

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1151 Trailer Estates Park and Recreation District, Manatee County

**SPONSOR(S):** Gregory

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration Subcommittee		Rivera	Miller
2) State Affairs Committee			

### SUMMARY ANALYSIS

General law allows each municipality and county in the state to create one or more recreation districts, which operate and maintain recreational facilities within the district. Use of facilities may be limited to authorized persons where a valid, paramount public purpose is served. Districts may only be created subject to a referendum unless a petition to create the district is signed by a majority of the electors within the proposed district.

Trailer Estates Park and Recreation District is an independent special district created by special act (enabling act) that operates similarly to a recreation district. Use of district facilities is limited to property owners, their family and guests, and other persons authorized by the district. The district is governed by a board of trustees (board) that have the authority to levy a district tax and promulgate rules and regulations. The district is not authorized to enforce those rules and regulations and is not authorized to impose penalties for violations.

The bill authorizes the board to adopt and enforce reasonable rules and regulations as provided to statutory recreation districts. The bill also authorizes the board to prescribe and enforce penalties as provided within the deed restrictions over the property within the district. The bill authorizes the board to adopt rules, regulations, and penalties that are not inconsistent with its enabling act and applicable law as necessary and convenient to carry out the terms of the enabling act.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Independent 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. Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.<sup>1</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>2</sup>

A "dependent special district" is 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>3</sup> An "independent special district" is any district that is not a dependent special district.<sup>4</sup>

##### *Formation and Charter of an Independent Special District*

With the exception of community development districts,<sup>5</sup> the charter for any new independent special district must include certain minimum elements enumerated in s. 189.031(3), F.S.<sup>6</sup> The charter of a newly-created district must state whether it is dependent or independent.<sup>7</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>8</sup>

The Legislature is prohibited from enacting a special law or general law of local application that:

- Creates a special districts with a district charter that does not conform to the minimum requirements in s. 189.031(3), F.S.;<sup>9</sup>
- Exempts district elections from the requirements of s. 189.04, F.S.;<sup>10</sup>
- Exempts a district from the requirements for bond referenda in s. 189.042, F.S.;<sup>11</sup>
- Exempts a district from certain requirements relating to issuing bonds if no referendum is required, requiring special district reports on public facilities, notice and reports of special district public meetings, or required reports, budgets, and audits,<sup>12</sup> or

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

<sup>2</sup> 2018 – 2020 Local Gov't Formation Manual, p. 62, available at <https://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.pdf> (last visited January 9, 2020).

<sup>3</sup> S. 189.012(2), F.S.

<sup>4</sup> S. 189.012(3), F.S.

<sup>5</sup> S. 189.0311, F.S. See s. 190.004, F.S. (providing that chapter 190, F.S., governs the functions and powers of independent community development districts).

<sup>6</sup> S. 189.031(1), F.S.

<sup>7</sup> S. 189.031(5), F.S.

<sup>8</sup> S. 189.031(3), F.S. (setting forth the minimum charter requirements).

<sup>9</sup> S. 189.031(2)(a), F.S.

<sup>10</sup> S. 189.031(2)(b), F.S.

<sup>11</sup> S. 189.031(2)(c), F.S.

<sup>12</sup> See ss. 189.031(2)(d), 189.051, 189.08, 189.015, and 189.016, F.S.

- Creates a district without submitting a statement documenting specific required matters to the Legislature.<sup>13</sup>

These prohibitions were passed by a 3/5 majority in the House and Senate when ch. 189, F.S., originally was adopted.<sup>14</sup> They may be amended or repealed only “by like vote.”<sup>15</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>16</sup>

### Recreation Districts

Florida allows each municipality and county in the state to create one or more recreation districts. A recreation district may contain all or part of land within a municipality if created by a municipality. Districts created by counties may only contain unincorporated areas. Under chapter 418, Florida Statutes, recreation districts must be created by municipal or county ordinance subject to a referendum in accordance with the municipal incorporation and merger statute.<sup>17</sup> The ordinance, and any amendments, act as the district charter.<sup>18</sup> Residents in a proposed district may petition the governing body of a municipality or county for the creation of a recreation district. No referendum is required to create the district if a majority of electors signs the petition.<sup>19</sup>

