

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 649 Eagle Bay Sub-Drainage District, Okeechobee County

**SPONSOR(S):** Local Government Affairs Subcommittee, Pigman

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

| REFERENCE                                | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|------------------------------------------|---------------------|---------|------------------------------------------|
| 1) Local Government Affairs Subcommittee | 10 Y, 0 N, As<br>CS | Miller  | Miller                                   |
| 2) Local & Federal Affairs Committee     |                     |         |                                          |

### SUMMARY ANALYSIS

“Special Districts” are a type of limited local government created to perform specific services within a described geographic area. Sometimes called special taxing districts, most are created either by special act (independent special districts) or county or municipal ordinance (dependent special districts). The Special District Accountability Program in the Department of Economic Opportunity (DEO) is responsible for creating and maintaining a current list of all special districts in Florida, as provided in ch. 189, F.S., the Uniform Special District Accountability Act.

When a special district fails to meet certain statutory responsibilities, no longer functions, or informs DEO it is no longer active, DEO is required to follow the statutory process before declaring the district inactive. This includes documenting one or more statutory criteria for inactive status, publishing notice in the area of the district of DEO’s intent to declare the district inactive, and documenting the lack of any objection to declaring the district inactive. DEO is required to deliver written notice of the declaration of inactive status to specific authorities. If the district was created by special act, notice is delivered to the Speaker of the House, the President of the Senate, and the standing committees in each chamber responsible for special district oversight. If the district was created by local ordinance, notice is delivered to the governing body of the county or municipality that created the district. A special district declared inactive may not collect taxes, assessments, or fees while the declaration is in effect. However, the district still exists until its legal authority is repealed by the creating entity.

The bill dissolves the Eagle Bay Sub-Drainage District, an inactive independent special district, by repealing chs. 12010, (1927), 19556 (1939), and 21916 (1943), Laws of Florida. Any assets and liabilities of the district are transferred to the Okeechobee County Board of County Commissioners.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **PRESENT SITUATION**

##### **Special Districts Declared Inactive**

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 by 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 special district may be "dependent"<sup>6</sup> or "independent."<sup>7</sup>

The Special District Accountability Program within the Department of Economic Opportunity (DEO) is responsible for maintaining and electronically publishing the official list of all special districts in Florida.<sup>8</sup> The official list currently reports all active special districts as well as those declared inactive by DEO.

Whether dependent or independent, when a special district no longer fully functions or fails to meet its statutory responsibilities, DEO is required to declare that district inactive by following a specified process.<sup>9</sup> DEO must first document the factual basis for declaring the district inactive.

A special district may be declared inactive if it meets one of six specific factors:

- The registered agent of the district, the chair of the district governing body, or the governing body of the appropriate local general-purpose government:
  - Provides DEO with written notice that the district has taken no action for 2 or more years.<sup>10</sup>
  - Provides DEO with written notice that the district has not had any members on its governing body or insufficient numbers to constitute a quorum for 2 or more years.<sup>11</sup>
  - Fails to respond to an inquiry from DEO within 21 days.<sup>12</sup>

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

<sup>2</sup> Id.

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

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

<sup>5</sup> 2015 – 2016 Local Gov't Formation Manual, p. 67, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2836> (accessed 9/28/2015).

<sup>6</sup> Section 189.012(2), F.S. 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 governing body of a single county or municipality.

<sup>7</sup> Section 189.012(3), F.S. A special district that is not a dependent district.

<sup>8</sup> Sections 189.061(1), 189.064(2), F.S. DEO maintains the current official list at

<https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (accessed 9/28/2015).

<sup>9</sup> Section 189.062(1), F.S. Prior to 2014, the former statute required DEO to document the existence of one of five criteria listed in paragraph (1)(a), publication and service under paragraph (1)(b) of a notice of intent to declare the district inactive, and the lack of any administrative appeal of the declaration within 21 days of that publication. Section 189.4044, F.S. (2013). In 2014, as ch. 189, F.S., was extensively revised and restructured, the word "or" was added at the end of s. 189.062(1)(a)6, F.S., apparently allowing DEO either to document one of the six criteria *or* publish notice of intent to declare inactive and find no appeal is filed. Chapter 2014-22, s. 24, Laws of Florida. During the 2015 regular legislative session, the Florida Senate passed CS/SB 1388, its version of a bill resolving technical issues stemming from the 2014 revisions, which would have amended s. 189.062(1)(a)6, F.S., by removing the word "or." CS/SB 1388 (2015), s. 11, at line 414 (bill did not pass the Legislature). DEO still uses the 3-step process as described in the 2013 statute.

