

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 1631 Trailer Estates Park and Recreation District, Manatee County

**SPONSOR(S):** Gregory

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

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**FINAL HOUSE FLOOR ACTION:** 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 1631 passed the House on April 21, 2021, and subsequently passed the Senate on April 29, 2021.

The Trailer Estates Park and Recreation District (district) is an independent special district created by special 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 makes the following changes to the district's charter:

- Provides a purpose of the district;
- Provides that more than one trustee may serve as vice chair of the district and specifies that spouses, parents, children, siblings, or domestic partners of a trustee may not serve on the board at the same time with the trustee;
- Specifies that persons qualified to vote in an election must be on the property appraiser rolls, rather than the tax assessor;
- Defines "residential parcel" for purposes of determining property subject to the district assessment, and clarifies that the assessment must be a lien on each improved residential parcel of land as identified on the current tax roll of the tax collector of Manatee County;
- Provides that proceeds of either the tax or assessments must be deposited in a bank or savings and loan;
- Requires the district's fiscal year to begin on October 1, beginning October 1, 2021;
- Authorizes the trustees to adopt and enforce rules and regulations governing the use of the facilities of the district as provided by general law, and to prescribe penalties for violations of the rules and regulations;
- Provides for the creation of an enforcement committee of at least three members, consisting of parcel owners, to hold a hearing regarding an alleged violation;
- Authorizes the trustees to prescribe penalties or exercise enforcement remedies for the enforcement of deed restrictions;
- Authorizes the trustees to conduct bingo games and raffles with certain restrictions;
- Provides certain requirements be met to amend the charter;
- Revises conditions under which the trustees may enter into a contract when the cost price or consideration exceeds \$150,000; and
- Removes the requirement that trustees be guilty of malfeasance in office in order to be relieved of any personal liability for acts done by them while in office.

According to the Economic Impact Statement, the bill does not have a fiscal impact.

The bill was approved by the Governor on June 29, 2021, ch. 2021-261, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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.<sup>1</sup> Special districts are created by general law, special act, local ordinance, or by 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. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>3</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>4</sup> An “independent special district” is any district that is not a dependent special district.<sup>5</sup>

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

With the exception of community development districts,<sup>6</sup> the charter for an independent special district must include the minimum elements required by statute.<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>

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>9</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. Recreation districts must be created by municipal or county ordinance subject to a referendum in accordance with the municipal

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

<sup>2</sup> Ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

<sup>3</sup> 2020– 2022 *Local Gov’t Formation Manual*, pp. 60-61, at

<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 visited March 6, 2021).

<sup>4</sup> S. 189.012(2), F.S.

<sup>5</sup> S. 189.012(3), F.S.

<sup>6</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>7</sup> S. 189.031(1), F.S. Section 189.031(3), F.S., sets forth the minimum charter requirements for an independent special district.

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

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

incorporation and merger statute.<sup>10</sup> The ordinance, and any amendments, acts as the district charter.<sup>11</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>12</sup> The district charter must contain the composition of the governing body of the district, which may be 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.<sup>13</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 divide the district into sectors represented by one or more supervisors if a majority of the electors within each sector approves the division.<sup>14</sup>

The district charter may contain findings by the governing body of the municipality or county that a valid and paramount public purpose will be served by the exclusive nature of the district, such as the creation of such district is the best alternative available for delivering recreational service, or the district is created for the exclusive use of a condominium or cooperative.<sup>15</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:

- To sue and be sued and have a corporate seal;
- 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 the 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.<sup>16</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>17</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 must be the tax collector of the district. District taxes are payable at the same time as municipal or county taxes and are secured by a lien on taxable property the same as local government taxes. Enforcement of a district tax lien must follow the same enforcement process as liens for municipal or county taxes.<sup>18</sup>

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<sup>10</sup> The statutory process for merging or incorporating municipalities is located in s. 165.041, F.S.

<sup>11</sup> 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.

<sup>12</sup> S. 418.20, F.S.

<sup>13</sup> S. 418.21(1), F.S.

<sup>14</sup> S. 418.21(2), F.S.

<sup>15</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.

<sup>16</sup> S. 418.22, F.S.

<sup>17</sup> S. 418.23, F.S.

<sup>18</sup> S. 418.26, F.S.

