

CHAPTER 2018-186

Committee Substitute for Committee Substitute for House Bill No. 1423

An act relating to Tohopekaliga Water Authority, Osceola County; amending ch. 2003-368, Laws of Florida, as amended; revising legislative findings; providing a definition; providing for the Polk County Board of County Commissioners to appoint one member of the board under an interlocal agreement; providing for a fifth member of the board to be appointed under certain circumstance; providing for additional members of the board in certain circumstances; providing for term limits; providing for the Governor to appoint a fifth member of the board under certain circumstance; requiring board members to elect a chairperson; deleting compensation and reimbursement for board members; updating cross references; providing additional powers of the authority; revising authority power to increase rates and acquire water or wastewater facilities or systems; requiring the board to adopt or update a master plan every 4 years; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (3), and (4) of section 2, subsections (6) through (9) of section 3, subsection (2) of section 4, subsections (1), (2), (3), (4), (5), (7), and (8) of section 6, section 8, section 9, paragraph (m) of subsection (1) of section 10, subsection (4) of section 12, subsection (6) of section 13, subsections (1) and (5) of section 18, subsection (1) of section 19, and section 20 of chapter 2003-368, Laws of Florida, as amended by chapters 2013-266 and 2007-287, Laws of Florida, are amended, and a new subsection (6) is added to section 3 of that chapter, to read:

Section 2. Legislative Findings.

(2) It is declared as a matter of legislative determination that the extensive growth of population and attendant commerce throughout Osceola County and surrounding counties has caused affected general purpose local governments within Osceola County to recognize the need to consider, advance, and develop a regional approach to the governmental delivery and provision of potable water, wastewater, nonpotable water, and reclaimed water facilities and services, the protection of the environment, and the use of valuable water resources.

(3) Each of the affected general purpose local governments within Osceola County and surrounding counties must meet the comprehensive planning requirements of chapter 163, Florida Statutes, which mandate that local governments coordinate their plans for future growth with available resources of funding and availability of infrastructure. The provision of potable and nonpotable water and wastewater services and facilities is a major factor in such infrastructure coordination. A focused

regional approach to local governmental ownership and provision of potable and nonpotable water and wastewater utility facilities is desirable and will readily allow Osceola County and the City of Kissimmee, and certain adjacent areas upon approval of any affected general purpose local government, to more effectively meet their statutory mandate with respect to the utilities element of their respective comprehensive plans.

(4) The Authority was created and established by the Legislature in 2003. It was, and continues to be, is the intent of the Legislature to create an independent special district in Osceola County that, with the concurrence and approval of affected general purpose local governments, can address and carry out the provision of potable and nonpotable water and wastewater services and facilities in certain areas of Osceola County and certain adjacent areas upon the approval of any affected general purpose local government, as hereinafter provided, to provide economies of scale; eliminate duplicative functions and expenditures; protect the local and regional environment; more efficiently use, preserve, address, protect, and have standing in all respects to use, preserve, address, and protect, valuable local and regional water resources; and advance regional and comprehensive planning.

Section 3. Definitions. When used in this act, unless a different meaning appears clearly from the context:

(6) “Partial term” means, in relation to the designated 3-year term of a member on the Board of Supervisors, any term in which a person appointed to the Board of Supervisors serves or takes office as a result of resignation, removal, or vacancy, and serves or fulfills less than the 3-year term of office. For the purposes of determining term limitations, however, service of 548 days or more of any partial term shall be construed as service of a full term.

~~(7)~~(6) “Pledged funds” means:

(a) The revenues, fees, charges, special assessments, and other moneys received by the Authority or its designee relating to its ownership or operation of the Authority facilities, or some portion thereof.

(b) Until applied in accordance with the terms of the financing documents, all moneys in the funds, accounts, and sub-accounts established thereby, including investments therein.

(c) Such other property, assets, and moneys of the Authority as shall be pledged pursuant to the financing documents, in each case to the extent provided by the Board of Supervisors pursuant to the financing documents. The funds pledged to one series of obligations may be different than the funds pledged to other series of obligations. Pledged funds shall not include any ad valorem tax revenues or general fund account of the Authority unless first approved by a vote of the qualified electors within the service area of the Authority.

(8)(7) “Project” means any structure, property, or facility which the Authority, from time to time, may determine to construct or acquire as part of its Authority facilities, together with all improvements, equipment, structures, and other facilities necessary or appropriate in connection therewith. This term is to be broadly construed so as to include the lawful undertaking which will accrue, or is reasonably expected to accrue, to the benefit of the Authority facilities, including joint ventures and acquisitions of partial interests or contractual rights. “Project” shall include, but not be limited to, acquisition or transfer of any water or wastewater utility system, water or wastewater utility assets, or securing the right to provide any water or wastewater utility service as provided for in one or more interlocal agreements between the Osceola County Board of County Commissioners and the City Commission of the City of Kissimmee or any other governmental body. “Project” may also include working capital, as well as any costs or judgments associated with litigation.

