

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 783 Soil and Water Conservation Districts

SPONSOR(S): State Affairs Committee, Truenow and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1078

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------------|--|
| 1) Local Administration & Veterans Affairs Subcommittee | 12 Y, 4 N | Leshko | Miller |
| 2) State Affairs Committee | 23 Y, 0 N, As CS | Leshko | Williamson |

SUMMARY ANALYSIS

In 1937, the Florida Legislature enacted ch. 582, F.S., also known as the Soil and Water Conservation Law. This legislation established a state and local partnership with the federal government to protect and restore soil and water resources and to assist private landowners in using conservation practices, creating the soil and water conservation districts (SWCD). The purpose of a SWCD is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.

Currently, there are 56 active independent SWCDs, five active dependent SWCDs, and two inactive SWCDs.

The bill creates a requirement that all five supervisors of the governing body of each district meet at least one time per calendar year. The bill further provides that failure to meet at least once per calendar year will result in automatic dissolution of the district and all assets and liabilities of the district will be transferred to the Florida Department of Agriculture and Consumer Services (FDACS). The bill also dissolves Baker SWCD and Martin SWCD and transfers their assets and liabilities to FDACS, as both were declared inactive by the Department of Economic Opportunity.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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.¹ Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.² The charter of a special district created by special act may be altered or amended by subsequent special acts.³ 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.⁴ A “dependent special district” is a special district created by and subject to significant control by the governing body of a single county or municipality.⁵ An “independent special district” is any district that is not a dependent special district.⁶

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.⁷

Inactive Special Districts

Special districts are declared inactive when the Department of Economic Opportunity (DEO) is notified that the district has taken no action for at least two years, the district has not had a governing body or a sufficient number of governing body members to constitute a quorum for at least two years, the district has unanimously adopted a resolution declaring the district inactive, the district fails to respond to an inquiry from DEO within 21 days, the district has failed to file certain reports,⁸ or the district has not had a registered office and agent on file with DEO for at least a year.⁹ If a special district is declared inactive the property or assets of the district are subject to legal process for payment of any debts of the district. After the payment of any outstanding debts, the remainder of its property or assets escheats to the county or municipality wherein the district is located.¹⁰ A special district declared inactive must be dissolved by repealing its enabling laws or by other means.¹¹ It is in the public interest that any independent special district created pursuant to state law not outlive its usefulness.¹²

¹ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

² See ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; see generally s. 189.012(6), F.S.

³ Local Administration & Veterans Affairs Subcommittee, *Local Bill Policies and Procedures Manual 2020 – 2022*, p. 23, <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Bill+Policy+and+Procedures+Manual.pdf> (last accessed Feb. 10, 2022).

⁴ Local Administration & Veterans Affairs Subcommittee, *The Local Gov’t Formation Manual 2020 – 2022*, pp. 60-61, <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last accessed Feb. 10, 2022).

⁵ S. 189.012(2), F.S. Types of such control include the county or municipality governing body acting as the district governing body, having the authority to appoint or remove at will district board members, or having final approval authority over the district’s budget.

⁶ S. 189.012(3), F.S.

⁷ Art. VII, s. 9(a), Fla. Const.

⁸ S. 189.066, F.S.

⁹ S. 189.062(1)(a), F.S.

¹⁰ S. 189.062(2), F.S.

¹¹ Ss. 189.071 and 189.072, F.S. (providing for the merger or dissolution of a dependent special district and the dissolution of an independent special district, respectively).

¹² S. 189.03(1)(b), F.S.

