

House Bill No. 1041

An act relating to the Fort Myers Beach Mosquito Control District, Lee County; providing legislative intent; providing for codification of the special acts relating to the District pursuant to s. 189.429, F.S.; codifying, reenacting, and amending all prior special acts relating to the District; codifying the several county resolutions relating to the District; providing a District charter; repealing all prior special acts relating to the District; providing an effective date.

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

Section 1. Pursuant to section 189.429, Florida Statutes, this act constitutes the codification of all special acts relating to the Fort Myers Beach Mosquito Control District. This act also constitutes the codification of all resolutions relating to the Fort Myers Beach Mosquito Control District. It is the intent of the Legislature in enacting this law to provide a single, comprehensive special act charter for the District, including all current legislative authority granted to the District by its several legislative enactments and any additional authority granted by this act.

Section 2. This act constitutes the codification of County resolutions adopted June 8, 1949, July 12, 1949, June 24, 1957, June 3, 1959, and Resolution Number 89-07-12, adopted by the Board of County Commissioners of Lee County, Florida, relating to the Fort Myers Beach Mosquito Control District. Chapters 57-2059, 61-2394, 65-1820, 67-1630, 72-598, 79-493, 81-414, 82-316, 83-442, and 83-454, Laws of Florida, as said laws relate to the Fort Myers Beach Mosquito Control District, are hereby codified, reenacted, amended, and repealed as herein provided.

Section 3. The charter for the Fort Myers Beach Mosquito Control District is re-created and reenacted to read:

Section 1. Creation; intent.—The Fort Myers Beach Mosquito Control District is re-created as an independent mosquito control District that shall operate pursuant to this special act and the provisions of chapter 388, Florida Statutes, as it may be amended from time to time, and all other general laws, whether referenced herein or not, which are applicable to independent special districts.

Section 2. Boundaries.—There is hereby reestablished the Fort Myers Beach Mosquito Control District for the purpose of mosquito control pursuant to chapter 388, Florida Statutes, and the boundaries of said District are declared to be as follows:

A tract or parcel of land lying in parts of Township 46 South, Range 23 East and Township 46 South, Range 24 East and part of Township 47 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

Beginning at the southeast corner of section 24, Township 46 South, Range 24 East being a point on the northerly line of Area No. 5 described

in 67-1630 Special Acts of Florida, as enacted by the 1967 session of the Florida Legislature, run westerly along the south line of said section and a north line of said Area No. 5 for 2,700 feet more or less to the waters of Estero Bay and the Point of Beginning of said Area No. 5; thence run southwesterly along a northwesterly line of said Area No. 5 across the waters of Estero Bay for 8,300 feet to a point of intersection; thence run southerly along a westerly line of said Area No. 5 across said Bay and Starvation Flats for 4,200 feet more or less to a point of intersection; thence run southeasterly, southerly and southwesterly along a westerly line of said area running across said Bay and Big Carlos Pass for 10,000 feet more or less to a point of intersection in said Area No. 5; thence run northwesterly across Big Carlos Pass and along the shoreline of Estero Island for 6,100 feet more or less to a point of intersection; thence continue northwesterly along said shoreline for 3,200 feet more or less to a point of intersection; thence continue along said shoreline northwesterly for 22,800 feet more or less to a point of intersection; thence run northwesterly along said shoreline for 3,900 feet more or less to a point of intersection; thence run northwesterly along said shoreline and across San Carlos Bay for 8,000 feet more or less to the intersection of a westerly prolongation of the north line of Section 13, Township 46 South, Range 23 East and the waters of San Carlos Bay; thence run easterly along said prolongation and said north line and the north line of Sections 18, 17, 16, 15, 14 and 13 being also the southerly line of Area No. 1 as described in said Special Acts of Florida to the northeast corner of said Section 13, Township 46 South, Range 24 East; thence run southerly along the easterly line of said Section 13 and Section 24, Township 46 South, Range 24 East for 10,600 feet more or less to the Point of Beginning. Containing 14,615 acres more or less. Bearings hereinabove mentioned are assumed.

Section 3. Governing body.—The District shall be governed by a board which shall consist of three commissioners of the District elected by a vote of the electors of the District pursuant to section 388.101, Florida Statutes, or any other applicable general law or special law, as said laws may be amended from time to time. This act shall not affect the balance of the terms of the current members serving on the board of commissioners of the District and each member shall complete his or her current elected term. Vacancies on the board of commissioners shall be filled as provided by section 388.111, Florida Statutes, or any other applicable general law or special law, as said laws may be amended from time to time. Members of the board of commissioners may each be paid a salary as provided in section 388.141, Florida Statutes, or any other applicable general law or special law, as said laws may be amended from time to time. The board of commissioners shall hold meetings as provided by section 388.151, Florida Statutes, or any other applicable general law or special law, as said laws may be amended from time to time.