(9)(8) “Ratepayer” means any natural person who pays rates, fees, or charges on a recurring basis to the Authority, or who is an official, officer, member, or employee of any entity, public or private, that pays rates, fees, or charges on a recurring basis to the Authority.

(10)(9) “Service area” means the geographic boundaries within which the Authority provides, or is otherwise authorized pursuant to the provisions of this act to provide, water or wastewater services or facilities.

Section 4. District Establishment and Creation.

(2) The District boundary shall embrace and include:

(a) The territory within Osceola County consisting of the incorporated area of the City of Kissimmee and including those areas served or provided with water and wastewater service by the City of Kissimmee on June 26, 2003 ~~the effective date hereof~~.

(b) All unincorporated areas within Osceola County, less and except any areas included within the Reedy Creek Improvement District, on June 26, 2003, ~~the effective date hereof~~, and less and except the territory within Osceola County consisting of the incorporated area of the City of St. Cloud, and including those unincorporated areas authorized by law to be served or provided with water and wastewater service by the City of St. Cloud on June 26, 2003 ~~the effective date hereof~~. This act shall not be construed to prohibit or inhibit the City of St. Cloud from lawfully extending, expanding, or providing authorized municipal services and facilities as provided for in section 180.02(3), Florida Statutes. The Authority shall be estopped in any future proceeding conducted pursuant to section 180.03 or section 180.04, Florida Statutes, by the City of St. Cloud, or any action arising therefrom, from asserting or claiming the willingness and ability to provide potable water or wastewater service to:

1. All lands in Osceola County, Florida, lying in Section 8, Township 25 South, Range 31 East.

2. All lands in Osceola County, Florida, lying in Section 5, Township 25 South, Range 31 East lying easterly of the eastern boundary of Fells Cove Subdivision, according to the plat recorded in the Public Records of Osceola County, Florida, (including specifically the Floridian R.V. Park).

3. All lands in Osceola County, Florida lying within Florida Turnpike right-of-way in the Northwest quarter (NW $\frac{1}{4}$) Section 36, Township 27 South, Range 30 East (Canoe Creek DOT facility).

The District boundary may be expanded to include any service area within the boundaries of an affected general purpose local government upon the adoption of a resolution by the governing body of the affected general purpose local government authorizing the Authority to provide its service and facilities therein.

Section 6. Governing Body.

(1) The governing body of the Authority shall consist of voting five permanent members, appointed as provided herein, and one or more interlocal members, as may be appointed, acting as the Board of Supervisors, each of whom shall serve a term of 3 years commencing on October 1, provided the procedure for appointment of the voting members of the Board of Supervisors and their respective initial terms of office shall be as follows:

(a) Board Supervisor No. 1 and Board Supervisor No. 2 shall serve terms ending on September 30, 2020, and staggered 3-year terms each 3 years thereafter ~~for initial terms of approximately 2 years, ending on September 30, 2005.~~ Board Supervisor No. 1 shall be appointed by the Osceola County Board of County Commissioners. Board Supervisor No. 2 shall be appointed by the City Commission of the City of Kissimmee.

(b) Board Supervisor No. 3 and Board Supervisor No. 4 shall serve terms ending on September 30, 2018, and staggered 3-year terms each 3 years thereafter ~~initial terms of approximately 3 years, ending on September 30, 2006.~~ Board Supervisor No. 3 shall be appointed by the Osceola Board of County Commissioners. Board Supervisor No. 4 shall be appointed by the City Commission of the City of Kissimmee.

(c) Board Supervisor No. 5 shall serve a an initial term of approximately 4 years, ending September 30, 2018, and staggered 3-year terms each 3 years thereafter ~~2007.~~ Board Supervisor No. 5 shall be ~~collectively~~ appointed by ~~joint resolution of the Polk~~ Osceola County Board of County Commissioners and the City Commission of the City of Kissimmee and shall serve as the ~~Chairperson of the Board of Supervisors.~~ At the expiration or termination without replacement of an interlocal agreement between Polk County and the Authority authorizing the Authority to provide its potable or nonpotable water or wastewater management or delivery services or programs to retail

customers within Polk County, the term of Board Supervisor No. 5 shall terminate immediately, creating a vacancy. In the event there are only four voting members of the Board of Supervisors due to expiration or termination of any interlocal agreement, a fifth voting member shall be appointed by joint resolution of the remaining general purpose local governments then authorized to appoint voting members to the Board of Supervisors.