The district charter must contain the composition of the governing body of the district, which may be either:

- (a) A five-member or larger board of supervisors elected from among the residents of the district, or
- (b) The governing body of the municipality or county that created the district.<sup>20</sup>

If the governing body is a board of supervisors (board), the charter must specify the date of the election and must provide that each property owner or resident in the district has the right to vote in the election. Supervisors may not receive compensation. The charter may also stagger the terms of the supervisors and parse the district into sectors for which one or more supervisors represent if a majority of the electors within each sector approves the division.<sup>21</sup>

The district charter may contain findings by the governing body of the municipality or county, such as the creation of such district is the best alternative available for delivering recreational service, or if the district is created for the exclusive use of a condominium or cooperative, that a valid and paramount public purpose will be served by the exclusive nature of the district.<sup>22</sup>

The charter of a recreation district may grant the district the following powers and any additional powers deemed necessary or useful in the exercise of those powers:

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<sup>13</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>14</sup> Ch. 89-169, s. 67, Laws of Fla.

<sup>15</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>16</sup> Art. VII, s. 9(a), Fla. Const.

<sup>17</sup> The statutory process for merging or incorporating municipalities is located in s. 165.041, F.S.

<sup>18</sup> Such ordinance may from time to time be amended by the governing body of said municipality or county. Such amendments must be approved by a vote of the electors in the district. S. 418.20, F.S.

<sup>19</sup> S. 418.20, F.S.

<sup>20</sup> S. 418.21(1), F.S.

<sup>21</sup> S. 418.21(2), F.S.

<sup>22</sup> Each finding may be reviewed by a court only as part of any review of the ordinance making such finding. s. 418.24, F.S.

- 1) To sue and be sued and have a corporate seal;
- 2) To enter contracts;
- 3) To acquire, purchase, construct, improve, and equip recreational facilities, including real and personal property, within the boundaries of the district;
- 4) To issue bonds, if approved at a referendum held in such district;
- 5) To operate and maintain recreational facilities or contract for such services;
- 6) To establish, charge, and collect fees for admission to or use of recreational facilities and use fees for operation, maintenance, improvement, and acquisition of recreational facilities or the payment of district bonds;
- 7) To adopt and enforce rules for the use of the recreational facilities owned or operated by the district; and
- 8) To employ necessary personnel.<sup>23</sup>

These powers may be restricted or limited as the governing body of the municipality or county from time to time determines. However, any restriction or limitation may not impair the district's existing contractual duties.<sup>24</sup>

The county or municipal assessment records serve as the official assessment records for the recreation district. The official charged with keeping said assessment records must provide an assessment roll for the district upon request. Unless otherwise provided by the district charter, the official who collects taxes in the municipality or county shall be the tax collector of the district. District taxes are payable at the same time as municipal or county taxes, and shall be secured by a lien on taxable property the same as the local government taxes. Enforcement of a district tax lien must follow the enforcement process as liens for municipal or county taxes.<sup>25</sup>

#### *Mobile Home Park Recreation Districts*

Municipalities and counties may create one or more mobile home park recreation districts limited to the boundaries of the mobile home park. These districts must also be established local ordinance subject to a referendum of the electors residing within the mobile home park. The residents within the proposed mobile home park recreational district may petition for the creation of the district, and no referendum is required if the petition is signed by a majority of the electors.<sup>26</sup>

The governing body of a mobile home park recreation district must be nine-member board of trustees (board) elected by the electors within the district. A person seeking to serve on the board must be a qualified elector within the district and must present a petition with 25 signatures from other district electors to the county supervisor of elections to be placed on the ballot no less than 60 days before an election. After the initial election, trustees serve staggered two-year terms with elections held annually. Trustees are not compensated and must select officers after each election. Vacancies are appointed for the remaining unserved term by the other trustees.<sup>27</sup>

