

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 1465 Hardee County Economic Development Authority, Hardee County

**SPONSOR(S):** Bell

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

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**FINAL HOUSE FLOOR ACTION:** 118 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 1465 passed the House on March 9, 2020, as amended, and subsequently passed the Senate on March 11, 2020.

The state levies an excise tax on the removal of phosphate rock from Florida soil or water for commercial use, and distributes a portion of the revenue generated to the counties from which the phosphate is removed. The proceeds must be used for phosphate-related expenses unless the county is designated as a rural area of opportunity. The proceeds are paid directly to the county unless a local authority has been created to receive the proceeds and promote and direct the economic development of the county.

The Hardee County Economic Development Authority (Authority) is an independent special district created in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County. The Authority can appropriate the phosphate tax revenue received from the state but has no taxing authority. The Authority also has the power to approve time and cost sheets for the county employees it uses for Authority business, but cannot approve an annual operating budget.

The bill authorizes the Authority to approve, process, and fund by direct appropriation certain grant applications for funding public infrastructure projects submitted by the county and municipalities within the county.

The Economic Impact Statement submitted by the Authority indicates the bill will have no fiscal impact on the Authority and will not impact present governmental services.

The bill was approved by the Governor on June 9, 2020, ch. 2020-200, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **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.<sup>1</sup> A special district may be created by general law, special act, local ordinance, or rule of the Governor and Cabinet.<sup>2</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.<sup>3</sup> Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>4</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 the governing body of a single county or municipality.<sup>5</sup> An “independent special district” is any district that is not a dependent special district.<sup>6</sup>

The governing body of each special district must annually adopt a budget by resolution. At a minimum, the adopted budget must show the level of detail required for the annual financial report to the Department of Financial Services.<sup>7</sup> The adopted budget must regulate expenditures of the special district, and an officer of a special district may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget.<sup>8</sup> The proposed budget of a dependent special district must be contained within the general budget of the local governing authority to which it is dependent and be clearly stated as the budget of the dependent district.

The governing body of each special district may amend its budget at any time within a fiscal year or within 60 days following the end of the fiscal year as permitted by statute.<sup>9</sup> An amended budget must be posted on the district’s official website within five days after adoption and must remain on the website for at least two years.<sup>10</sup>

A local general-purpose government may review the budget or tax levy of any special district located solely within its boundaries.<sup>11</sup>

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<sup>1</sup> S. 189.012(6), F.S. The Legislature adopted ch. 189, F.S., in 1989, to provide uniform statutes for the definition, creation, and operation of special districts. See s. 189.011(1), F.S.

<sup>2</sup> S. 189.012(6), F.S.

<sup>3</sup> See ss. 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. See art. VIII, ss. 1(f) and (g), 2(b), s. 6(e), Fla. Const. and ss. 166.021 and 125.01, F.S. See also *2018 – 2020 Local Gov’t Formation Manual*, p. 64, at

[https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2020&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual.pdf](https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2020&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual.pdf) (last visited January 23, 2020)(hereinafter *Local Government Manual*).

<sup>4</sup> *Local Government Manual*, p. 64.

<sup>5</sup> S. 189.012(2), F.S.

<sup>6</sup> S. 189.012(3), F.S.

<sup>7</sup> See s. 218.32(1), F.S.

<sup>8</sup> S. 189.016(3), F.S.

<sup>9</sup> S. 189.016(6), F.S.

<sup>10</sup> S. 189.016(7), F.S.

<sup>11</sup> S. 189.016(8), F.S.

All special districts must comply with the statutory financial reporting requirements for local government entities.<sup>12</sup> A special district must comply with a local general-purpose government's request for the district's financial information if the district is located solely within its boundaries and the request is to satisfy the local general-purpose government's statutory reporting requirements.<sup>13</sup>

### Rural Economic Development Initiative

The Legislature created the Rural Economic Development Initiative (REDI) to encourage and facilitate the location and expansion of major economic development projects in rural communities and regions.<sup>14</sup> A "rural area of opportunity" is a rural community,<sup>15</sup> or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.<sup>16</sup> The Governor may designate up to three rural areas of opportunity as priority assignment areas for REDI by executive order, allowing the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive.<sup>17</sup>