<sup>10</sup> Section 189.062(1)(a)1., F.S.

<sup>11</sup> Section 189.062(1)(a)2., F.S.

<sup>12</sup> Section 189.062(1)(a)3., F.S.

- Following statutory procedure,<sup>13</sup> DEO determines the district failed to file specified reports,<sup>14</sup> including required financial reports.<sup>15</sup>
- For more than 1 year, no registered office or agent for the district was on file with DEO.<sup>16</sup>
- The governing body of the district unanimously adopts a resolution declaring the district inactive and provides documentation of the resolution to DEO.<sup>17</sup>

Once DEO determines which criterion applies to the district, notice of the proposed declaration of inactive status is published by DEO, the local general-purpose government for the area where the district is located, or the district itself.<sup>18</sup> The notice must state that any objections to declaring the district inactive must be filed with DEO pursuant to chapter 120, F.S.,<sup>19</sup> within 21 days after the publication date.<sup>20</sup> If no objection is filed within the 21 day period, DEO declares the district inactive.<sup>21</sup>

After declaring certain special districts as being inactive, DEO must send written notice of the declaration to the authorities which created the district. If the district was created by special act, DEO sends written notice to the Speaker of the House, the President of the Senate, and the standing committees in each chamber responsible for special district oversight.<sup>22</sup> The statute provides that the declaration of inactive status is sufficient notice under the Florida Constitution<sup>23</sup> to authorize the repeal of special laws creating or amending the charter of the inactive district.<sup>24</sup> This statute stands in lieu of the normal requirement for publication of notice of intent to file a local bill at least 30 days before introducing the bill in the Legislature.<sup>25</sup>

The property and assets of a special district declared inactive by DEO are first used to pay any debts of the district. Any remaining property or assets then escheat to the county or municipality in which the district was located. If the district's assets are insufficient to pay its outstanding debts, the local general-purpose government in which the district was located may assess and levy within the territory of the inactive district such taxes as necessary to pay the remaining debt.<sup>26</sup>

A district declared inactive may not collect taxes, fees, or assessments.<sup>27</sup> This prohibition continues until the declaration of invalidity is withdrawn or revoked by DEO<sup>28</sup> or invalidated in an administrative proceeding<sup>29</sup> or civil action<sup>30</sup> timely brought by the governing body of the special district.<sup>31</sup> Failure of the special district to challenge (or prevail against) the declaration of inactive status enables DEO to enforce the statute through a petition for enforcement in circuit court.<sup>32</sup>

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<sup>13</sup> Section 189.067, F.S.

<sup>14</sup> Section 189.066, F.S.

<sup>15</sup> Section 189.062(1)(a)4., F.S. *See, ss.* 189.016(9), 218.32, 218.39, F.S.

<sup>16</sup> Section 189.062(1)(a)5., F.S.

<sup>17</sup> Section 189.062(1)(a)6., F.S.

<sup>18</sup> Publication must be in a newspaper of general circulation in the county or municipality where the district is located and a copy sent by certified mail to the district's registered agent or chair of the district's governing body, if any.

<sup>19</sup> The Florida Administrative Procedure Act.

<sup>20</sup> Section 189.062(10)(b), F.S. The published notice also must include the name of the district, the law under which it was organized and operating, and a description of the district's territory.

<sup>21</sup> Section 189.062(1)(c), F.S.

<sup>22</sup> Section 189.062(3), F.S.

<sup>23</sup> Art. III, s. 10, Fla. Const.

<sup>24</sup> Section 189.062(3), F.S.

<sup>25</sup> Section 11.02, F.S.

<sup>26</sup> Section 189.062(2), F.S.

<sup>27</sup> Section 189.062(5), F.S.

<sup>28</sup> Section 189.062(5)(a), F.S.