Mobile home park recreational districts may be granted the power to

- 1) To sue and be sued and to have a corporate seal.
- 2) To enter contracts, including the purchase, lease, conveyance, or other manner of acquisition of common real or tangible personal property;<sup>28</sup>
- 3) To acquire, purchase, construct, improve, equip, and maintain streets and lights, recreational facilities, and other common areas of all types, including real property and personal property, within the boundaries of the existing platted mobile home park to be acquired by the district;

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<sup>23</sup> S. 418.22, F.S.

<sup>24</sup> S. 418.23, F.S.

<sup>25</sup> S. 418.26, F.S.

<sup>26</sup> S. 418.30, F.S.

<sup>27</sup> S. 418.302, F.S.

<sup>28</sup> If the cost, price, or consideration will exceed \$25,000, including all obligations proposed to be assumed in connection with such acquisition, then the contract cannot be formed unless certain conditions are met including a two-thirds vote of the terms by the trustees and a referendum. S.418.304(13), F.S.

- 4) To levy and assess a special assessment known as a “recreation district tax,” which cannot be an ad valorem tax, against all improved residential parcels situated within the district for the purpose of providing funds to implement the powers of the district, subject to an enumerated disclosure and resolution process;<sup>29</sup>
- 5) To issue bonds or notes to finance, in whole or in part, the cost of construction, acquisition, or improvement of common real property and personal property of the district;
- 6) To operate and maintain recreational facilities or contract for such services;
- 7) To establish, charge, and collect reasonable fees for admission to or use of recreational facilities, provided the use of the facilities is extended to residents and nonresident owners within the district, their family members and guests, and other such persons and groups as the board may authorize from time to time; and to apply such fees to the operation, maintenance, improvement, enlargement, or acquisition of recreational facilities or to the payment of bonds, notes, or revenue certificates of the district;
- 8) To adopt and enforce rules for the use of the recreational facilities owned or operated by the district;
- 9) To employ necessary personnel;
- 10) To adequately insure the facilities, properties, and operations of the district as well as the trustees of the district, jointly and severally, in the performance of their duties;
- 11) To buy, sell, rent, or lease real property and personal property and to deliver purchase money notes and mortgages in connection with the acquisition of property;
- 12) To adopt rules and regulations not inconsistent with existing deed restrictions and use district funds in the administration and enforcement of those rules, regulations, and deed restrictions;

A mobile home park recreation district may be abolished by a majority vote of the qualified electors of the district at an election called by the trustees for that purpose. The election must be held and noticed under the same requirements as the creation of the district. However, the district may not be abolished while it has outstanding indebtedness unless adequate provision is made for the liquidation of such outstanding indebtedness.<sup>30</sup>

#### Crary v. Tri-Par Estates Park and Recreation District

In March of 2019, Tri-Par Estates Park and Recreation District, a special district created by special act which operates in a similar manner to mobile home recreation districts created under ch. 418, F.S., filed a declaratory judgment action against a mobile home park lot owner. The district sought relief to enforce its rules and regulations despite lack of explicit language in its enabling act to enforce such rules and regulations. The lower court granted summary judgment in favor of the district, and the defendant, Virginia Crary, appealed. The Second District Court of Appeal reversed and remanded the lower court ruling recognizing that enabling act did authorize the district to promulgate rules and regulations but holding the act did not permit enforcement of those rules and regulations.<sup>31</sup>

The court ruling held that the act creating the district failed to expressly grant it the power to enforce its rules and regulations although it did expressly allow the enforcement of the district's deed restrictions. In light of art. I, s. 18, of the Florida Constitution, which precludes an administrative agency from imposing a prison sentence or any other penalty except as provided by law, the district could not imply those powers unless they were necessarily or reasonably incident to the powers expressly granted.<sup>32</sup>

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<sup>29</sup> If the board of trustees (board) elects to collect the district assessment in a single annual installment, the district assessment must be considered part of the county tax subject to the same penalties, charges, fees, and enforcement remedies as county taxes. s. 418.304(4)(e)1., F.S. If the assessment is collected monthly, all affected property owners must receive a clear and conspicuous statement of the change in the property owner's rights with regard to foreclosure proceedings, and must not be considered part of the county tax or collected as part of the county tax collection. s. 418.304(4)(e)2., F.S.