## *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 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.<sup>19</sup>

The governing body of a mobile home park recreation district must be a 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. The remaining trustees fill vacancies for the remaining unserved term.<sup>20</sup>

Mobile home park recreational districts may be granted the power:<sup>21</sup>

- To sue and be sued and to have a corporate seal;
- To enter contracts, including the purchase, lease, conveyance, or other manner of acquisition of common real or tangible personal property;<sup>22</sup>
- 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;
- 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>23</sup>
- 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;
- To operate and maintain recreational facilities or contract for such services;
- 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;
- To adopt and enforce rules for the use of the recreational facilities owned or operated by the district;
- To employ necessary personnel;
- 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;
- 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; and

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<sup>19</sup> S. 418.30, F.S.

<sup>20</sup> S. 418.302, F.S.

<sup>21</sup> S. 418.304, F.S.

<sup>22</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.

<sup>23</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.

- 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 debt.<sup>24</sup>

#### *Crary v. Tri-Par Estates Park and Recreation District*<sup>25</sup>

In 2019, Tri-Par Estates Park and Recreation District, a special district created by special act that operates in a similar manner to a mobile home recreation district 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 while the enabling act authorized the district to promulgate rules and regulations the act did not permit enforcement of those rules and regulations.<sup>26</sup>

The court held that the act creating the district failed to expressly grant it the power to enforce its rules and regulations, although the act expressly allowed 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>27</sup>

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. The court found this argument unpersuasive, noting recreation districts created under ch. 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>28</sup>

#### Trailer Estates Park and Recreation District

The Trailer Estates Park and Recreation District (district) is an independent special district created by a special act in 1969<sup>29</sup> and recodified in 2002 (enabling act).<sup>30</sup> The district covers all land in Trailer Estates subdivisions in Manatee County.<sup>31</sup> The enabling act controls over conflicting laws,<sup>32</sup> and the provisions must be construed liberally to effectuate the purpose of the act and the public interest.<sup>33</sup>

A board of nine elected trustees serving two-year terms governs the district.<sup>34</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

<sup>24</sup> S. 418.309, F.S.

<sup>25</sup> 267 So. 3d 530 (2d DCA 2019).

<sup>26</sup> See *Crary v. Tri-Par Estates Park and Recreation District*, 267 So. 3d 530 (2d DCA 2019).

<sup>27</sup> *Id.* at 533.

<sup>28</sup> *Id.* at 534.

<sup>29</sup> Ch. 69-1287, Laws of Fla.

<sup>30</sup> Ch. 2002-361, Laws of Fla., and s. 189.019, F.S.

<sup>31</sup> Ch. 2002-361, ss. 1 and 2 of s. 3, Laws of Fla.

<sup>32</sup> Ch. 2002-361, s. 5, Laws of Fla.

<sup>33</sup> Ch. 2002-361, s. 6, Laws of Fla.

<sup>34</sup> Ch. 2002-361 s. 11 of s. 3, Laws of Fla.

bond premiums are paid by the district.<sup>35</sup> Trustees can be removed for malfeasance and misfeasance if they fail to discharge their duties within the district. Trustees may succeed themselves and the remaining trustees fill vacancies for the unexpired term.<sup>36</sup>

The district has the power to acquire property, sue and be sued, enter contracts,<sup>37</sup> and carry out any function necessary for the operation of the district.<sup>38</sup> The board must approve all district debt before it is incurred.<sup>39</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>40</sup>

Trustees supervise all real and personal property of the district 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>41</sup> Trustees also are 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 recorded in the Sarasota County public records.<sup>42</sup> The board may adopt such rules and regulations, not inconsistent with its enabling act, as necessary or convenient in carrying out the provisions of the act.<sup>43</sup>

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>44</sup>

Trustees not guilty of malfeasance in office must be relieved of any personal liability for any acts done by them while holding office in the district. Any trustee made a party to any action, suit, or proceeding solely by reason of holding office in the district must be indemnified by the district against reasonable expenses, including attorney fees, incurred by the trustee in defending the suit, action, or proceeding, except for matters where it is determined that the trustee is liable for negligence or misconduct in the performance of his or her duties.<sup>45</sup>

### **Effect of the Bill**

The bill provides a purpose of the district, which is to provide park and recreation amenities, services, and programs for the owners, residents and their guests, and invitees of the district.

The bill revises the trustees' powers and duties to provide that more than one trustee may serve as vice chair of the district and specifies that spouses, parents, children, siblings, or domestic partners of a trustee may not serve on the board at the same time with the trustee.

The bill specifies that qualified persons to vote in an election must be on the property appraiser rolls, rather than the tax assessor.

For property subject to the district assessment, the bill defines "residential parcel" as a parcel, as identified by the property appraiser of Manatee County, or a platted subdivision lot or a proportionate

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<sup>35</sup> Ch. 2002-361, 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. 2002-361, s. 6 of s. 3, Laws of Fla.

<sup>36</sup> Ch. 2002-361, s. 11 of s. 3, Laws of Fla.

