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DATE: January 31, 2002

**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 471
RELATING TO: Monroe County/ Key Largo Wastewater
SPONSOR(S): Representative Sorensen
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 8 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates an independent special district to assume existing wastewater management powers and duties from the Florida Keys Aqueduct Authority (FKAA) for a portion of the FKAA's existing geographical boundary. Additionally, the bill removes that geographical portion from the FKAA's wastewater management jurisdiction.

This bill does not impact on state revenues. Information on estimated local costs and Federal funding to local government are found in the 2002 Economic Impact Statement (attached) and in "OTHER COMMENTS" Section IV.C., respectively.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appeared to apply to the bill, as introduced. However, upon adoption of the strike-all amendment on January 24, 2002, the provisions of the Rule do not apply. (See II.C. EFFECT OF PROPOSED CHANGES. and V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES).

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. This bill creates a new governmental entity.
2. This bill results in increased governmental costs.

B. PRESENT SITUATION:

The power and responsibility for the construction, operation and maintenance of facilities to collect and treat wastewater in Monroe County currently rests with the FKAA as recreated in ch. 76-441, L.O.F., as amended. The FKAA recently requested that the Monroe County Legislative Delegation consider a request to remove all wastewater responsibilities from their purview. The Monroe County Legislative Delegation's decision was to provide for a new district that could more easily focus on an area in greatest need of wastewater management services, and at the same time, utilize federal funds to the maximum extent allowable.

CREATING A NEW INDEPENDENT SPECIAL DISTRICT

Chapter 189, Florida Statutes, Provisions

It is the specific intent of the Legislature that independent special districts shall only be created by legislative authorization as provided in chapter 189, Florida Statutes. In addition, pursuant to section 11(a)(21), Art. III, State Constitution prohibits special or general laws of local application that do not conform to the requirements below.

Special acts creating independent special districts cannot exempt the district from general law regarding:

- General requirements and procedures for elections (s.189.405, F. S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s. 189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 and 189.418, F.S.).

A statement must be submitted to the Legislature that documents: (1) the purpose of the proposed district; (2) the authority of the proposed district; and (3) an explanation of why the district is the best alternative.

In addition, a resolution or official statement is required of the appropriate local governing body in which the proposed district is located affirming that:

- the creation of the proposed district is consistent with approved local government plans of the local governing body, and
- the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the Department of Community Affairs determination or declaratory statement regarding the status of the district.

Pursuant to s. 189.404(2)(a), F.S., the Legislature prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. Independent districts created after September 30, 1989, must address and require certain provisions in their charters. The following describes the requirements:

- The district's purpose.
- The district's powers, duties, and functions regarding:
 - Ad valorem taxation;
 - Bond issuance;
 - Revenue raising capabilities;
 - Budget preparation and approval;
 - Liens and foreclosure of liens;
 - Use of tax deeds and tax certificates for non-ad valorem assessments; and
 - Contractual agreements.
- The methods for establishing the district.
- The method for amending the district's charter.
- The membership and organization of the district's governing board. Districts whose boards are elected on a one-acre/one-vote basis are required to have five board members, with three of those members constituting a quorum.
- The maximum compensation of the district's governing board members.
- The administrative duties of the district's governing board.
- The financial disclosure, noticing, and reporting requirements for the district.
- The procedures and requirements for issuing bonds, if the district has such authority.

- The district's election and referenda procedures and the qualifications to be a district elector.
- The district's financing methods.
- The authorized millage rate for a district authorized to levy ad valorem taxes, except for taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors of the district.
- The methods for collecting non-ad valorem assessments, fees, or service charges.
- Planning requirements.
- Geographic boundary limitations

The charter may refer to other general law provisions that address the charter requirements, e.g., fire districts may refer to ch. 191, F.S. provisions.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled. All local bills, regardless of the subject matter, must comply with local notice requirements.

