

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: HB 13-B

INTRODUCER: Representative Shoaf

SUBJECT: Eastpoint Water and Sewer District, Franklin County

DATE: February 9, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Hunter | Twogood | RC | Favorable |

I. Summary:

HB 13-B is a local bill that reaffirms and continues the Eastpoint Water and Sewer District’s (district) authority to raise revenue and pay outstanding bonds and other obligations without interruption. The bill codifies, reenacts, and amends the charter of the district and repeals the special act that initially created it. The bill also makes the following revisions to the existing charter:

- Removes the definition of “county commissioners;”
- Removes the separate positions of secretary and treasurer of the district’s board of supervisors (board) and creates a new position of board secretary-treasurer;
- Removes the requirement that warrants or checks be signed by the chair and treasurer, and now only requires that two board members sign;
- Removes authorization to provide fire services;
- Removes authorization to provide garbage collection services;
- Removes oversight authorization of discharge into waters in and outside of the district;
- Limits service extensions outside the district boundaries to properties currently receiving services; and
- Updates the threshold requirements triggering the need to advertise for bids.

The bill further provides that, notwithstanding s. 189.0311(2), F.S., the district is not dissolved as of June 1, 2023, but continues in full force and effect.

II. 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.¹ A special district may be created

¹ Section 189.012(6), F.S. See also *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547-48 (Fla. 2019).

by general law, special act, local ordinance, or 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

A "dependent special district" is a special district meeting at least one of the following criteria:

- The membership of the district's governing body is identical to the governing body of a single county or municipality;
- All members of the district's 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 approval by the governing body of a single county or municipality.⁵

An "independent special district" is any district that is not a dependent special district or one that includes more than one county unless the district lies wholly within a single municipality.⁶

According to the Department of Economic Opportunity's (DEO) Special District Accountability Program Official List of Special Districts (Official List of Districts), there are 1,918 special districts, including 1,303 independent special districts and 615 dependent districts.⁷

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.⁸

Generally, the maximum millage rate for an independent special district is the millage rate authorized by law and approved by the electors of the district in a referendum.⁹ The 1968 Florida Constitution, however, provides that independent special districts with ad valorem tax authority established by law before its effective date may continue to exercise that authority, but that the

² Section 189.012(6), F.S.

³ Sections 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. FLA. CONST. art VIII, ss. 1(f) and (g), 2(b), s. 6(e) and sections 125.01 and 166.021, F.S. *See also Local Gov't Formation Manual* 62, available at <https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3227> (last visited Feb. 8, 2023).

⁴ *Local Gov't Formation Manual* at 62.

⁵ Section 189.012(2), F.S.

⁶ Section 189.012(3), F.S. Independent special districts are created by the Legislature, unless another mechanism is authorized by general law. *See, e.g.* section 190.005, F.S. (community development districts may be created by a county, municipality, or the Florida Land and Water Adjudicatory Commission, depending on the size and location of the district).

⁷ Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 8, 2023).

⁸ FLA. CONST. art VII, s. 9(a)

⁹ FLA. CONST. art VII, s. 9(b)

authority may be restricted or withdrawn by law unless such power is necessary to pay outstanding debts.¹⁰

Formation and Charter of an Independent Special District

With the exception of community development districts,¹¹ the charter for an independent special district must include the minimum elements required by ch. 189, F.S.¹² 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.¹³

Independent Special District Dissolution

Generally, an independent special district may be dissolved in one of the four following ways:

- Voluntary dissolution by a majority vote plus one of the district's board;¹⁴
- For districts created by special act, the passage of a special act dissolving the district, subject to approval by a majority vote of the residents or landowners of the district;¹⁵
- For districts created by a local government, voter approval of a referendum dissolving the district or by the procedure used to create the district;¹⁶ or
- For districts that have been declared inactive by DEO, by special act or ordinance without a referendum.¹⁷