### Phosphate Rock Severance Tax

The state levies an excise tax on those severing phosphate rock from Florida soils or waters for commercial use, which tax is collected, administered, and enforced by the Department of Revenue.<sup>18</sup> Each county designated as a rural area of opportunity receives payments from the revenues generated by the tax equal to 8.9 percent of the county's proportionate share of statewide phosphate mining.<sup>19</sup> These payments are made to the local authority designated to promote and direct the economic development of the county, if the Legislature has established one, or alternatively to the county directly.<sup>20</sup>

### Hardee County Economic Development Authority

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<sup>12</sup> See ss. 218.32 and 218.39, F.S.

<sup>13</sup> S. 189.016(9), F.S.

<sup>14</sup> S. 288.0656(1)(a)-(b), F.S. REDI is within the Department of Economic Opportunity (DEO) and state and regional agencies are authorized to participate. REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities to find ways to balance environmental and growth management issues with local needs. S. 288.0656(3), F.S.

<sup>15</sup> S. 288.0656(2)(e), F.S. A "rural community" is:

1. A county, or a municipality within a county, with a population of 75,000 or fewer;
2. A county, or a municipality within a county, with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer; or
3. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified and verified by DEO.

"Economic distress" means conditions affecting the fiscal and economic viability of a rural community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low weekly earned wages compared to the state average, low housing values compared to the state average, high percentages of the population receiving public assistance, high poverty levels compared to the state average, and a lack of year-round stable employment opportunities. S. 288.0656(2)(c), F.S.

<sup>16</sup> S. 288.0656(2)(d), F.S.

<sup>17</sup> S. 288.0656(7)(a), F.S. REDI may recommend up to three rural areas of opportunity to the Governor. Designation as a rural area of opportunity under this subsection is contingent upon the execution of a memorandum of agreement among DEO; the governing body of the county; and the governing bodies of any municipalities to be included within a rural area of opportunity. S. 288.0656(7)(b), F.S.

<sup>18</sup> S. 211.3103(1), F.S. The tax is in addition to any ad valorem taxes levied upon the separately assessed mineral interest in land the rock was located, or any other tax, permit, or license fee imposed by the state or counties. S. 211.3103(4), F.S.

<sup>19</sup> S. 211.3103(6)(b), F.S. After December 31, 2022, the percentage will increase to 10 percent. S. 211.3103(6)(a), F.S.

<sup>20</sup> Section 211.3103(6)(a)4., F.S.

Hardee County has been designated a rural area of opportunity.<sup>21</sup> The Hardee Economic Development Authority (Authority) is an independent special district created by special act in 2004 (enabling act) to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County.<sup>22</sup> These grant awards are not limited to public entities. The Authority has no power to levy taxes or impose fees.<sup>23</sup>

The Authority has a governing body composed of nine members serving staggered terms.<sup>24</sup> The Hardee County Board of County Commissioners (BOCC) serves as five members. The remaining four members are the President of the Heartland Workforce Investment Board, Inc., in Hardee County, and three members appointed by the governing bodies of the three municipalities within the county (the City of Bowling Green, City of Wauchula, and Town of Zolfo Springs).<sup>25</sup>

Appointed members serve four-year terms and the commissioner members serve terms that run concurrent with their commission terms.<sup>26</sup> Members are not compensated and may serve successive terms.<sup>27</sup> The chair of the BOCC serves as interim chair to call the first meeting of the Authority and the Authority may elect any sitting member to serve as chair. Each member is entitled to one vote and a majority of the members constitutes a quorum.<sup>28</sup>

The Authority must adopt administrative rules and hold public meetings pursuant to general law, establish procedures for soliciting and awarding grants as required by its enabling act, direct the county clerk to expend funds upon proper authorization, and create a standardized application form for the award of grants by the Authority.<sup>29</sup> The Authority may conduct business and receive funds on its own behalf, approve or amend time and cost sheets submitted by county employees appointed to work for the Authority, and any other acts reasonable and necessary to implement and enforce the charter and rules adopted in accordance with the charter.<sup>30</sup>

The enabling act creates specific procedures for the submission, review, consideration, and award of the funds administered by the Authority.<sup>31</sup> The act provides:

- How the Authority gives notice of the period for submitting applications and certain information applicants must provide;<sup>32</sup>
- Procedures for review of each application by the Authority, including how projects are ranked for final award consideration and that the Authority conduct at least one public hearing to review all applications;<sup>33</sup>
- Specific criteria for each potential grantee;<sup>34</sup>
- Specific requirements for the priority listing of projects by the Authority and subsequent funding based on those priorities;<sup>35</sup> and

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<sup>21</sup> Fla. Exec. Order No. 16-150 (June 27, 2016), at [https://www.flgov.com/wp-content/uploads/orders/2016/EO\\_16-150.pdf](https://www.flgov.com/wp-content/uploads/orders/2016/EO_16-150.pdf) (last visited February 11, 2020).

<sup>22</sup> Ch. 2004-394, Laws of Fla., as amended by chs. 2006-349, 2010-271, and 2018-185 Laws of Fla., and ss. 211.3103(6)(a)4. and (6)(b)4., F.S.

<sup>23</sup> See Ch. 2004-394, Laws of Fla.

<sup>24</sup> Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(1) of s. 1, Laws of Fla.

<sup>25</sup> *Id.*

<sup>26</sup> Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(2) of s. 1, Laws of Fla.

<sup>27</sup> Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(4) of s. 1, Laws of Fla.

<sup>28</sup> Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(3) of s. 1, Laws of Fla.

<sup>29</sup> Ch. 2004-394, s. 4(1), Laws of Fla.

<sup>30</sup> Ch. 2004-394, s. 4(2), Laws of Fla.

<sup>31</sup> Ch. 2004-394, s. 7, Laws of Fla.

<sup>32</sup> Ch. 2004-394, s. 7(1), Laws of Fla.

<sup>33</sup> Ch. 2004-394, s. 7(2), Laws of Fla.

<sup>34</sup> Ch. 2004-394, s. 7(2)(e), Laws of Fla.

<sup>35</sup> Ch. 2004-394, s. 7(2)(f)-(h), Laws of Fla.

- All grant awards must be formalized by a grant award agreement.<sup>36</sup>

The Authority may appropriate funds received by the clerk<sup>37</sup> in distributing the county's portion of the state's excise tax on the severance of phosphate rock<sup>38</sup> only as provided in the enabling act. The requirements of the enabling act create a lengthy process with limited flexibility.

### **Effect of the Bill**

The bill authorizes the Authority to process certain grant applications by Hardee County or the municipalities located within the county<sup>39</sup> for infrastructure projects through direct appropriations under an adopted operating budget. Because the enabling act limits the Authority to providing grants for infrastructure and economic development, the infrastructure projects subject to this direct appropriation must be for the purpose of economic development. The annual operating budget must comply with the requirements established by the Special District Accountability Program in the Department of Economic Opportunity. The budget may only provide for the consideration and approval or denial of these grant applications and each application must be considered at a public meeting of the Authority.

The Economic Impact Statement submitted by the Authority indicates the bill will have no fiscal impact on the Authority and will not impact present governmental services. The bill will lead to increased efficiency.<sup>40</sup>

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

C. ECONOMIC IMPACT STATEMENT FILED? Yes  No

D. NOTICE PUBLISHED? Yes  No

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<sup>36</sup> Ch. 2004-394, s. 7(3), Laws of Fla.

<sup>37</sup> The clerk of court acting in the capacity of chief financial officer for Hardee County. See ch. 2004-394, s. 2(2), Laws of Fla.; art. VIII, s. 1(d). Fla. Const.

<sup>38</sup> Ch. 2004-394, ss. 1(2) and 6, Laws of Fla.

<sup>39</sup> The following municipalities are located within the county: Bowling Green, Wauchula, and Zolfo Springs.

<sup>40</sup> Hardee County Economic Development Authority, *2020 Economic Impact Statement Form*, available at <https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=EconomicImpactStatement.pdf&DocumentType=localbilldocuments&Session=2020&BillNumber=1465> (last visited February 14, 2020).

IF YES, WHEN?      December 19, 2019

WHERE?              *The Herald-Advocate*, Wauchula, Hardee County, Florida

E. REFERENDUM(S) REQUIRED?    Yes     No

IF YES, WHEN?