<sup>29</sup> Section 189.062(5)(b)1., F.S. Administrative proceedings are conducted pursuant to s. 120.569, F.S.

<sup>30</sup> Section 189.062(5)(b)2., F.S. The action for declaratory and injunctive relief is brought under ch. 86, F.S.

<sup>31</sup> The special district must initiate the legal challenge within 30 days after the date the written notice of the department's declaration of inactive status is provided to the special district. Section 189.062(5)(b), F.S.

<sup>32</sup> Section 189.062(5)(c), F.S. The enforcement action is brought in the circuit court in and for Leon County.

Declaring a special district to be inactive does not dissolve the district or otherwise cease its legal existence. Subsequent action is required to repeal the legal authority creating the district, whether by the Legislature<sup>33</sup> or the entity that created the district.<sup>34</sup>

### Eagle Bay Sub-Drainage District

The Eagle Bay Sub-Drainage District (District) was created as an independent special district by special act in 1927.<sup>35</sup> The purposes for establishing drainage districts at that time included reclaiming and protecting “wet or overflowed lands, or lands subject to overflow in or more counties” in Florida.<sup>36</sup> The District was established originally by the filing of a petition with the appropriate circuit court.<sup>37</sup> As of May 1, 1927, the District had issued bonds in the total amount of \$120,000. The special act “ratified, approved, validated and confirmed”<sup>38</sup> all actions and proceedings establishing the District and issuing the bonds.

Apparently due to the ongoing effects of the Great Depression, in 1935 the Legislature acted to cancel “all past due special assessments or taxes and all certificates representing such past due or delinquent (obligations, except state taxes)” levied by the District.<sup>39</sup> This cancellation would only take effect if the District was able to obtain funding from Federal agencies or other sources to refinance its outstanding debt.<sup>40</sup> Subsequently, the Legislature repealed the 1935 act,<sup>41</sup> authorized the District to issue bonds for the purpose of refunding existing District obligations,<sup>42</sup> ratified and validated taxes and assessments imposed in 1938 and prior years,<sup>43</sup> and further authorized the District to dispose of or sell certificates of purchase and actual title to land acquired by the District (or its Board or any appointed receiver of the District) through the foreclosure by the District of a lien for unpaid taxes or assessments.<sup>44</sup> Apparently, the District subsequently went into receivership.<sup>45</sup> The legislative record apparently ends in 1943, when the Legislature acted to exclude specific lands from District assessments and taxes for the years 1942 and subsequent,<sup>46</sup> canceled taxes for 1942 imposed on the described property,<sup>47</sup> and ratified all prior actions of the former receiver for the District and the Board of Supervisors after control of the District was restored to its board.<sup>48</sup>

By 2000, the District for two consecutive years failed to pay required fees<sup>49</sup> to the Special District Information Program within the Division of Community Planning in the Department of Community Affairs (DCA)<sup>50</sup> and also failed to file certain statutory reports.<sup>51</sup> On March 21, 28, April 4 and 11, 2000,

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<sup>33</sup> Chapter 69-1308, Laws of Florida.

<sup>34</sup> Section 189.062(4), F.S. Unless otherwise provided by law or ordinance, dissolution of a special district transfers title to all district property to the local general-purpose government, which also must assume all debts of the dissolved district. Section 189.076(2), F.S.

<sup>35</sup> Ch. 12010, Laws of Florida (1927).

<sup>36</sup> Ch. 6458, s. 1, Laws of Florida (1913); CGL 1451.

<sup>37</sup> *Id.*

<sup>38</sup> Ch. 12010, s. 1, Laws of Florida (1927).

<sup>39</sup> Ch. 16980, s. 1, Laws of Florida (1935).

<sup>40</sup> *Id.*

<sup>41</sup> Ch. 19556, s. 5, Laws of Florida (1939).

<sup>42</sup> *Id.* s. 1.

<sup>43</sup> *Id.* s. 2.

<sup>44</sup> *Id.* s. 4.

<sup>45</sup> Ch. 21916, s. 4, Laws of Florida (1943), referring to one Robert H. Cook as the former receiver of the district.

<sup>46</sup> Ch. 21916, s. 1, Laws of Florida (1943).

<sup>47</sup> *Id.* s. 2.