Additionally, s. 189.0311(2), F.S., provides for the dissolution of all independent special districts created by special act prior to the ratification of the Florida Constitution on November 5, 1968, if those districts are not reestablished, re-ratified, or otherwise reconstituted by a special act or general law after that date.¹⁸ Such districts dissolve on June 1, 2023, unless re-established pursuant to the requirements and limitations of ch. 189, F.S., on or after that date. According to the Official List of Districts, 132 active independent special districts were created by special act before November 5, 1968,¹⁹ and of those districts, six do not operate under a charter that was reestablished, re-ratified, or otherwise reconstituted by a special act or general law after November 5, 1968.²⁰

¹⁰ FLA. CONST. art XII, ss. 2, 15 See also FLA. CONST. art. IX, s. 2 (1885), amended by SJR 69 (1939) (approved by the voters Nov. 5, 1940) (prohibition on state levy of ad valorem taxes for state purposes). *Bailey v. Ponce de Leon Port Authority*, 398 So. 2d 812 (Fla. 1981); see also *Hillsborough County v. Tampa Port Authority*, 563 So. 2d 1108 (Fla. 2d DCA 1990).

¹¹ Section 189.0311, F.S.; see section 190.004, F.S. (providing that ch. 190, F.S., governs the functions and powers of independent community development districts).

¹² Sections 189.031(1) and (3), F.S., sets forth the minimum charter requirements for an independent special district.

¹³ Sections 189.031(3), F.S. (setting forth the minimum charter requirements).

¹⁴ Section 189.072(1), F.S. If the district was created by special act, dissolution also requires a special act of the Legislature to take effect.

¹⁵ Section 189.072(2)(a), F.S.

¹⁶ Section 189.072(2)(b), F.S. If the district has the power to levy ad valorem taxes, a referendum is required for dissolution. FLA. CONST. art. VII, s. 9(b).

¹⁷ Section 189.072(3), F.S.

¹⁸ Created by ch. 2022-266, Laws of Fla.

¹⁹ Dept. of Economic Opportunity, Special Dist. Accountability Program, "Official List of Special Districts," available at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 8, 2023).

²⁰ Bradford County Development Authority, Bradford County; Eastpoint Water and Sewer District, Franklin County; Hamilton County Development Authority, Hamilton County; Marion County Law Library, Marion County; Reedy Creek Improvement District, Orange and Osceola Counties; and Sunshine Water Control District, Broward County will dissolve on June 1, 2023, unless re-established pursuant to the requirements and limitations of ch. 189, F.S., on or after that date. Of those scheduled to sunset, Eastpoint Water and Sewer District, Reedy Creek Improvement District, and Sunshine Water Control District have debt obligations.

Unless otherwise provided by law or ordinance, all assets and liabilities of a dissolved independent special district are transferred to the local general-purpose government having jurisdiction over the territory of the district.²¹

Eastpoint Water and Sewer District

The Eastpoint Water and Sewer District (District) is an independent special district created by special act in 1967.²² The district's purpose is to acquire, operate, and maintain water and sewer systems serving the unincorporated areas of Franklin County and other customers, as the district may determine.²³ The district is governed by a five-member board of supervisors (board) made up of landowners appointed by the Governor to serve four-year terms.²⁴ The board is authorized to set, revise, and collect rates and charges for water furnished, sewer systems, and garbage collection.²⁵ The rates and charges must:

- Pay the cost of operating and maintaining waterworks, sewage, and trash facilities of the district;
- Pay debt on outstanding bonds; and
- Provide for reserve funds.²⁶

Additionally, the board is authorized to levy an ad valorem tax of up to five mills.²⁷ For Fiscal Year 2021-2022, the total final budget of the district was \$1,602,326.05.²⁸ For that same fiscal year the district levied an ad valorem tax of 3.25 mills, an increase from the 3 mills levied the previous year.²⁹ Those receiving services outside of the district boundaries are charged an additional 40 percent surcharge on rates and fees.³⁰ In its most recent financial statement to the Department of Financial Services, the district reported \$2,872,835 in total long-term debt as of September 30, 2021.³¹

The district may expend its funds only to provide the services and exercise the powers authorized in the charter.³² The district currently serves approximately 1,100 residential, commercial, and industrial customers.³³

²¹ Sections 189.072(4) and 189.076(2), F.S.