<sup>30</sup> S. 418.309, F.S.

<sup>31</sup> See *Crary v. Tri-Par Estates Park and Recreation District*, 267 So. 3d 530 (2d DCA 2019).

<sup>32</sup> *Id* at 533.

Tri-Par argued that its enabling act implied the authority to enforce its rules and regulations because it authorized the use of district funds to enforce deed restrictions. However, the court found this argument unpersuasive noting recreation districts created under chapter 418, F.S., are expressly granted the power to enforce their rules and regulations. The court ruled that the district's enabling act did not expressly or implicitly grant the district the power to enforce its rules and regulations but only allowed for the enforcement of the district's deed restrictions.<sup>33</sup>

### Trailer Estates Park and Recreation District

Trailer Estates Park and Recreation District is an independent special district created by special act of the Legislature in 1969 and recodified in 2002 (enabling act).<sup>34</sup> The district covers all land in Trailer Estates subdivisions in Manatee County as described by its enabling act.<sup>35</sup> The enabling act controls over conflicting laws,<sup>36</sup> and the provisions must be construed liberally to effectuate the purpose of the act and the public interest.<sup>37</sup>

A board of nine elected trustees serving two year terms governs the district.<sup>38</sup> Trustees are not compensated for service but are reimbursed for expenses they incur on behalf of the district. Any trustee authorized to sign checks on behalf of the district must execute a bond of at least \$5,000. All bond premiums are paid by the district.<sup>39</sup> Trustees can be removed for malfeasance and misfeasance if they fail to discharge their duties within the district. Vacancies are filled for the unexpired term by the remaining trustees.<sup>40</sup>

The district has the power to acquire property, sue and be sued, enter contracts,<sup>41</sup> and carry out any function necessary for the operation of the district. The board must approve all district debt before it is incurred.<sup>42</sup> The board is authorized to levy a tax on the improved residential parcels of land within the district that becomes a lien on the property until paid and is considered part of the Manatee County tax.<sup>43</sup>

Trustees supervise all real and personal district property and use of district facilities is limited to property owners within the district, their family and guests, and any person authorized by the board of trustees.<sup>44</sup> Trustees are also authorized to issue bonds, promulgate reasonable rules and regulations governing the use of district facilities, and use district funds to administer and enforce deed restrictions that have been filed with the Sarasota County public records.<sup>45</sup> The board may adopt such rules and regulations, not inconsistent with its enabling act, as it deems necessary or convenient in carrying out the provisions of the act.<sup>46</sup>

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<sup>33</sup> *Id* at 534.

<sup>34</sup> Ch. 2002-361, Laws of Fla. and s. 189.019, F.S.

<sup>35</sup> Ch. 2002-361(3)1 and 2, Laws of Fla.

<sup>36</sup> Ch. 2002-361 (5), Laws of Fla.

<sup>37</sup> Ch. 2002-361(6), Laws of Fla.

<sup>38</sup> [citation needed]

<sup>39</sup> Ch. 2002-361(3)3, Laws of Fla. The Supervisor of Elections conducts district elections and is compensated for its services by the district. See ch. 2002-361(3)6, Laws of Fla.

<sup>40</sup> Ch. 2002-361(3)11, Laws of Fla.

<sup>41</sup> Trustees cannot enter into any future contracts involving the purchase, lease, conveyance, or other manner of acquisition of real or tangible personal property when the cost, price, or consideration exceeds \$25,000 unless the board follows special procedures which include two-thirds approval of the board and a referendum. Ch. 2002-361(3)22, Laws of Fla.

