

LAWS OF FLORIDA CHAPTER 98-461

AN ACT relating to the Lee County Mosquito Control District, an independent district; providing for a codified charter of its special acts in a single act and repealing all prior special acts relating to the Lee County Mosquito Control District as required by chapter 97-255, Laws of Florida; creating and establishing a mosquito control district in said county and excepting therefrom certain territory of said county and fixing the boundaries of said district; dividing said district into areas for the purpose of electing members of the board of commissioners; providing for the terms of office and qualifications of the members of the board of commissioners and providing the method and times of elections; prescribing the powers and duties of the board; setting the compensation of the board; providing for audit of books and time of meetings; providing procedure for adopting a budget; giving the board the power to tax and levy assessments for special benefits and providing the methods, procedure, and limitations thereon; authorizing the board to contract and cooperate with county, state, and other governmental agencies in regard to mosquito control or suppression; charging the Lee County Health Unit or Health Department with the responsibility with reference to mosquito control; determining the status of employees and providing a method by which such responsibility shall terminate and declaring the legislative policy with reference thereto; providing penalty for damage to property; providing that the records shall be filed in the public records for Lee County; providing limitations of actions; providing for the repeal of all special acts relating to the Lee County Mosquito Control District; granting to the district created herein such powers as are provided for mosquito control districts under the laws of Florida; providing for severability; providing that such act shall be construed liberally; providing an effective date.

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

Section 1. *Continuation of a mosquito control district* - There is hereby provided for the continuation of the Lee County Mosquito Control District, and independent special district, the boundaries of which shall include all territory of Lee County except the following described area:

DESCRIPTION

A tract or parcel of land lying parts of Township 46 South, Range 24 East and Township 46 South, Range 24 East and part of Township 47 South, Range 24 East, Lee County, Florida, which tract or parcel, containing 14,615 acres more or less is described as follows:

BEGINNING at the southeast corner of Section 24, Township 46 South, Range 24 East, running westerly along the south line of said section for 2,700 feet more or less to the waters of Estero Bay;

THENCE run southwesterly along a northwesterly line across the waters of Estero Bay for 8,300 feet to a point of intersection;

THENCE run southerly along a westerly line 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;

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 Section 18, 17, 16, 15, 14, and 13 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.

Section 2. *Division of district into areas* - The Board of Commissioners of the Lee County Mosquito Control District shall divide the district into seven residential areas for the purpose of selecting members of the board of commissioners. From the 1990 Federal Census and every 10 years thereafter, the board of commissioners shall reestablish area boundaries so that all areas are as nearly equal in population as practicable based on the most recent decennial census.

Section 3. *Board of commissioners; qualification; election; term of office* –

- (1) The business and affairs of the Lee County Mosquito Control District shall be governed by a board of seven commissioners, who shall constitute the Lee County Mosquito Control Board, hereinafter referred to as the board.
- (2) Each board member shall be a qualified elector residing within the area from which elected; shall serve staggered terms of 4 years, unless removed for cause by the Governor; and shall be entitled to receive per diem and mileage as provided by general law for expenses incurred while performing official duties.

- (3) One member of the board shall be elected from each of the seven areas provided in Section 2. Each member shall be elected at large by a plurality vote of the qualified electors of the district voting in a nonpartisan election to be held on the date of the general election. Candidates for the office of commissioner shall qualify in accordance with general law. If the vote in the general election results in a tie, the outcome shall be determined by lot. The term of office shall commence on the second Tuesday following the election, but before assuming office, each commissioner shall make and execute to the Governor a good and sufficient surety bond in the amount of not less than \$2,000 conditioned upon the faithful performance of the duties of his office, which bond shall be approved by and filed with the Clerk of the Circuit Court of Lee County. The expense of the bonds shall be borne by the district.
- (4) Vacancies created by resignation, death, or removal from office shall be filled by appointment of the Governor for the remainder of the term of office.
- (5) This act shall not affect the terms of the members serving on the board when this act takes effect except that the term of each member shall expire in November of the year in which his successor is to be elected. Any such members whose terms do not expire in November 1984 shall serve for the remainder of their terms, as shortened by this act, and shall represent the area in which they reside.

