section 1: Provides that the bill is a codification of all special acts relating to the Immokalee Water and Sewer District and provides legislative intent
- Section 2: Provides that chs. 1998-495, 2005-298, 2015-205, and 2021-263, Laws of Fla., are codified, reenacted, amended, and repealed as provided in the bill.
- Section 3: Provides a charter for the Immokalee Water and Sewer District.
- Section 4: Provides that all currently existing contracts, obligations, rules, resolutions, and policies remain valid and in full force and effect.
- Section 5: Provides that this act does not affect the terms of office of the present district board nor does it affect the terms and conditions of employment of any employee of the district.
- Section 6: Provides for liberal construction.
- Section 7: Provides that this act controls in the event of conflict with any other act.
- Section 8: Repeals chs. 1998-495, 2005-298, 2015-205, and 2021-263, Laws of Fla.

³⁰ Chs. 1998-495, 2005-298, 2015-205, and 2021-263, Laws of Fla.

³¹ This statute governs the manner in which a county approves, issues, and services revenue bonds.

³² This statute provides that the unpaid amount of fees, rates, or charges imposed by a county for water or sewer services received from the county creates a lien on the parcel to which the unpaid amounts pertain.

Section 9: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 20, 2021

WHERE? The *Naples Daily News*, a daily newspaper published in Naples, Collier County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

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 neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2022, the Local Administration & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed language relating to conducting meetings electronically and restrictions on the dissolution of the District.

This analysis is drafted to the committee substitute adopted by the Local Administration & Veterans Affairs Subcommittee.