Dissolution of Special Districts

If not by voluntary action, an active, independent special district created by special act may be dissolved by vote of the resident electors of the district or the affected landowners, if the majority of the members of the district's governing body are elected by landowners.¹³ If the district was created by a county or municipality, it may be dissolved by local referendum or the same procedure by which the district was created.¹⁴ Additionally, a dependent special district may be merged or dissolved by an ordinance of the county or municipality within which it is located.¹⁵ However, any dependent special district created by special act may only be dissolved by act of the Legislature.¹⁶

Upon dissolution of a special district the title to all district property is transferred to the local general-purpose government, which also assumes all indebtedness of the preexisting special district.¹⁷

Soil and Water Conservation Districts (SWCD)

History and Purpose of SWCD

In response to the 1930's Dust Bowl disaster,¹⁸ in 1935, the United States Congress declared soil and water conservation a national policy and priority, intending to elicit the active support of landowners on a local level. Shortly thereafter, in 1937, the Florida Legislature enacted ch. 582, F.S., also known as the Soil and Water Conservation Law.¹⁹ This legislation established a state and local partnership with the federal government to protect and restore soil and water resources and to assist private landowners in using conservation practices, providing for the creation of SWCD.²⁰ The purpose of SWCDs is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.²¹ The overall goal of creating SWCD was to promote the efficient use of soil and water resources by protecting water quality and preventing floodwater and sediment damage.²²

Creation of SWCD

Any 10 percent of landowners within the territory of a proposed SWCD may petition the Florida Department of Agriculture and Consumer Services (FDACS) to organize a SWCD. The petition must include the following:

- The proposed name of the SWCD;
- That there is a need, in the interest of the public health, safety, and welfare, for a SWCD to function in the territory;
- A description of the territory proposed to be organized as a SWCD; and

¹³ S. 189.072(2)(a), F.S.

¹⁴ S. 189.072(2)(b), F.S.

¹⁵ S. 189.071(1), F.S.

¹⁶ S. 189.071(2), F.S.

¹⁷ S. 189.076(2), F.S.

¹⁸ "[N]ame given to the drought-stricken Southern Plains regions of the United States, which suffered severe dust storms during a dry period in the 1930s. . . . By 1934, an estimated 35 million acres of formerly cultivated land had been rendered useless for farming, while another 125 million acres . . . was rapidly losing its topsoil." History, *Dust Bowl*, (Aug. 5, 2020), <https://www.history.com/topics/great-depression/dust-bowl> (last visited Feb. 10, 2022).

¹⁹ Ch. 1937-18144, Laws of Florida.; Association of Florida Conservation Districts, *History of Conservation Districts*, <https://afcd.us/history/> (last visited Feb. 10, 2022).

²⁰ Florida Department of Agriculture and Consumer Services (FDACS), *Florida Soil and Water Conservation District Supervisor Handbook* (2018), <https://www.fdacs.gov/content/download/96781/file/florida-soil-and-water-conservation-district-supervisor-handbook.pdf> (last visited Feb. 10, 2022).

²¹ S. 582.02(4), F.S.

²² Michael T. Olexa, Tatiana Borisova, and Jarrett Davis, *Handbook of Florida Water Regulation: Soil and Water Conservation Districts*, Institute of Food and Agricultural Sciences, University of Florida, <https://edis.ifas.ufl.edu/pdf%5CFE%5CFE101700.pdf> (last visited Feb. 10, 2022).

- A request that DEO define the boundaries for such SWCD, hold a referendum within the territory on the question of the creation of a SWCD in the territory, and determine that such a district be created.²³

Within 30 days of such petition being filed, DEO must give notice and hold a meeting of affected landowners to discuss the desirability and necessity of creating such a SWCD, the appropriate boundaries, and the accuracy and completeness of the petition. If, after the first hearing, creating a SWCD appears desirable, a second hearing must be held and noticed throughout the entire area considered for inclusion in the district. After both hearings, DEO must determine whether there is a need for a SWCD and either grant or deny the petition. A new petition regarding the same or substantially same territory cannot be refiled for six months after a denial.²⁴

If DEO grants a petition for creation of a SWCD, FDACS must then determine whether the creation of such a district is administratively practicable and feasible. FDACS holds a referendum within the proposed district at which all owners of land lying within the boundaries of the territory are eligible to vote.²⁵ Additionally, FDACS takes into account a variety of economic and social factors that may be relevant to the determination, but may not determine that the creation of a SWCD is administratively practicable and feasible unless at least a majority of the votes cast at the referendum are in favor of the creation of the district.²⁶

