

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1335 Loxahatchee Groves Water District, Palm Beach County

SPONSOR(S): Pafford

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Flegiel	Rojas
2) State Affairs Committee	14 Y, 0 N	Renner	Camechis

SUMMARY ANALYSIS

The Loxahatchee Groves Water Control District (District) provides surface water management, road maintenance, and related services for the Loxahatchee Groves community and a portion of Royal Palm Beach. Its area covers 12.5 square miles with 29 miles of unpaved roads and 30 miles of canals in Northern Palm Beach County. The District was founded in 1917 and all of its prior special acts have been codified into one special act pursuant to ch. 99-425, L.O.F., as amended by: ch. 2004-410, L.O.F.; ch. 2011-257, L.O.F.; and ch. 2012-262, L.O.F.

As a water control district, the drainage and water control provisions of state law govern its enabling special acts and authority. In addition to the powers provided in state law, the District has the power to construct, maintain, improve, and repair roadways and roads necessary to exercise the powers and duties of the District or the five member board of supervisors (Board). The District's Board may, at its discretion, accept dedication of a road within the boundaries of the District pursuant to the procedures outlined in its charter.

HB 1335 creates section 9 of the District's charter providing for the presumed dedication of right-of-way easements to the public over roads constructed by the District. Only roads that have been constructed by the District and maintained or repaired continuously and uninterruptedly by the District for seven years may be dedicated. Once dedicated, an easement vests in the road to the public for right-of-way purposes. The dedication vests automatically when a road meets all conditions set forth in section 9, regardless of whether there is a record of conveyance, dedication or appropriation to the public use.

The bill provides procedures by which a map may be filed with the county clerk to establish prima facie evidence of the existence of an easement over the dedicated roads. The bill clarifies that it does not apply to any facility of an electric facility which is located on property otherwise subject to section 9. The bill provides that the Town of Loxahatchee Groves may continue to have traffic control jurisdiction over all public roads located within the District.

The bill provides that it shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Loxahatchee Groves Water Control District (District) provides surface water management, road maintenance, and related services for the Loxahatchee Groves community¹ and a portion of Royal Palm Beach. Its area covers 12.5 square miles with 29 miles of unpaved roads and 30 miles of canals in Northern Palm Beach County.² The District was founded in 1917³ and all of its prior special acts have been codified into one special act pursuant to ch. 99-425, L.O.F., later amended by: ch. 2004-410, L.O.F.; ch. 2011-257, L.O.F.; and ch. 2012-262, L.O.F.

As a water control district, the drainage and water control provisions of state law⁴ governs its enabling special acts and authority.⁵ In addition to the powers provided in state law, the District has the power to construct, maintain, improve, and repair roadways and roads necessary to exercise the powers and duties of the District or the five member board of supervisors (Board), including but not limited to, all roads shown on the replat of Loxahatchee Groves. Included in the District's authority is the power to:

- Provide access to and development of areas within the District, or both.
- Provide funds for such construction, maintenance, improvement, or repair through the levying of assessments pursuant to ch. 298, F.S., or special act, or both.

The District's Board is authorized to accept dedication of a road within the boundaries of the District pursuant to the following procedures:⁶

- The landowners possessing the easements to the road must petition the board in writing for dedication of the road. Those signing the petition must agree to give the District their respective easements at no cost to the District, pursuant to policies established by the District.
- At least a simple majority of landowners on the road, on a per-acre basis, must petition the Board to dedicate the road.
- The Board then determines whether or not to accept such petition. If the Board accepts the petition, then the District will project all estimated costs⁷ involved with the dedication of the road.
- The Board provides this estimated cost information to the affected landowners and a referendum must be held among those landowners to create a special taxing unit, consisting of all of the benefited land contiguous to and inclusive of the road to be dedicated to cover such cost. If the referendum passes by majority vote, on a per-acre basis, then the District must create a special taxing unit and levy assessments for the costs associated with the dedication of the road.

¹ There are more than 1,200 homes in the District with an estimated population of 3,500. Loxahatchee Groves Water Control District, About Us, <http://www.lgwcd.org/index.php?go=home.category&categoryId=2> (last visited March 31, 2014).

² *Id.*

³ *Id.*

⁴ Chapter 298, F.S.

⁵ See ch. 298, F.S., and chapters 99-425, 2004-410, 2011-257 and 2012-262 L.O.F.

⁶ Paragraph c., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F..

⁷ These costs include the cost of planning, designing, and building the road or improving the existing road to meet specifications acceptable to the District, the cost of improving or replacing any culvert crossing or bridge that connects the road to be dedicated to an existing District road or roads, the cost of any eminent domain proceeding to obtain road easements from those landowners who did not sign the petition and give the District their respective easements, the cost of establishing the special taxing unit, and any other costs anticipated to be incurred by the District as a result of any action involved with the road dedication. Chapter 2004-410, L.O.F.