PRESENT POWERS AND DUTIES OF THE FKAA

The bill, in s. 2, provides that the new District will have the powers and duties that may be exercised by the FKAA. The powers and duties of the FKAA were recreated pursuant to ch. 76-441, L.O.F., as amended. A brief summary of the purpose, powers and duties of the FKAA, pursuant to ch 76-441, L.O.F., as amended, is as follows (a comprehensive listing of powers and duties is available for inspection in the Committee on Local Government and Veterans Affairs office):

The bill, by reference to the powers and duties of the FKAA, pursuant to ch. 76-441, L.O.F., as amended, provides for the powers and duties of the new District. A brief summary of those powers and duties applicable to wastewater management is as follows:

General Provisions:

The FKAA is an autonomous corporate and political body with perpetual existence authorized to acquire, maintain and operate a wastewater management system within the district boundaries.

The FKAA has the authority, in compliance with the rules of the Departments of Health and Environmental Protection, to regulate, mandate or prohibit the use of specific types of wastewater facilities; to prescribe methods of pretreatment of waste; and to prescribe the specific type of wastewater treatment facility or measures required to be utilized within the boundaries of the FKAA, in order to manage effluent disposal and wastewater matters.

Rulemaking; Eminent Domain Powers; and Purchasing:

The FKAA may adopt rules pursuant to ch. 120, F.S.; necessary to meet environmental requirements imposed by federal agencies as a condition of funding; exercise eminent domain powers pursuant to law; and acquire goods and services, except in certain circumstances, pursuant to ch. 287, F.S.

Jurisdiction:

FKAA has the exclusive jurisdiction over the administration, maintenance, development, and provision of wastewater system services in Monroe County, with the exception of specific areas. However, such jurisdiction shall not conflict with ch. 403, F.S., and rules of the Department of Environmental Protection.

Board of Directors; compensation:

A five-member, board of directors appointed by the Governor for four-year terms governs the FKAA. Each board member must execute a bond to the Governor in the amount of \$10,000 to secure the faithful performance of their powers and duties. Each board member is entitled to receive a fee of \$300 per meeting, not to exceed three meetings per month; and reasonable expenses as provided for in ch. 112, F.S.

FKAA records; required audit; capacity to sue & be sued:

The board of directors must keep a permanent record book, open to public inspection, containing documentation of activities and an inventory. Additionally, the FKAA must obtain an annual certified audit of its books, which audit is required to be available for public inspection; and it must publish notice of the audit's availability. The FKAA has the authority to sue and be sued by its name in any court of law or in equity, and to adopt and use a corporate seal and to alter it at its pleasure

Exemptions and Effect of ch. 76-441, L.O.F., as amended, on other statutory provisions:

The FKAA is exempt from the provisions of chs. 216, 273, and s. 253.03(6), F.S. Additionally, interest paid on all revenues of the FKAA derived from its projects are exempt from all taxes by the state or its political subdivisions, except that the exemption does not apply to interest earnings subject to taxation under ch. 220, F.S.

Rates, Fees, Charges and Other Assessments:

The FKAA has the authority to establish, following public hearings, and collect rates, fees, rentals, or other charges from persons, firms, corporations, municipalities, counties, the Federal Government, political subdivisions and other public or private agencies or bodies within the geographic limits for the facilities and services furnished or to be furnished by the FKAA and to provide for reasonable penalties against any user for any sums that are delinquent. Such charges shall be sufficient to produce revenues to provide for all facility and services operational costs and to pay bonds, interests and associated costs. Such charges are a lien upon any such parcel of property except the lien of county or municipal taxes and shall be on parity with any such taxes.

The FKAA may recover, in a civil action and in accordance with any covenant in any bond indenture of the FKAA, the unpaid balance and all interest accrued thereon for any rates, fees, rentals, charges, or other delinquent penalties which have not been paid as when due and are in default for 30 days or more, together with attorneys' fees and costs.

Financial matters:

The FKAA is authorized to establish rates and fees; issue bonds or other obligations; and to establish taxing districts to assess and levy ad valorem taxes, to pay all or part of the cost of the acquisition or construction, reconstruction, extension, repair, improvement, maintenance, or operation or any project or combination of projects. Additionally, the FKAA is authorized to provide for the retirement or refunding of any bonds or obligations of the FKAA or for any combination of the foregoing purposes. The district may also borrow monies, and receive grants.