Section 4. *Election; ballots* - The Board of County Commissioners of Lee County shall make the necessary arrangements for setting up the elections of the board of commissioners of the mosquito control district and shall supply the necessary ballots and do all other things necessary for said elections. The provisions of section 1(1)(a) of chapter 81-414, Laws of Florida, relating to elections in odd-numbered years shall not apply to the Lee County Mosquito Control District.

Section 5. *Powers and duties of the board of commissioners* –

- (1) 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, either in the district, or in territory not in the district, but within 5 miles of district boundaries, and so situated with respect to the district that such mosquitoes or arthropods from such territory may disperse into the district. The board is authorized to use any and all mechanical, physical, chemical, or biological control measures that the board may deem necessary to accomplish the purposes of this chapter. Should the owner of record of lands upon which mosquito or other arthropod breeding occurs advise the board of commissioners that said owner prefers that the district not implement control measures upon that property, the board is empowered to enter into an agreement whereby the owner of the property will eliminate or control such mosquito or other arthropod breeding, in a manner approved by the board, and at the expense of the owner. Should the board of commissioners have reason to believe that mosquito or other arthropod breeding on such property is not effectively eliminated or controlled by the owner of the property, the board shall present information to the Director of the Lee County Health Department indicating

a belief that a mosquito problem exists on said lands, which, if not eliminated or controlled, would adversely affect nearby properties or residents. If the Director of the Lee County Health Department concurs, he shall issue an order, in writing, authorizing the board of commissioners to take such action as it may deem necessary. Upon issuance of any order by the Director of the Lee County Health Department, the board of commissioners and its agents or employees are specifically authorized to enter without hindrance upon such lands for the purpose of inspections to ascertain whether breeding places of mosquitoes or other arthropods exist upon such lands; to abate such public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes or other arthropods upon such lands have been complied with.

- (2) The board of commissioners shall have all the powers of a body corporate including the power to sue and be sued as a corporation in said name in any court; to contract; to adopt and use a common seal and alter the same at pleasure; to purchase, hold, lease, and convey such real estate and personal property as the board may deem proper to carry out the purposes of this law; to prescribe rules and regulations for the marking of such property; 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 in regard to mosquito control or suppression; to borrow money in conformance with constitutional provisions and general law in an amount not to exceed \$1 on each \$1,000 of assessed valuation of property in the district for a period of time not to exceed 1 year, and to issue negotiable promissory notes and bonds in an amount not to exceed \$1 on each \$1,000 of assessed valuation of property in the district, to enable it to carry out the provisions of this law. The board of commissioners is authorized to loan moneys to the Lee County Hyacinth Control District by a transfer of funds between accounts, provided that such loans or transfers shall be repaid within the fiscal year in which they are made.

Section 6. *Organization of the board* - As soon as is practicable after the commissioners have been appointed or elected and have qualified, they shall meet and organize by electing one of their members as chair, one as vice chair, and one as secretary treasurer. In all meetings four members shall be necessary to transact business.

Section 7. *Salary of the board* -The commissioners under this chapter may receive compensation as authorized by s. 388.141, Florida Statutes, for services pertaining to mosquito control work.

Section 8. *Audit* - The books and accounts of said mosquito control district shall be audited annually by the same officers and in like manner as the books of other county officers, or, at the discretion of the board, by a certified public accountant selected by the board.