- If the dedication is approved, then the District will acquire, by sale or through eminent domain, the necessary easements and build the road or make the necessary improvements to the existing road to meet all District specifications.
- The road is then dedicated to the District and maintained by the District under its general maintenance assessment.

The charter preserves the District's ability, under ch. 298, F.S., to create and assess units of development.

Chapter 2011-257, L.O.F. created section 8 of the District's charter providing for the dedication of width of four roads located within the District. The section provided that the improvements of the four public roads were approved by the affected landowners participating in four separate referendum elections⁸ held between January 1, 2009 and December 31, 2010. The affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment. The width of the four roads, to the extent that they were actually constructed and maintained or repaired continuously and without interruption by the District for seven years, were dedicated through easement rights to the public pursuant to the District's charter.

The four roads dedicated by the Ch. 2011-257, L.O.F., were:

- "A" Road
- "C" Road (South)
- "C" Road (North)
- "D" Road

Chapter 95, Florida Statutes

Section 95.361, F.S., provides for the presumed dedication of roads constructed by a county, a municipality, or the Department of Transportation, and maintained or repaired continuously and uninterruptedly for four years by the county, municipality, or the Department of Transportation. The width of a road falling under the statute is deemed to be dedicated to the public to the extent it has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. An applicable dedication vests all right, title, easement and appurtenances in and to the road in: the county, if it is a county road; the municipality, if it is a municipal street or road; or the state, if it is a road in the State Highway System or State Park Road System.

The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with statute, as duly certified by the proper authority, is prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

In order to give persons that might have an interest in property affected by the dedication of a road to the public, the legislature provided a one year period from the date the law went into effect or seven years after the initial date of maintenance or repair of the road, whichever is greater, to file a challenge against the governing authority assuming jurisdiction over the property.

Courts have held that s. 95.361, F.S., does not involve any "taking" of property, but only a "dedication" of property.⁹ Furthermore, under the case *Underwood v. Columbia County*,¹⁰ the court held that unlike a takings case, in which the property owner is entitled to the fair market value of the land converted to public use, a dedication under s. 95.361, F.S., does not require payment of compensation for the dedicated property.

⁸ Paragraph c., section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

⁹ See *Boothe v. Manatee County, Fla.*, C.A.11 (Fla) 1987, 812 F.2d 1372, rehearing denied 818 F.2d 871.

¹⁰ See *Underwood v. Columbia County*, App. 1 Dist., 868 So.2d 1225(2004)

Effect of Proposed Changes

HB 1335 adds section 9 to the charter of the District, which is codified in section 2 of ch. 99-425, L.O.F., as amended. The bill provides for the presumed dedication of a right-of-way easement to the public for all roads in the District that have been constructed by the District and maintained or repaired by the District continuously and uninterruptedly for seven years. The easement is dedicated over the width of the road that has actually been maintained for the prescribed period of time, whether or not the road has been formally established as a public road. The dedication vests the easement in and to the road in the public, whether or not there is a record of conveyance, dedication, or appropriation to the public use. The easement allows the public to travel over, under, across, upon, through and within the area of road it covers.

The bill establishes the filing of a map as prima facie evidence of the public's easement rights. To be valid, the map must be filed in the office of the clerk of the circuit court of the county where the road is located. Furthermore, the map must recite that the road has been dedicated in accordance with the procedures set forth in section 9 and must be certified by the chair and secretary of the District.

The bill provides that the provisions of section 9 do not apply to any facility of an electric utility which is located on property otherwise subject to the section. It also provides for the Town of Loxahatchee Groves to retain traffic control jurisdiction over all public roads located within the District.

B. SECTION DIRECTORY:

Section 1 Amends ch. 99-425, L.O.F., as amended; provides for the dedication of road right-of-way easements to the public; provides requirements for such dedication; provides for prima facie evidence of such public road right-of-way easements; exempts certain property of an electric utility; assigns continuing traffic control jurisdiction on all public roads within the District to the Town of Loxahatchee Groves.

Section 2 Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 16, 2014

WHERE? *The Palm Beach Post*, a daily and Sunday newspaper published at West Palm Beach in Palm Beach County.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN? n/a

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹¹ Attorney General Opinion, AGO 2010-25, June 7, 2010. On file with staff.

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under s. 95.361(4), F.S., a person who had an interest in property affected by the dedication of a road to the public was granted a one-year period from the date the law went into effect to file a challenge against the governing authority assuming jurisdiction over the property. The bill does not include a similar provision allowing a person who has an interest in property affected by the dedication established in the bill to file a claim against the District.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.