Enforcement:

The FKAA has the authority to restrain, enjoin, or otherwise prevent the violation of ch. 76-441, L.O.F., as amended, or of any resolution, rules, or regulations adopted pursuant to the powers granted by ch. 76-441, L.O.F., as amended. The FKAA is authorized to require and enforce the use of its facilities whenever and wherever they are accessible. The FKAA has the authority to discontinue services upon delinquency of payments and to enforce and collect such delinquent funds, penalties and other costs.

C. EFFECT OF PROPOSED CHANGES:

This bill removes authority over the construction, operation and maintenance of facilities to collect and treat wastewater from the FKAA for a specific portion of the FKAA's current geographical boundary and creates that authority in a new independent special district, the Key Largo Wastewater Treatment District ("new District"). The bill provides for powers and duties by reference; establishes a five member governing board with necessary rulemaking authority; and provides for the election, compensation, and reimbursement of governing board members.

Pursuant to s. 189.404(3), F.S., the new District's charter must contain certain provisions in its charter. The following describes the requirements and whether this bill meets those requirements.

- This bill does not appear to specifically create a charter for the new District.
- District purpose: The provisions of this bill establish a purpose for the District.
- Powers, functions, and duties of the district regarding ad valorem taxation, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other similar issues: The bill, by reference to the powers and duties of the FKAA, authorizes the new District to establish certain ad valorem and non ad valorem assessments, issue bonds, and provides exclusive authority in the board of directors over the new District's budget matters.
- The methods for establishing the district: The bill establishes the new District by a general delineation of the new District's boundary.
- The method for amending the charter of the district: The bill does not provide a method for amending the charter.
- The membership and organization of the governing board of the district: The bill, expressly, and by reference to the powers and duties of the FKAA, provides for the new District's membership and organization of the governing board of the new District.

- The maximum compensation of a governing board member: The bill provides for compensation of \$300 per meeting, not to exceed three meetings per month. Additionally, the bill provides that the amount of compensation shall be adjusted annually based upon the index provided in s. 287.017(2), F.S. Further, the bill provides for the reimbursement of reasonable expenses as provided in s. 112.061, F.S.
- The administrative duties of the governing board of the district: The bill, by reference to the powers and duties of the FCAA, provides for the administrative duties of the governing board, which duties appear to be consistent with the provisions of ch. 189, F.S.
- The applicable financial disclosure, noticing, and reporting, requirements: The bill, by reference to the powers and duties of the FCAA, provides that the records of the new District will be kept in a record book which shall be available for public inspection at reasonable times. Additionally, the bill, by reference to the powers and duties of the FCAA, requires an annual audit and publication of a notice of availability of such audit.
- If the district has authority to issue bonds, the procedures and requirements for issuing bonds: The bill, by reference to the powers and duties of the FCAA, provides for the authority to issue bonds, and the procedures and requirements thereof.
- The procedures for conducting any district elections or referendum and the qualifications of an elector of the district: The bill does provide that elections are held at large in a nonpartisan election held in conjunction with the general election. The bill provides that a potential candidate must qualify pursuant to general law.
- The methods for financing the district: The bill, by reference to the powers and duties of the FCAA, provides that the new District may establish rates, fees, and other charges related to the use of wastewater facilities services. Additionally, the new District may issue bonds for the purpose of financing activities consistent with the new District's purpose.
- The method(s) for collecting non-ad valorem assessments, fees, or service charges: The bill, by reference to the powers and duties of the FCAA, provides for the collection of non-ad valorem assessments, fees or service charges.
- Geographic boundary limitations: The bill generally describes the boundaries of the new District.

The Committee has received evidence of compliance with the provisions of s. 189.404(2)(e)(4), F.S., that requires the submittal to the Legislature of documentation evidencing a resolution or official statement of the governing body within which the proposed district is located stating that the creation of the proposed district is consistent with the approved local government plans and that the local government has no objection to the creation of the proposed district.

By reference to the powers and duties of the FCAA, the new District appears to be exempt from various provisions of general law.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the Key Largo Wastewater Treatment District as an independent special district to construct and operate facilities for the collection and treatment of wastewater an area within Monroe County consisting of all lands east of Tavernier Creek, including Key Largo, and Cross Key, with the exception of Ocean Reef. Creates the district charter, and terminates the jurisdiction of the Florida Keys Aqueduct Authority over these activities within the area of the new District.