<sup>37</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, s. 3(22), Laws of Fla.

<sup>38</sup> Ch. 2002-361, s. 8 of s. 3, Laws of Fla.

<sup>39</sup> *Id.*

<sup>40</sup> Ch. 2002-361, s. 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.

<sup>41</sup> Ch. 2002-361, ss. 14 and 15 of s. 3, Laws of Fla.

<sup>42</sup> Ch. 2002-361, s. 15 of s. 3, Laws of Fla.

<sup>43</sup> Ch. 2002-361, s. 17 of s. 3, Laws of Fla.

<sup>44</sup> Ch. 2002-361, s. 19 of s. 3, Laws of Fla.

<sup>45</sup> Ch. 2002-361, s. 20 of s. 3, Laws of Fla.

share thereof. The bill provides that trustees must fix the amount of an assessment for the next ensuing fiscal year in accordance with general law and the property appraiser must collect the assessment as assessed on each platted subdivision lot or proportionate share thereof in addition to a residential parcel as currently provided. Notice for the public hearing on the adoption of the resolution fixing the amount of the assessment must accord with general law. Both the property appraiser and the tax collector must include the special assessment on the Manatee County tax roll and both must receive compensation for their services, which are declared to be special services performed directly for the district.

The bill clarifies that the assessment must be a lien on each improved residential parcel of land in the district as identified on the current tax roll of the tax collector of Manatee County. The bill provides that proceeds of either the tax or assessments must be deposited in a bank or savings and loan.

The bill requires the district's fiscal year to begin on October 1, beginning October 1, 2021, and provides that annual financial statements must accord with general law. The bill removes the requirement that the financial statement be published during the month of April each year in a newspaper.

The bill authorizes the trustees to adopt and enforce rules and regulations governing the use of the facilities of the district as provided by general law, and to prescribe penalties for violations of the rules and regulations. The rules and regulations to be enforced must include deed restrictions. Penalties must be fixed by a resolution and may not exceed \$200 per violation against any member, authorized occupant, licensee, or invitee of the member, for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with provisions of the rules and regulations. Fines may be levied daily for each continuing violation, with a single notice and opportunity for hearing, not to exceed \$1,000. The District is authorized to file a lien against the property for any unpaid fines after 90 days.

The bill provides for the creation of an enforcement committee of at least three members, consisting of parcel owners, to hold a hearing regarding an alleged violation. The enforcement committee may only recommend fines or suspensions. Spouses, parents, children, siblings, and domestic partners of a trustee or another member of the committee are prohibited from serving. Fines may not be imposed or recommended unless the enforcement committee provides at least 14 days' written notice of the hearing. Trustees must rule on the recommendation of the enforcement committee. If a fine is levied, the payment is due five days after notice of the fine, which must be approved by majority vote of the trustees. Rights of the parcel owner to use common areas and facilities may be suspended if the owner is delinquent in paying the fine more than 30 days. However, a suspension does not prohibit vehicular or pedestrian ingress and egress from the parcel, including the right to park a vehicle. Penalties for failure to comply with the rules may also include suspension of the ability to use common areas and facilities. The suspension may not exceed 30 days per violation.

The bill authorizes the trustees to prescribe penalties or exercise remedies to enforce deed restrictions. Trustees may adopt rules, regulations, and penalties as deemed necessary for the transaction of the business of the trustees and in carrying out the provisions of the charter.

The bill authorizes the trustees to conduct bingo games and raffles, with certain conditions.

The bill provides for the following conditions in which the charter may be amended:

- The trustees by two-thirds vote of the full membership of the trustees have approved the terms and conditions of an acquisition by written resolution;
- Within not less than 30 nor more than 60 days after the date of the resolution, the trustees certify the resolution to the Supervisor of Elections of Manatee County for a referendum election; and
- A majority of qualified electors of the district voting in a referendum election approve the resolution.

The qualifications of voters, notice, and procedure for the referendum must be the same as set forth for the election of trustees and for special referendum elections.

The bill relieves trustees from personal liability for their official actions, except when a trustee is found negligent or to have committed misconduct.

The bill provides that trustees may not enter into any contract when the cost price or consideration exceeds \$150,000 (adjusted based on the Consumer Price Index for All Urban Consumers based on a starting date of October 1, 2021), unless by two-thirds vote of their full membership the trustees approve the terms and conditions of such an acquisition.

According to the Economic Impact Statement, the bill does not have a fiscal impact.

## 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

IF YES, WHEN? January 31, 2021

WHERE? *Bradenton Herald*, a newspaper published in Manatee County, FL.

E. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?