Section 9. *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 of 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 by this chapter or by any other law.
- (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 of the property 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 a court summons in a civil action. If the property belongs to a person who is not a resident of the district, and is not in charge or possession of any person, and there is no tenant or agent of the owner upon whom service can be made, who can after diligent search be found; or if the owner of the property 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 addressed to his address as given on the last completed assessment roll of the county in which the property is situated, or, in the absence of an address on the roll, to his last known address. Before complying with the requirements of the notice 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 in his 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 that the nuisance is not abated within the time specified in the notice or at the hearing, by appropriate measures to eliminate continuance or to prevent its recurrence, the board of commissioners may abate the nuisance by taking any measures it deems appropriate to 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 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, or preventing its recurrence, shall become a lien upon the property on which the nuisance is abated, or its recurrence prevented.

Section 10. *Meetings* - The board of commissioners of the district shall hold monthly meetings which shall be open to the public. Reasonable expenses of members in attending meetings may be approved for payment by the board of commissioners.

Section 11. *Budget; hearings* - The fiscal year of Lee County Mosquito Control District shall be the 12-month period extending from October 1 each year through September 30 of the following year. The board shall prepare a tentative budget for the district covering its proposed operation and requirements for the ensuing fiscal year. The proposed budget shall be advertised, public hearings held, and a final budget adopted in accordance with the provisions of chapter 189, and ss. 200.065 and 218.34, Florida Statutes.

Section 12. *Eminent domain* - The board may hold control and acquire by gift or purchase any real or personal property for the use of the district and may condemn any land or easements needed to carry out the purposes of this act. The board may exercise the right of eminent domain and institute and maintain condemnation proceedings as provided in chapter 73, Florida Statutes.

Section 13. *Tax levy-*

- (1) The board of commissioners of the mosquito control district may levy upon all of the taxable property in the district a special tax not exceeding 1 mill on the dollar during each year solely for the purposes authorized and prescribed by this act. The levy shall be made each year in accordance with chapter 200, Florida Statutes. The board of county commissioners shall order the property appraiser of the county to assess and the tax collector of the county to collect the amount of taxes so assessed and levied by the board of commissioners of said mosquito control district upon all of the taxable property in the district at the rate of taxation adopted by the board for the year and included in the resolution, and the levy shall be included in the warrants of the property appraiser, and attached to the assessment roll of taxes for the county each year. Fees shall be paid to the property appraiser and to the tax collector in accordance with law. 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 county in the amount of each such levy as in the case of other state and county taxes, and collect the taxes thereon in the same manner as the department is required by law to assess and collect taxes for state and county purposes, and remit the same to the treasurer of the

board. All such taxes shall be held by the treasurer for the credit of the board and paid out 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 upon all of the property in the district assessments for special benefits. 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 and the total on any tax that might be levied under subsection (1) and the assessment for special benefits levied under this section shall not amount to a sum which would be in excess of an amount equal to 1 mill of the value of any such property.

Section 14. *Qualifications of director*; advertisement of contracts - All work done under the provisions of this act, both in construction and maintenance, shall be carried on under the supervision of an individual determined by the board to be well qualified to administer the programs authorized by this act. The board may have all work performed by contract with or without advertisement, or without contract, by machinery, equipment and labor employed directly by the board.

Section 15. *Penalty for damage to property* - Whoever shall willfully damage any of the property of the mosquito control district created under this act or any w constructed, maintained, or controlled by the mosquito control district or who shall obstruct or cause to be obstructed any of the operations of the mosquito control district taken under this chapter, shall be punished as provided by general law.

Section 16. *Dissolution of districts* - Three mosquito control districts in Lee County created under the provisions of chapters 388, 389, and 390, Florida Statutes, and known as Boca Grande District, the Sanibel-Captiva District, and the Fort Myers District have heretofore been abolished and dissolved, and are no longer in existence.

