

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL 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:**

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**FINAL HOUSE FLOOR ACTION:** 116 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 1495 passed the House on March 2, 2022, and subsequently passed the Senate on March 10, 2022.

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. 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.

The bill was approved by the Governor on June 24, 2022, ch. 2022-258, L.O.F., and became effective on that date.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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.<sup>1</sup> Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.<sup>2</sup> The charter of a special district created by special act may be altered or amended by subsequent special acts.<sup>3</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.<sup>4</sup> 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 subject to significant control by 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,<sup>8</sup> the charter for an 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>

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

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

<sup>3</sup> 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&Committeed=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Bill+Policy+and+Procedures+Manual.pdf> (last accessed Jan. 29, 2022).

<sup>4</sup> *Halifax Hospital Medical Center, supra* at 547.

<sup>5</sup> 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&Committeed=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last accessed Jan. 29, 2022).

<sup>6</sup> 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.

<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 community development districts).

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

<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.

- Exempt a district from certain requirements relating to issuing bonds<sup>13</sup> 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.<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>

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>21</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>22</sup>

### *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.<sup>23</sup> 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.<sup>24</sup> However, such reenactment will maintain exceptions to law contained in the charter.

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<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.

<sup>18</sup> 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).

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

<sup>20</sup> 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.”).

<sup>21</sup> S. 189.031(3), F.S. (setting forth the minimum charter requirements).

<sup>22</sup> Art. VII, s. 9(a), Fla. Const.

<sup>23</sup> S. 189.019, F.S.

<sup>24</sup> S. 189.019(3), F.S.

## Immokalee Water and Sewer District

The Immokalee Water and Sewer District (District) is an independent special district in Collier County created in 1978<sup>25</sup> and the charter was recodified in 1998.<sup>26</sup> The District is authorized to operate and maintain water and sewer systems.<sup>27</sup> The District levies special assessments and user fees but does not have ad valorem taxation authority.<sup>28</sup>

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.<sup>29</sup>

### **Effect of Proposed Changes**

The bill codifies, reenacts, amends, and repeals the special acts comprising the charter of the District<sup>30</sup> 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.,<sup>31</sup> is applicable to assessment bonds.
- Provides that s. 153.67, F.S.,<sup>32</sup> 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.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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<sup>25</sup> Ch. 78-494, Laws of Fla.

<sup>26</sup> Ch. 98-495, Laws of Fla.

<sup>27</sup> Ch. 98-495, s. 4 of section 2, Laws of Fla.

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

<sup>29</sup> Ch. 98-495, s. 5 of section 2, Laws of Fla.

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

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

<sup>32</sup> 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.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. ECONOMIC IMPACT STATEMENT FILED? Yes  No

D. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 20, 2021.

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

E. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?