(d) By resolution, ~~one~~ additional members of the Board of Supervisors Supervisor may be appointed by Polk County or an each additional general-purpose local government that has adopted a resolution authorizing the Authority to provide services and facilities within a service area within its boundaries and that has entered into an interlocal agreement with the Authority authorizing the Authority to provide its potable or nonpotable water or wastewater management or delivery services or programs to retail customers within such service area, provided such interlocal agreement expressly provides for the appointment of such interlocal voting member of the Board of Supervisors. Such appointment shall be effective only for so long as the interlocal agreement is effective. Any interlocal voting member appointed to the Board of Supervisors shall serve an initial term of not more than 3 years, ending on September 30 of the final year of the term. The final year of any such term shall be determined such that successive terms are staggered so no more than a minimum of members of the Board of Supervisors are ever due to be appointed in any year.

(2) All members of the Board of Supervisors shall be ratepayers and qualified electors of Osceola County or of the service area adjacent to ~~Osceola County~~ in which the District has been authorized to operate. Each of the general purpose local governments responsible for appointing members shall consider but is not required to appoint members with business, real estate development, engineering, accounting, financial, scientific, utility, governmental, or public service backgrounds.

(3) Board members shall not be appointed to or serve no more than three ~~3~~ consecutive 3-year terms, not including any partial initial term which may be held or is served for fewer than 548 days as provided for herein.

(4) Upon the occasion of a vacancy for any reason in the term of office of a member of the Board of Supervisors or in the event there are only four voting members of the Board of Supervisors due to expiration or termination of any interlocal agreement, which vacancy occurs prior to the replacement of the member by appointment and which remains unfilled for 60 days after such vacancy due to the failure of the respective general purpose local government governing body to duly appoint a successor as provided in subsection (1), a successor shall be appointed by the Governor. Any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and until a successor is duly appointed.

(5) The Board of Supervisors shall annually elect a Chairperson, Vice Chairperson, Secretary, and such other officers of the Authority as may be hereafter designated and authorized by the Board of Supervisors, each of

whom shall serve for 1 year commencing as soon as practicable after October 1 and until his or her successor is chosen. The Chairperson, Vice Chairperson, and Secretary shall conduct the meetings of the Authority and perform such other functions as herein provided. The Chairperson, and Vice Chairperson, and any other duly appointed person shall take such actions and have all such powers and sign all documents on behalf of the Authority in furtherance of this act or as may be approved by resolution of the Board of Supervisors adopted at a duly called meeting. The Vice Chairperson, in the Chairperson's absence, shall preside at all meetings. The Secretary, or his or her designee, shall keep minutes of all meetings, proceedings, and acts of the Board of Supervisors, but such minutes need not be verbatim. Copies of all minutes of the meetings of the Authority shall promptly be sent by the Secretary, or his or her designee, to all members of the Board of Supervisors and to each general purpose local government located within the District or the service area. The Secretary may also attest to the execution of documents. The Secretary shall have such other powers as may be approved by resolution of the Board of Supervisors adopted at a duly called meeting.

~~(7) The members of the Board of Supervisors shall receive as compensation for their services a fee of \$100 per meeting, not to exceed 3 meetings per month. The amount of compensation shall be adjusted annually based upon the index provided in section 287.017(2), Florida Statutes, or its successor in function. In addition, each member of the Board of Supervisors shall be reimbursed for expenses as provided in section 112.061, Florida Statutes, or otherwise approved by the Board of Supervisors for travel on Authority business outside of the boundaries of the District or service area of the District.~~

~~(7)(8)~~ A majority of the Board of Supervisors shall constitute a quorum for the transaction of business of the Authority. The affirmative vote of the majority of the members of the Board of Supervisors present and voting (exclusive of any member having a conflict) shall be necessary to transact business. However, any increase in rates, fees, or charges shall require the affirmative vote of a majority of the entire Board of Supervisors.

Section 8. Meetings; Notice. The Board of Supervisors shall hold meetings pursuant to section 189.015, ~~sections 189.416 and 189.417~~, Florida Statutes.

Section 9. Reports; Budgets; Audits. The District shall prepare and submit reports, budgets, and audits as provided in section 189.016, ~~sections 189.415 and 189.418~~, Florida Statutes.

Section 10. District Powers, Functions, and Duties.