Section 4. Officers.—As soon as practicable after the election of members of the board, the members shall meet and elect from the membership a chair, secretary, and treasurer as provided by section 388.121, Florida Statutes, or any other applicable general law or special law, as said laws may be amended from time to time.

Section 5. Powers.—The District shall have and the board may exercise the powers and authority provided by chapter 388, Florida Statutes, by the special laws related to the District being codified hereby, by the county resolutions adopted by the Board of County Commissioners of Lee County, Florida, related to the District, or by any other applicable general law or special law, as said laws may be amended from time to time. The board of commissioners may do any and all things necessary for the control and elimination of all species of mosquitoes and other arthropods of public health importance as provided by applicable general law or special law, as said laws may be amended from time to time. The District is authorized to use any and all mechanical, physical, chemical, or biological control measures as the board may deem necessary to accomplish the purposes of this law. In particular, the District shall have and the board may exercise all the powers of a body corporate, including: the power to sue and be sued as a corporation in any court; to contract; to adopt and use a common seal; to purchase, hold, control, acquire by gift, condemn, lease, and convey such real estate, easements, and personal property, including surplus property, as the board may deem proper to carry out the purposes of this law; to exercise the right of eminent domain and institute and maintain condemnation proceedings as provided in chapter 73, Florida Statutes; to secure letters of patent, copyrights, and trademarks, both foreign and domestic, on any work products, and to enforce its rights therein; to operate airports and air navigation facilities within the District's boundaries in accordance with chapter 332, Florida Statutes; to employ such experts, agents, and employees as the board may require; to provide uniforms for District employees; to participate with employees in a family group insurance plan; to contract and cooperate with county, state, and other governmental agencies with regard to mosquito control or suppression; and to borrow money, all in conformance with applicable provisions of constitutional law, general law, and special law, as said laws may be amended from time.

Section 6. District budgets; hearing.—The fiscal year of the District shall be the 12-month period extending from October 1 of one year through September 30 of the following year. The board of commissioners shall prepare a budget for the ensuing fiscal year and hold public hearings on same as provided in section 388.201, Florida Statutes, and in conformance with other applicable general law and special law, as said laws may be amended from time to time.

Section 7. Taxes.—

(1) The board of commissioners may levy on all taxable property in the District a special tax not exceeding 1 mill on the dollar during each year as a maintenance tax to be used solely for the purposes of the District as authorized herein and by general law and special law, as said laws may be amended from time to time. The board of commissioners of the District shall comply with all requirements of general law and special law, as said laws may be amended from time to time, concerning the levy of the District's annual maintenance tax. All such taxes shall be held by the treasurer for the credit of the board and paid out by the treasurer as ordered by the board.

(2) The Legislature does determine that the eradication and control of mosquitoes within the District is of special benefit and constitutes a special

improvement for the benefit of the District and the property located therein and is therefore subject to assessment for special benefits, and the board of commissioners of the District is authorized to levy assessments for special benefits upon all of the property in the District. However, the total amount of any such assessment levied under this subsection shall not exceed an amount equal to 1 mill on the dollar of the total valuation of the property so assessed. Further, the total of any tax that might be levied under subsection (1) and the assessment for special benefits levied under this subsection shall not exceed 1 mill on the dollar of the value of any such property.

Section 8. Assessment and collection of taxes.—Taxes herein provided for shall be assessed and collected in the manner prescribed by applicable general law or special law, as said laws may be amended from time to time. The board of commissioners shall by resolution certify to the property appraiser of Lee County, timely for the preparation of the tax roll, the tax rate to be applied in determining the amount of the District's annual maintenance tax. Certified copies of such resolution executed in the name of the board of commissioners by its chair and secretary and under its corporate seal shall be made and delivered to the property appraiser, the Board of County Commissioners of Lee County, and the Department of Revenue not later than September 30 of such year. The property appraiser of Lee County shall assess and the tax collector of Lee County shall collect the amount of taxes so assessed and levied by said board of commissioners of the District upon all of the taxable real and personal property in the District at the rate of taxation adopted by the board of commissioners for said year and included in said resolution, and said levy shall be included in the warrants of the property appraiser and attached to the assessment roll of taxes for the county each year. The tax collector shall collect such taxes so levied by the board in the same manner as other taxes are collected and shall pay the same within the time and in the manner prescribed by law to the treasurer of the board. The Department of Revenue shall assess and levy on all the railroad lines and railroad property and telegraph and telephone lines and telegraph and telephone property situated in the District in the amount of each such levy as in the case of other state and county taxes and shall collect said taxes thereon in the same manner as it is required by law to assess and collect taxes for state and county purposes and remit the same to the treasurer of the board. The tax officers of Lee County are hereby authorized and directed to perform the duties devolving upon them under chapter 388, Florida Statutes, and to receive compensation therefor at such rates or charges as are provided by law with respect to similar services or charges.