Provides that the new District has all the powers within the new District area for the collection and treatment of wastewater formerly exercised by the Florida Keys Aqueduct Authority pursuant to ch. 76-441, L.O.F., as amended.

Provides that the District's governing board will consist of five elected members who must be residents and electors of the district; and are elected to four-year terms in a nonpartisan election held in conjunction with each general election. The bill provides that prospective candidates shall qualify pursuant to general law; and provides that the candidates receiving the five highest vote totals shall be deemed elected to office. The bill further provides that the term of office shall begin and end on the same dates as do the members of the Monroe County Commission. However, during the new District's initial election, the governing board members with the two lowest vote totals shall each serve a two-year term. Thereafter, all governing board members shall serve four-year terms. At their first meeting, governing board's first shall elect one member to serve as chair; the chair shall be so elected annually.

The bill provides the governing board with the authority to adopt all rules necessary for the conduct of its business.

The bill provides that governing board members shall receive a fee of \$300 per meeting as compensation for their services, not to exceed three meetings per month. The amount of compensation shall be adjusted annually based upon the index provided in s. 287.017(2), F.S.; and governing board members are reimbursed for expenses as provided for in s. 112.061, F.S. Additionally, governing board members are bound by the conflict of interest and disclosure laws applicable to public officers as set forth in part III, ch. 112, F.S.

Section 2. Provides that the area described in the new District charter is removed and deleted from the boundaries of the Florida Key Aqueduct Authority as re-created by ch. 76-44, L.O.F., as amended.

Section 3. Provides the act shall take effect upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? October 17, 2001.

WHERE? *The Key West Citizen.*

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

According to the Economic Impact Statement (attached), this bill will cost local government an estimated \$720,000 (Board Elections; Administration Establishment; Development of Administrative Procedures, Rules and Regulations; Personnel and Professional Services) for Year 1; \$600,000 for Year 2.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill provides, in s. 3, that the new District governing board shall adopt all rules necessary for the conduct of its business.

C. OTHER COMMENTS:

According to an analysis provided by the Department of Environmental Protection, the transition of wastewater management services authority from the FKAA to the new District, appear to raise two issues of concern: a) delay in addressing wastewater management issues, and b) resultant potential loss of funding. Particular funding concerns are: approximately \$6 million from the Federal Emergency Management Agency (FEMA); and approximately \$4 million from the Environmental Protection Agency (EPA).

By telephone, Monroe County Commissioner Murray Nelson stated that the timing concern and the resultant impact on funding were moot issues as neither of these funding sources are yet in place cause concern; and by the time the funding is actually available, the new District will be in place to act upon them. Additionally, Commissioner Nelson stated that regarding the FEMA funds, FKAA has agreed to act as a conduit for these funds to the new District; and regarding the EPA funds, they have been slated for use county-wide and therefore will be available to the new District through the Board of County Commissioners.

By a four to five vote, the Monroe County Board of County Commissioners requested Representative Sorensen to move forward with a bill to create the Key Largo Wastewater Treatment District.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veterans Affairs adopted two amendments at its meeting on January 24, 2002. The first amendment creates a charter for, and establishes, the Key Largo Wastewater Treatment District as an independent special district.

The first amendment:

- Complies with all ch. 189, F.S., requirements.

- Eliminates exemptions from general law.
- Authorizes time limited ad valorem tax upon voter approval.
- Provides all other necessary powers and duties for the new District to function, including, but not limited to:
 - Establishing the new District boundary as consisting of Key Largo, including Tavernier Creek, including Tavernier, Key Largo, an Cross Key, with the exception of Ocean Reef, all in Monroe County, Florida.
 - Five member governing board, elected from nonpartisan candidates.
 - Meeting, notice and reporting requirements.
 - Chapter 120, F.S., rulemaking authority.
 - Time limited ad valorem taxing authority and other revenue generation capabilities.
- Removes from the FCAA jurisdiction a portion of the geographic area over which the FCAA currently has authority over wastewater management.

The second amendment conforms the language of the bill regarding the prohibition against creating state, county or municipal debts to s. 11, Art. XII, State Constitution. The second amendment is engrossed into the strike-all amendment prior to reporting the bill out of Committee.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Don Rubottom