Section 17. *Transfer of assets and liabilities* - All assets, including equipment, moneys on hand, easements, and rights of any kind and nature belonging to the three above named districts, or the district created under chapter 65-1820, chapter 57-2059, and chapter 61-2394, Laws of Florida, together with all of the liabilities incurred by said districts are hereby assigned to and made property and obligation of the Lee County Mosquito Control District, provided that after the lapse of 6 months from May 15, 1961, no action shall be brought or instituted upon any bond, interest coupon, bond credit, certificate of indebtedness, note or any other debt, claim or liability outstanding, due, or owing by the Fort Myers Mosquito Control District, Boca Grande Mosquito Control District, and Sanibel-Captiva Mosquito Control District.

Section 18. *Books and records* - All books and records of the district shall become a part of the records of the district continued by this act.

Section 19. *Purpose* -The abatement and control of mosquitoes within Lee County is advisable and necessary for the maintenance and improvement of the health, comfort, welfare, and prosperity of the people thereof; and is found and declared to be for public health and other public purposes.

Section 20. *Responsibility; duties* - The Lee County Health Unit, also referred to and known as the Lee County Health Department, established by the board of county commissioners on June 7, 1950, is charged with the responsibility of abating or suppressing mosquitoes in Lee County. The director of said health unit or health department shall cause to be done any and all work and all things necessary for the control and elimination of mosquitoes in the county wherever such work is necessary and he is empowered to use such means, physical or chemical, as may be necessary to accomplish the objects of this act. All employees engaged in such work shall be considered employees of the Lee County Health Unit regardless of the fact that their salaries or wages are paid by the Board of Commissioners of the Lee County Mosquito

Control District, and regardless of the fact that the determination as to who is to be employed and the wages or salaries to be paid is made by the Board of Commissioners of the Lee County Mosquito Control District, and the records are kept by said board.

Section 21. *Alternate plan* - The purpose of section 20, is to coordinate certain activities between the Lee County Health Unit or Health Department and the Lee County Mosquito Control District in an effort to best serve the interest and welfare of the Lee County Mosquito Control District and the property owners and residents thereof. If the Board of Commissioners of the Lee County Mosquito Control District should make a study or, by reason of the experience in handling the affairs of said district, determine that it is not in the best interest of the Lee County Mosquito Control District and the property owners and residents thereof to continue in the Lee County Health Unit or Health Department the responsibilities, powers, duties, and authority and that the continuation of the responsibilities, powers, duties, and authority in such unit or department is not advantageous to the Lee County Mosquito Control District, it is declared to be the legislative intent that the Board of Commissioners of the Lee County Mosquito Control District may pass a resolution so determining and finding and, upon the passage of such resolution, any and all such powers, duties, responsibilities, and authority given to the Lee County Health Unit or Health Department shall immediately vest in the Lee County Mosquito Control District and the employees shall become the employees of the Lee County Mosquito Control District and the provisions of section 20 shall, insofar as they or any of them relate to Lee County Health Unit or Health Department, be of no further force and effect.

Section 22. All prior special acts relating to the Lee County Mosquito Control District are hereby repealed. They are chapters 57-1520, 57-2059, 61-2394, 63-1542, 65-1820, 65-1831, 67-1630, 72-598, 79-493, 82-316, 83-442, and 95-517, Laws of Florida. It is the intent that this act shall be the single act that codifies all prior special acts related to the Lee County Mosquito Control District upon this act becoming a law.

Section 23. The district created by this act and the board of commissioners shall have the right to use any and all privileges or powers which are granted to mosquito control districts under the general laws of this state.

Section 24. It is declared to be the legislative intent that this act shall be construed liberally.

Section 25. It is declared to be the legislative intent that if any section, subsection, sentence, clause, or provision or part thereof of this act is held invalid, unenforceable or unconstitutional it shall not affect the remainder of the act and the remainder of the act shall remain in force and effect as if the invalid portion of the act had not been enacted.

Nothing in this act shall change existing law as to whether or the extent to which the provisions of Chapters 253,369,373,388, and 403, Florida Statutes, shall apply.

Section 26. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 27, 1998.

Filed in Office Secretary of State May 26, 1998.