

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 597 Tri-Par Estates Park and Recreation District, Sarasota County

SPONSOR(S): Local Administration Subcommittee, Newton

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

FINAL HOUSE FLOOR ACTION: 115 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 597 passed the House on February 20, 2020, and subsequently passed the Senate on March 11, 2020.

Each municipality and county in the state may 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.

Tri-Par Estates Park and Recreation District (Tri-Par) is an independent special district created by special act that operates similarly to a recreation district. Use of Tri-Par facilities is limited to property owners, their family and guests, and other persons authorized by the district. Tri-Par is governed by a board of trustees with 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 of trustees for the Tri-Par to adopt and enforce reasonable rules and regulations and prescribe and enforce penalties. The bill authorizes the board to suspend access to certain common areas or facilities for a specified period. The bill also requires that the board provide notice to the accused violator along with an opportunity for a hearing before levying any penalties. The bill authorizes the board to adopt rules, regulations, and penalties that are not inconsistent with its enabling act and applicable laws as necessary and convenient to carry out the terms of the enabling act.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill was approved by the Governor on June 9, 2020, ch. 2020-189, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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 rule of the Governor and Cabinet.¹ 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.²

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.³ An “independent special district” is any district that is not a dependent special district.⁴

Formation and Charter of an Independent Special District

With the exception of community development districts,⁵ the charter for any new independent special district must include certain minimum elements enumerated in statute.⁶ The charter of a newly-created district must state whether it is dependent or independent.⁷ 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.⁸

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

- Creates a special district with a charter that does not conform to the minimum requirements in s. 189.031(3), F.S.;⁹
- Exempts district elections from the requirements of s. 189.04, F.S.;¹⁰
- Exempts a district from the requirements for bond referenda in s. 189.042, F.S.;¹¹
- 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;¹² or

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

² 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).

³ S. 189.012(2), F.S.

⁴ S. 189.012(3), F.S.

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

⁶ S. 189.031(1), F.S. See s. 189.031(3), F.S.

⁷ S. 189.031(5), F.S.

⁸ S. 189.031(3), F.S. (setting forth the minimum charter requirements).

⁹ S. 189.031(2)(a), F.S.

¹⁰ S. 189.031(2)(b), F.S.

¹¹ S. 189.031(2)(c), F.S.

¹² 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.¹³

These prohibitions were passed by a three-fifths majority in the House of Representatives and Senate when ch. 189, F.S., originally was adopted.¹⁴ They may be amended or repealed only “by like vote.”¹⁵

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.¹⁶

Recreation Districts

Chapter 418, F.S., authorizes each municipality and county in the state to create one or more recreation districts.¹⁷ A recreation district may contain all or part of the land within a municipality, if created by a municipality. Districts created by counties may only contain unincorporated areas. Recreation districts may be created by municipal or county ordinance, subject to a referendum conducted in accordance with the municipal incorporation and merger requirements.¹⁸ Alternatively, 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.¹⁹ The ordinance, and any amendments, act as the district charter.²⁰ The district charter must specify the composition of the governing body of the district as either:

- A five-member or larger board of supervisors elected from among the residents of the district; or
- The governing body of the municipality or county that created the district.²¹

If the governing body is a board of supervisors, 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. Board members may not receive compensation.²² The charter may also stagger the terms of the board members and establish electoral sub-units represented by one or more members elected by majority vote within the sub-unit.²³

The district charter may contain findings by the governing body of the municipality or county, such as a finding that the creation of the 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.²⁴

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:

- To sue and be sued and have a corporate seal;

¹³ 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).

¹⁴ S. 67, ch. 89-169, Laws of Fla.

¹⁵ Art. III, s. 11(a)(21), Fla. Const.

¹⁶ Art. VII, s. 9(a), Fla. Const.

¹⁷ S. 418.20, F.S.

¹⁸ See s. 165.041, F.S.

¹⁹ S. 418.20, F.S.

²⁰ The governing body of said municipality or county may from time to time amend such ordinance. Such amendments must be approved by a vote of the electors in the district. S. 418.20, F.S.

²¹ S. 418.21(1), F.S.

²² S. 418.21(2)(b), F.S.

²³ S. 418.21(2), F.S.

²⁴ 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.

- To enter contracts;
- To acquire, purchase, construct, improve, and equip recreational facilities, including real and personal property, within the boundaries of the district;
- To issue bonds, if approved at a referendum held in such district;
- To operate and maintain recreational facilities or contract for such services;
- 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;
- To adopt and enforce rules for the use of the recreational facilities owned or operated by the district; and
- To employ necessary personnel.²⁵

These powers may be restricted or limited by the governing body of the municipality or county, which created the district, but may not impair the district's existing contractual duties.²⁶

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 must be the tax collector of the district. District taxes are payable at the same time as municipal or county taxes, and must be secured by a lien on taxable property in the same manner as other local government taxes. Enforcement of a district tax lien must follow the enforcement process as liens for municipal or county taxes.²⁷

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 may be established by 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.²⁸

The governing body of a mobile home park recreation district must be a nine-member board of trustees 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 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. The remaining trustees make interim appointments to fill any vacancies to serve the remainder of any unexpired term.²⁹

Mobile home park recreational districts possess the same powers as recreation districts, including the powers to enter into contracts, 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. Mobile home park recreational districts also have the power to levy and assess a special assessment called a "recreation district tax."³⁰

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

²⁵ S. 418.22, F.S.