<sup>48</sup> *Id.* s. 4.

<sup>49</sup> Former Fla. Admin. Code R. 9B-50.003, now Fla. Admin. Code R. 73C-24.003. The department responsible for overseeing special districts is authorized to adopt by rule a schedule of annual fees to be paid by each special district, capped at \$175/year. Section 189.018, F.S. (formerly s. 189.427, F.S.).

<sup>50</sup> The Department of Community Affairs was abolished and the Division of Community Planning, responsible for supervision of special districts, was transferred to the newly created Department of Economic Opportunity, effective July 1, 2011. Ch. 2011-142, ss. 3, 528, Laws of Florida.

<sup>51</sup> Declaration of Inactive Status Report, Eagle Bay Sub-Drainage District (12/5/2000). As of 2000, special districts were required to file regular reports with local governing authorities, including reports on public facilities (s. 189.415, F.S.), designating a registered agent and office (s. 189.416, F.S., also filed with DCA), and a schedule of regular meetings (s. 189.417, F.S.), as well as required financial reports (ss. 189.418, 218.32, 218.34, F.S.). See s. 189.419, F.S. (2000). A search of the specific Department of Financial

DCA published the "Notice of Declaration of Inactive Status of the Eagle Bay Sub-Drainage District" in The Okeechobee Journal.<sup>52</sup> Pursuant to statute,<sup>53</sup> the notice required any objections to the District being placed on inactive status were to be filed with DCA within 21 days of the initial publication of the notice; no objections were received. On December 5, 2000, DCA declared the District inactive and notified the Speaker of the House as well as the President of the Senate of the Authority's inactive status<sup>54</sup> pursuant to statute.<sup>55</sup>

### **EFFECT OF THE BILL**

The bill dissolves the Eagle Bay Sub-Drainage District, an independent special district, by repealing chs. 12010, (1927), 19556 (1939), and 21916 (1943), Laws of Florida. Any assets and liabilities of the district are transferred to the Okeechobee County Board of County Commissioners.

#### **B. SECTION DIRECTORY:**

Section 1: Repeals chs. 12010, 1927; 19556, 1939, and 21916, 1943, Laws of Florida.

Section 2: Abolishes the Eagle Bay Sub-Drainage District and transfers all assets and liabilities of the district to the Board of County Commissioners of Okeechobee County.

Section 3: Provides the bill is effective upon becoming law.

### **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? December 4, 2000

WHERE? Leon County

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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Services webpage shows no reporting by the District for the period 1993 – 2000. See "Local Government Financial Reporting" at <https://apps.fldfs.com/LocalGov/Reports/AdHoc.aspx> (accessed 11/24/2015).

<sup>52</sup> Notice of Declaration of Inactive Status to Senate President John McKay and Speaker Tom Feeney (12/4/2000).

<sup>53</sup> Section 189.4044(1), F.S. (1999).

<sup>54</sup> Letter from the Department of Community Affairs to Senate President John McKay and Speaker Tom Feeney, supra n. 50.

<sup>55</sup> The statute currently requires notification of the standing committee chairs; however, at the time the district was declared inactive, the statute only required the Speaker of the House and President of the Senate be notified. See s. 189.4044 F.S. (1999).

When notice of intent to file a local bill is published in the area to be affected pursuant to statute,<sup>56</sup> proof of such publication typically is in the form of an affidavit.<sup>57</sup> However, in this instance the notice of declaring inactive status in and of itself is sufficient to satisfy the constitutional requirement.<sup>58</sup> To satisfy the requirement of general law that evidence of the necessary publication “be established” in the Legislature before the bill is passed,<sup>59</sup> a Substitute Notice of Publication reciting the requirement of s. 189.062(3), F.S., was submitted with the bill.

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

On December 2, 2015, the Local Government Affairs Subcommittee approved a technical amendment that deleted an unnecessary reference to ch. 16980, Laws of Florida (1935), which had been repealed by ch. 19556, Laws of Florida (1939). This analysis is drawn to the bill as amended.

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<sup>56</sup> Section 11.02, F.S.

<sup>57</sup> Section 11.03, F.S.

<sup>58</sup> Section 189.062(3), F.S.

<sup>59</sup> Section 11.021, F.S.