(1) The Authority shall have all powers to carry out the purposes of this act and the functions and duties provided for herein, including the following powers which shall be in addition to and supplementing any other privileges, benefits, and powers granted by this act or general law:

(m) To contract with private or public entities or persons to obtain, provide, treat, distribute, or receive potable and nonpotable water or to provide or receive wastewater disposal, collection, or treatment; and, to additionally enjoy all powers necessary to contract by interlocal agreement with the state or any general or special purpose local government to manage, treat, store, or provide for surface run-off or stormwater management, detention, retention, recovery, protection, use, or any similar activity which makes available, protects, conserves, or otherwise uses nonpotable water, including, but not limited to, the establishment or assistance in the operation of any reservoir or stormwater utility program, special or non-ad valorem assessment program, or the imposition, levy, billing, collection, and enforcement of payment for such projects or services for any associated rates, fees, or charges therefor.

Section 12. Adoption of Rates, Fees, and Charges.

~~(4) In the event the Authority acquires, purchases, assumes, or accepts ownership of any publicly or privately owned water or wastewater facilities or systems, the Authority may agree to set, freeze, and not increase any rates, fees, or charges to any affected class or customers of the acquired facilities for up to 4 full calendar years following such acquisition, and in exchange for such value and concessions as the Board deems reasonable and appropriate. Provided, however, the Board shall not set and freeze such rates, fees, and charges for amounts less than similar rates, fees, and charges for amounts less than similar rates, fees, and charges then charged or imposed upon other Authority customers. Except as required by any covenant to timely meet, perform, or repay any obligations under any financing documents or as described in subsections (7) and (8), no rates, fees, or charges shall be increased or adopted for 2 years after the effective date of this act, unless the Authority causes a rate consultant to review its rates, fees, charges, gross revenue, operating expenses, and methods of operation and determines that such increase is either predicated upon implementing an identified capital improvement plan or meeting state or federal conservation or water demand management requirements.~~

Section 13. System Development Charges; Impact Fees.

~~(6) Nothing in this act shall be construed to invalidate any system development charges, impact fees, or other capital contribution charges previously levied or collected by Osceola County, or the City of Kissimmee, or any other local government or under any implied authority to levy and collect such charges; such charges being in the nature of impact fees are hereby ratified and confirmed.~~

Section 18. Planning Requirements.

~~(1) At least once every 4 years after 2018, Within 3 years after the effective date of this act, the Board of Supervisors shall adopt or update a master plan which, among other things:~~

- (a) Identifies current customers, projects, and future customers.
- (b) Profiles customers (residential and non-residential, e.g. commercial, industrial).
- (c) Reviews and generally inventories all existing infrastructure and treatment facilities within the boundaries of or served by the District.
- (d) Identifies a capital improvement program for the Authority.
- (e) Reviews all current permits and existing regulations to projected regulations.
- (f) Identifies and evaluates potential acquisitions or service expansions.
- (g) Evaluates Authority staffing.
- (h) Provides for detailed mapping of Authority facilities.
- (i) Provides for hydraulic analysis of Authority facilities, both existing and proposed.
- (j) Evaluates present and future sources of raw water and treatment requirements for those sources in terms of capacity, reliability, and economy.
- (k) Provides for an analysis of all available wastewater alternatives, including surface water discharge, wetlands discharge, percolation facilities, spray irrigation, and deep well injection.
- (l) Identifies reclaimed water storage alternatives and wet weather backup alternatives.
- (m) Identifies current and potential high volume users of reclaimed water.

Thereafter, The Board of Supervisors shall review and, if necessary, amend the master plan periodically, but no less often than every 4 years.

(5) The Authority shall comply with the provisions of part VI of chapter 189, sections 189.415 and 189.4155, Florida Statutes.

Section 19. Merger; Dissolution.

(1) In no event shall a merger involving the Authority be permitted unless otherwise approved by resolution of all affected general purpose local governments. ~~Upon the effective date of this act, any governmental utility authority created by interlocal agreement between Osecola County and the City of Kissimmee as a separate legal authority pursuant to section 163.01(7)(g), Florida Statutes, may be merged into the Authority and this act shall be the surviving charter for the Authority in all respects.~~

Section 20. Effect of Incorporation or Presence of Another Special District. To the maximum extent permitted by law, the subsequent incorporation or annexation of any area included within the boundaries of the District or service area after June 26, 2003, or the presence or creation of any special district within the boundaries of the District or service area, shall not impair or alter the authority, power, obligations, or purpose of the Authority or its successor in providing water and wastewater services and facilities within any portion of the District's boundaries or authorized service area ~~now~~ included within Osceola County, any municipality, or special district or subsequently included within any county, municipality, or special district. Nothing herein shall be construed to limit or affect the powers of any municipal services benefit unit or dependent special district established by any charter county.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor March 23, 2018.

Filed in Office Secretary of State March 23, 2018.