²⁶ S. 418.23, F.S.

²⁷ S. 418.26, F.S.

²⁸ S. 418.30, F.S.

²⁹ S. 418.302, F.S.

³⁰ S. 418.304, F.S.

while it has outstanding indebtedness, unless adequate provision is made for the liquidation of such outstanding indebtedness.³¹

Tri-Par Estates Park and Recreation District

Tri-Par Estates Park and Recreation District (Tri-Par) is an independent special district covering all the residential land in Tri-Par Estates subdivisions in Sarasota County.³² The district was created by special act in 1978 and the charter was recodified in 2001 (enabling act).³³ The enabling act must be construed liberally to effectuate the purpose of the act and the public interest.³⁴ Tri-Par may impose a tax of up to 0.2 mills on the taxable property within the district.³⁵

A board of nine elected trustees serving three-year terms governs Tri-Par.³⁶ Trustees are not compensated for their 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 \$10,000. All bond premiums are paid by the district.³⁷ 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.³⁸

Tri-Par has the power to acquire property, sue and be sued, enter contracts,³⁹ and carry out any function necessary for the operation of the district.⁴⁰ The board must approve all district debt before it is incurred.⁴¹ The board may levy a tax on the improved residential parcels of land within the district that is a lien on the property until paid and is considered part of the Sarasota County tax.⁴²

Trustees supervise all real and personal district property and use of district facilities is limited to property owners within Tri-Par, their family and guests, and any person authorized by the board of trustees. 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 recorded in the Sarasota County public records. 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.⁴³

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.⁴⁴

Crary v. Tri-Par Estates Park and Recreation District

³¹ S. 418.309, F.S.

³² Ch. 2001-343, s. 1 of s. 3, Laws of Fla.

³³ Ch. 2001-343, Laws of Fla.

³⁴ Ch. 2001-343, s. 25 of s. 3, Laws of Fla.

³⁵ Ch. 2001-343, ss. 1 and 7 of s. 3, Laws of Fla.

³⁶ Ch. 2001-343, ss. 3 and 5 of s. 3, Laws of Fla.

³⁷ Ch. 2001-343, s. 3 of s. 3, Laws of Fla. The supervisor of elections conducts district elections and is compensated for its services by the district. See ch. 2001-343, s. 4 of s. 3, Laws of Fla.

³⁸ Ch. 2001-343, s. 11 of s. 3, Laws of Fla.

³⁹ 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 \$20,000 unless it relates to the repair or replacement of existing assets or the board follows special procedures, which include two-thirds approval of the board. Ch. 2001-343, s. 22 of s. 3, Laws of Fla.

⁴⁰ Ch. 2001-343, ss. 8 and 15 of s. 3, Laws of Fla.

⁴¹ Ch. 2001-343, s. 8 of s. 3, Laws of Fla.

⁴² Ch. 2001-343, ss. 7 and 9 of s. 3, 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. 2001-343, s. 9 of s. 3, Laws of Fla.

⁴³ Ch. 2001-343, s. 15 of s. 3, Laws of Fla.

⁴⁴ Ch. 2001-343, s. 19 of s. 3, Laws of Fla.

In March 2019, the district 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 authorization in its enabling act. The lower court granted summary judgment in favor of the district, and the defendant appealed. The Second District Court of Appeal reversed, holding that while the enabling act authorized the district to promulgate rules and regulations, the act did not permit enforcement of those rules and regulations.⁴⁵ The court held that the act creating the district failed to contain an express grant of power to enforce the district's rules and regulations although the act did expressly allow the enforcement of the district's deed restrictions.⁴⁶

Effect of the Bill

The bill authorizes the board of trustees for Tri-Par to adopt and enforce, rather than just promulgate, reasonable rules and regulations as provided under ch. 418, F.S. The board also is authorized to prescribe and enforce penalties. The board may impose a penalty for a single violation of up to \$100 and for a continuing violation of up to \$1000. The bill specifies that such fines may not become a lien on the property. The board also may suspend access of a property owner, or authorized licensee or invitee of the property owner, to certain common areas or facilities for no more than 10 days. The suspension may not prohibit access to the property, the right to park a vehicle, or use of common areas providing access or utility service to the property. Penalties may not be levied until the accused violator receives notice and has an opportunity for a hearing before the board. 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.

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 [X] No []

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

IF YES, WHEN? September 17, 2019

⁴⁵ See *Crary v. Tri-Par Estates Park and Recreation District*, 267 So. 3d 530 (Fla. 2d DCA 2019).

⁴⁶ *Id.* at 533.

WHERE?

Sarasota Herald-Tribune, Sarasota County, Florida

E. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?