<sup>42</sup> Ch. 2002-361(3)8, Laws of Fla.

<sup>43</sup> Ch. 2002-361(3)9, Laws of Fla. District taxes are subject to the same penalties, charges, fees, and remedies for enforcement and collection as provided by the laws of the State of Florida for the collection of such taxes. Ch. 2002-361(3)9, Laws of Fla.

<sup>44</sup> Ch. 2002-361(3)14 and 15, Laws of Fla.

<sup>45</sup> Ch. 2002-361(3)15, Laws of Fla.

<sup>46</sup> Ch. 2002-361(3)17, Laws of Fla.

The district may be abolished by a majority of the registered voters within the district voting at an election called by the board of trustees. The district cannot be abolished while it has outstanding debt unless it first makes adequate provision for the liquidation of that debt.<sup>47</sup>

### Effects of the Proposed Bill

The bill authorizes the board of trustees to adopt and enforce reasonable rules and regulations as provided under chapter 418, of the Florida Statutes, rather than just promulgating them. The board is also authorized to prescribe and enforce penalties as provided within the deed restrictions over the property within the district. The bill authorizes the board to adopt rules, regulations, and penalties not inconsistent with the act and applicable law as necessary and convenient to carry out the terms of the act.

#### B. SECTION DIRECTORY:

Section 1. Amends ch. 2002-361, Laws of Florida, to authorize the Board of Trustees to adopt and enforce certain rules and regulations governing district facility use and prescribe penalties for violations of such rules and regulations.

Section 2. Provides the act will take effect July 1, 2020.

### II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? November 14, 2019

WHERE? *Bradenton Herald*, Manatee County, Florida

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes ☒ No ☐

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

The State Constitution requires a referendum or notice of the intention to seek enactment before any special law can be passed. Notice must be published as prescribed by general law.<sup>48</sup> General law requires notice be published one time, at least 30 days prior to the bill's introduction in the Legislature.<sup>49</sup>

Notice of the bill refers to the 2019 regular Legislative Session and as a result fails to meet Constitutional notice requirements.

#### B. RULE-MAKING AUTHORITY:

The bill provides the district authority to adopt and enforce reasonable rules and regulations governing the use of district recreational facilities and to prescribe penalties for the violation of those rules and regulations.

<sup>47</sup> Ch. 2002-361(3)19, Laws of Fla.

<sup>48</sup> See Art. III, s. 10, Fla. Const.

<sup>49</sup> Publication may be by advertisement in a newspaper of general circulation in each affected county or, if no such newspaper is published in or circulated throughout an affected county, by posting the notice for 30 days in three public places in each such county, including the courthouse. S. 11.02, F.S., implementing art. III, s. 10, Fla. Const. See *also Totten v. Okaloosa County Gas District*, 164 So. 2d 15, 17 (Fla. 1964).

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The State Constitution vests all legislative power in the State Legislature.<sup>50</sup> Under the nondelegation doctrine, the Legislature may not delegate the power to enact a law, to declare what the law must be, nor the power to exercise unrestricted discretion in applying a law.<sup>51</sup> In determining whether a particular power can be delegated, the Legislature may delegate its powers only where there are ascertainable minimal standards and guidelines.<sup>52</sup> Additionally, legislative power cannot be completely delegated as to policy and standards.<sup>53</sup>

The bill appears to delegate the power to exercise unrestricted discretion in prescribing and enforcing penalties it will be permitted to impose if the bill is enacted.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>50</sup> See Art. III, s. 1, Fla. Const.

<sup>51</sup> See *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260 (Fla. 1991) and *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008).

<sup>52</sup> See *United Faculty of Florida v. Florida State Bd. of Educ.*, 157 So. 3d 514, 315 Ed. Law Rep. 580 (Fla. 1st DCA 2015); *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008).

<sup>53</sup> See *State ex rel. Palm Beach Jockey Club v. Florida State Racing Com'n*, 158 Fla. 335, 28 So. 2d 330 (1946).