Section 9. Use, loan, or rental of equipment.—The use, loan, or rental of equipment by the District shall be as provided in section 388.231, Florida Statutes, or any other applicable general law or special law, as said laws may be amended from time to time.

Section 10. State aid.—The District shall be eligible to receive state funds, supplies, services, and equipment as provided by chapter 388, Florida Statutes, and any other applicable general law or special law, as said laws may be amended from time to time.

Section 11. Breeding places.—

(1) Any breeding place for any species of mosquitoes or any other arthropod of public health importance which exists by reason of any use made on the land on which it is found, or of any artificial change in its natural condition, is hereby declared to be a public nuisance. Such nuisance may be abated as provided herein or by any applicable general law or special law, as said laws may be amended from time to time.

(2) Whenever a nuisance specified in this chapter exists upon any property in the District, the board of commissioners may notify in writing the owner or the party in possession, or the agent of either, of the existence of the nuisance. The notice shall state the finding of the District that a public nuisance exists on the property and the approximate location of such nuisance on such property. The notice shall be served upon the owner of record or the person having possession, or upon the agent of either. The notice shall be served by any person authorized by the board in the same manner as the summons in a civil action. If the property belongs to a person who is not a resident of the District, and there is no one in possession nor an agent of either upon whom service can be made, or who can after diligent search be found, the notice shall be served by posting a copy in a conspicuous place upon the property for a period of 10 days, and by mailing a copy to the owner of record addressed to his or her address as given on the last completed assessment roll of Lee County, or, in the absence of an address on the roll, to his or her last known address. Before complying with the requirements of the notice of abatement, the owner or party in possession may appear at a hearing before the board at a time and place fixed by the board and stated in the notice. At the hearing the District board shall determine whether the initial finding as set forth in the notice is correct and shall permit the owner or party in possession to present testimony on his or her behalf. If, after hearing all the facts, the board makes a determination that a nuisance exists on the property, the board shall order compliance with the requirements of the notice or with alternate instructions issued by the board.

(3) Any recurrence of the nuisance may be deemed to be a continuation of the original nuisance.

(4) In the event the nuisance is not abated by appropriate measures to eliminate the nuisance and to prevent its recurrence within the time specified in the notice or at the hearing, the board of commissioners may abate the nuisance by taking any measures it deems appropriate to eliminate the nuisance and prevent the recurrence of further breeding. The cost of abatement of a nuisance under this section shall be repaid to the District by the owner of the property.

(5) When any nuisance specified in this chapter is found to exist on any lands or property subject to the control of any public agency, the District shall notify the public agency of the existence of the nuisance. The provisions of this section relating to the contents of the notice, the manner of serving it, the right of the public agency to a hearing before the board, and the power of the District to abate the nuisance if it is not abated by the public agency shall apply. If the public agency determines that the order to eliminate the nuisance and prevent recurrence of the breeding specified in the notice to abate the nuisance is excessive or inappropriate for the intended use of the

land, or if the public agency determines that a public nuisance within the meaning of this chapter does not exist, such public agency may appeal the decision of the board in accordance with "The State Agency Dispute Settlement Act of 1978." If the control of the nuisance is performed by the District, the cost for such control is a charge against, and shall be paid from, the maintenance fund or from any other funds budgeted for the support of the public agency.

(6) All sums expended by the District in abating a nuisance, including preventing its recurrence, shall become a lien upon the property on which the nuisance is abated or its recurrence is prevented.

Section 4. This act shall be construed as a remedial act and shall be liberally construed to promote the purpose for which it is intended, which is a codification, reenactment, and repeal of the several legislative enactments of the Fort Myers Beach Mosquito Control District and codification of county resolutions relating to the District.

Section 5. In the event of a conflict of the provisions of this act with the provisions of any other act, the provisions of this act shall control to the extent of such conflict.

Section 6. Chapters 57-2059, 61-2394, 65-1820, 67-1630, 72-598, 79-493, 81-414, 82-316, 83-442, and 83-454, Laws of Florida, as said laws relate to the Fort Myers Beach Mosquito Control District, are repealed.

Section 7. This act shall take effect upon becoming a law.

Approved by the Governor May 25, 2001.

Filed in Office Secretary of State May 25, 2001.