If FDACS determines that the operation of the proposed SWCD within the defined boundaries is administratively practicable and feasible, an application must be filed with the Department of State accompanied by a statement from FDACS certifying that the proper proceedings were taken upon the filing of the initial petition for creation.²⁷ The Department of State, pending any issues with the name chosen for the district, records the application and statement and issues a certificate of the due organization of the district and records the certificate.²⁸

Governing Board of SWCD

The governing body of a SWCD consists of five supervisors serving staggered four-year terms. Elections for supervisors are held every two years at the time of the general election. The office of the supervisor is a nonpartisan office.²⁹ Each supervisor must qualify as required in the election law.³⁰ A supervisor holds office until a successor has been elected and qualified. The Governor may remove any supervisor, upon notice and hearing, for neglect or malfeasance in office, but for no other reason.³¹ Supervisors do not receive compensation but may be reimbursed for travel expenses.³²

Powers of SWCD

SWCD and the supervisors have the power to:

- Conduct surveys, studies, and research relating to soil and water resources and publish and disseminate the results of such surveys, studies, research, and related information;³³
- Conduct agricultural best management practices demonstration projects and projects for the conservation, protection, and restoration of soil and water resources;³⁴

²³ S. 582.10(1)(a)-(d), F.S.

²⁴ S. 582.11, F.S.

²⁵ S. 582.12, F.S.; FDACS pays all expenses for the issuance of required notices and the conduct of hearings and referenda. S. 582.13, F.S.

²⁶ S. 582.14, F.S.

²⁷ S. 582.15(1), F.S.

²⁸ S. 582.15(2), F.S.

²⁹ S. 582.18(1), F.S.

³⁰ See ch. 99, F.S., *passim*.

³¹ S. 582.19(4), F.S.

³² S. 582.19(1) and (2), F.S.

³³ S. 582.20(1), F.S.

³⁴ S. 582.20(2), F.S.

- Cooperate or enter into agreements with any special district, municipality, county, water management district, state or federal agency, governmental or otherwise, or owner or occupier of lands;³⁵
- Obtain options upon and acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; maintain, administer, and improve any properties acquired, receive income from such properties and expend such income in carrying out soil and water conservation; and sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of soil and water conservation;³⁶
- Make available to landowners agricultural and engineering machinery and equipment, and other materials and equipment, that will assist landowners in carrying out conservation operations;³⁷
- Construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any conservation operations;³⁸
- Sue and be sued in the name of the district, have a seal, make and execute contracts, borrow money, and execute promissory notes;³⁹
- Use the services of the county agricultural agents and their offices; and
- Employ additional permanent and temporary staff.⁴⁰

SWCD Activities

Some activities of SWCD include:

- Cooperative programs such as best management practices projects and Farm Bill programs like the Environmental Quality Incentives Program, Agricultural Conservation Easement Program, and Regional Conservation Partnership Programs;
- Conservation projects focusing on water quality improvement, habitat restoration, and administering cost-share funds to help farmers and other landowners implement conservation practices;
- Demonstration projects focusing on irrigation, drainage, tailwater recovery, erosion control, and waste management;
- Educational workshops on topics like water quality and quantity, pesticide and fertilizer management, watershed engineering, wetlands, soil characteristics, soil tillage techniques, plan identification, invasive plant control, farm ponds, and agricultural production;
- Mobile Irrigation Labs to evaluate agricultural irrigation systems; and
- Planning and rulemaking at the county, regional, state, and federal levels.⁴¹

Dissolution of SWCD

SWCD may be discontinued if two-thirds or more of the qualified voters in a referendum have voted for discontinuance; if the Council reviews and recommends to the Commissioner that the continued operation of the district is not administratively practicable and feasible; if the district fails to comply with any audit or financial reporting and DEO's inspector general reviews and confirms in writing that the district has failed to comply with such requirements; or DEO receives a resolution adopted by the supervisors of the district requesting that the Commissioner issue a certificate determining that the continued operation of the district is not administratively practicable and feasible.⁴² Once the supervisors of a SWCD receive notification from FDACS that DEO has determined that the continued operation of the district is not practicable or feasible the supervisors must proceed to terminate the affairs of the district.