²² Ch. 67-1399, Laws of Fla.

²³ Ch. 67-1399, s. 4, Laws of Fla.

²⁴ Ch. 67-1399, s. 5, Laws of Fla.

²⁵ Ch. 67-1399, s. 10, Laws of Fla.

²⁶ *Id.*

²⁷ Ch. 67-1399, s. 8(15), Laws of Fla.

²⁸ Eastpoint Water and Sewer District, *EWSD Budget Information*, "Final Budget 2021-2022," available at <https://ewsdfl.com/budgets> (last visited Feb. 8, 2023).

²⁹ *Id.*

³⁰ Eastpoint Water and Sewer District Water/Sewer User Agreement, available at <https://img1.wsimg.com/blobby/go/3204d8b4-6a1d-4b6c-9794-c464556ca29c/downloads/User%20Agreement%202022-2023.pdf?ver=1667398719337> (last visited Feb 8, 2023).

³¹ Dept. of Financial Services, 2021 Local Government General Ad Hoc Report for Eastpoint Water and Sewer District, available at <https://apps.fldfs.com/LocalGov/Reports/AdHoc.aspx> (last visited Feb. 8, 2023).

³² *Halifax Hospital Medical Center*, *supra* at 547.

³³ Eastpoint Water and Sewer District, available at <https://ewsdfl.com/> (last visited Feb. 8, 2023).

III. Effect of Proposed Changes:

The bill ratifies and confirms the continued existence of the district and provides legislative intent to preserve the district's necessary authority to generate revenue and pay outstanding indebtedness as provided in its original charter as such authority was preserved by Art. XII, ss. 2 and 15 of the Florida Constitution.

Additionally, the bill makes the following revisions to the existing charter:

- Removes the definition of "county commissioners;"
- Removes the separate positions of board secretary and board treasurer and creates a new position of board secretary-treasurer;
- Removes the requirement that warrants or checks be signed by the chair and treasurer, and now only requires that two board members sign;
- Removes authorization to provide fire services;
- Removes authorization to provide garbage collection services;
- Removes oversight authorization of discharge into waters in and outside of the district;
- Limits service extensions outside of the district boundaries to properties currently receiving services; and
- Updates the threshold requirements triggering the need to advertise for bids.

The bill reaffirms and continues the district's authority to raise revenue and pay outstanding bonds and other obligations without interruption.

The bill provides that, notwithstanding s. 189.0311(2), F.S., the district is not dissolved as of June 1, 2023, but continues in full force and effect.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill is a local law, an important distinction because the State Constitution imposes special requirements on local laws and prohibits local laws on specified subjects where the law should be uniform statewide. The general guiding test to distinguish the difference is:

A statute relating to subdivisions of the state or to subjects or to persons or things of a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class, is a ‘general law’; while a statute relating to particular subdivisions or portions of the state, or to particular classified localities, is a local law. . .³⁴

Section 10 Article III of the State Constitution requires that notice of intent to seek enactment of a local law be published in the manner provided by general law,³⁵ or that the local law be conditioned to take effect only upon approval by vote of the area affected. A local law must satisfy one of these requirements or it is unconstitutional.³⁶

Notice was published on December 22, 2022, in The Times, a weekly newspaper published in Apalachicola, Franklin County, FL.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on the district.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁴ State *ex rel.* Buford v. Daniel, 99 So. 804 (1924)

³⁵ Sections 11.02, 11.021, and 11.03, F.S.

³⁶ Barndollar v. Sunset Realty Corp., 379 So.2d 1278 (Fla. 1979)

VIII. Statutes Affected:

The bill repeals, reenacts, and amends chapter 67-1399 Laws of Florida.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