³⁵ S. 582.20(3), F.S.

³⁶ S. 582.20(4), F.S.

³⁷ S. 582.20(5), F.S.

³⁸ S. 582.20(6), F.S.

³⁹ S. 582.20(8), F.S.

⁴⁰ S. 582.20(9), F.S.

⁴² S. 582.30(2) and (3)(a)-(c), F.S.

⁴² S. 582.30(2) and (3)(a)-(c), F.S.

The supervisors must dispose of all the property belonging to the SWCD at public auction and transfer the proceeds of such sale to the State Treasury, which funds must be used to liquidate any legal obligations the district may have at the time of its discontinuance. The supervisors are then required to file an application with the Department of State for discontinuance of the district. The Department of State must then issue a certificate of dissolution to the supervisors.⁴³ Upon issuance of a certificate of dissolution, the title to all property owned by the preexisting SWCD transfers to the local general-purpose government, which also assumes all indebtedness of the SWCD.⁴⁴

Existing SWCD

Currently, there are 51 active independent SWCDs,⁴⁵ five active dependent SWCDs,⁴⁶ and two inactive SWCDs.⁴⁷

Effect of Proposed Changes

The bill creates a requirement that all five supervisors of the governing body of each district meet at least one time per calendar year in a public meeting pursuant to s. 286.011, F.S. The bill provides that failure to meet at least once per calendar year results in automatic dissolution of the district as of January 1 of the year immediately following the year in which the board failed to meet and all assets and liabilities of the district transfer to FDACS.

Baker SWCD and Martin SWCD were declared inactive by DEO on August 3, 2020, and March 17, 2020, respectively. Accordingly, the bill dissolves Baker SWCD and Martin SWCD and transfers all assets and liabilities of each district to FDACS.

B. SECTION DIRECTORY:

Section 1: Creates s. 582.195, F.S., relating to mandatory meetings of the governing body of a SWCD.

Section 2: Creates 582.295, F.S., providing for automatic dissolution of SWCDs in certain circumstances.

Section 3: Dissolves Baker and Martin SWCDs.

Section 4: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to affect state revenues.

2. Expenditures:

This bill does not appear to require state expenditures.

⁴³ S. 582.31, F.S.

⁴⁴ S. 189.076(2), F.S.

⁴⁵ Division of Community Development, *Official List of Special Districts*, Florida Department of Economic Opportunity (Feb. 10, 2022), <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Feb. 10, 2022). (Alachua, Bradford, Brevard, Broward, Charlotte, Chipola River, Choctawhatchee River, Clay, Collier, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Hamilton, Hardee, Highlands, Hillsborough, Holmes Creek, Indian River, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison County, Manatee River, Marion, Nassau, Okeechobee, Orange Hill, Orange, Osceola, Palm Beach, Peace River, Polk, Putnam, Santa Fe, Sarasota, Seminole, South Dade, St. Johns, St. Lucie, Sumter, Suwannee County, Taylor, Tupelo, Volusia, and Wakulla).

⁴⁶ *Id.* (Blackwater, Glades, Hendry, Madison, Union).

⁴⁷ *Id.* (Baker and Martin); See generally s. 189.062, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to affect local government revenue.

2. Expenditures:

This bill does not appear to require expenditures from local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to directly impact the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 28, 2022, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS dissolved the Baker and Martin SWCDs and left the other 56 SWCDs intact. The PCS also required all five of the supervisors of the governing body of each SWCD to meet in a public meeting at least once per calendar year and provided for automatic dissolution if they fail to do so.

This analysis is drafted to the committee substitute adopted by the State Affairs Committee.