

Administrative Procedures Act, improvement district

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Subject:

Administrative Procedures Act, improvement district

Ms. Betsy S. Burden

Attorney for the Northern Palm Beach County Improvement District

Post Office Box 2775

Palm Beach, Florida 33480-2775

RE: ADMINISTRATIVE PROCEDURE ACT--DRAINAGE AND WATER CONTROL--SPECIAL DISTRICTS--NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT--applicability of Administrative Procedure Act to Northern Palm Beach County Improvement District. Chs. 120 and 298, Fla. Stat. Ch. 59-994, Laws of Florida.

Dear Ms. Burden:

You have asked for my opinion on substantially the following question:

Is the Northern Palm Beach County Improvement District an "agency" as that term is defined in section 120.52(1), Florida Statutes?

In sum:

As an entity described in Chapter 298, Florida Statutes, the Northern Palm Beach County Improvement District is an "agency" within the scope of the Administrative Procedure Act, Chapter 120, Florida Statutes.

Chapter 120, Florida Statutes, the Administrative Procedure Act, applies to agencies as defined in that chapter. Section 120.52, Florida Statutes, provides definitions for terms used in the act, including a definition for the term "agency":

"(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the constitution.

(b) Each state officer and state department, departmental unit described in s. 20.04, commission, regional planning agency, board, multicounty special district with a majority of its governing board comprised of nonelected persons, and authority, including, but not limited to, the Commission on Ethics and the Game and Fresh Water Fish Commission when acting pursuant to statutory authority derived from the Legislature, educational units, *and those entities described in chapters 163, 298, 373, 380, and 582 and s. 186.504*, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II, an expressway authority pursuant to chapter 348, or any legal or administrative entity created by an interlocal agreement

pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions." (e.s.)

An agency within this definition is subject to the provisions of the Administrative Procedure Act.

Chapter 59-994, Laws of Florida, created and incorporated the Northern Palm Beach County Water Control District.[1] The district was created generally for the purposes of reclaiming and draining certain lands in Palm Beach County. The district was authorized to accomplish these purposes by constructing and maintaining canals, ditches, levees, dikes, pumping plants, and other drainage works and improvements.[2] In 1995, the district was renamed the Northern Palm Beach County Improvement District.[3]

The original enabling legislation for the district contains the following language:

*"Provisions of Chapter 298, Florida Statutes, Made Applicable.--*The Northern Palm Beach County Water Control District hereby created shall be a public corporation of this State. The provisions of the General Drainage Laws of Florida applicable to drainage districts or sub-drainage districts which are embodied in Chapter 298, Florida Statutes, and all of the laws amendatory thereof, now existing or hereafter enacted, so far as not inconsistent with this Act, are hereby declared to be applicable to said Northern Palm Beach County Water Control District. Said Northern Palm Beach County Water Control District shall have all of the powers and authorities mentioned in or conferred by said Chapter 298, Florida Statutes, and Acts amendatory thereof, except as herein otherwise provided."*[4]*

This section and numerous other references throughout Chapter 59-994, Laws of Florida, and the subsequent amendments to this chapter, make it clear that the district is governed by and empowered by Chapter 298, Florida Statutes.[5]

Chapter 298, Florida Statutes, provides general guidance for water management districts and drainage districts.[6] The chapter recognizes that districts within the scope of authority of Chapter 298 may be created in a number of ways:

"A water management district or a drainage district heretofore or hereafter created pursuant to the method authorized in this chapter or a water management district created by special act to operate under the authority of this chapter shall be designated as a water control district."*[7]*

Further, in recognition of the authority conferred on the Northern Palm Beach County Improvement District by Chapter 298, Florida Statutes, that chapter is cited in the Florida Department of Community Affairs "Official List of Special Districts" as the statutory authority under which the district operates in addition to its special act authority.[8]

Therefore, it is my opinion that, as an entity described in Chapter 298, Florida Statutes, the Northern Palm Beach County Improvement District is an "agency" within the scope of Chapter 120, Florida Statutes, and is subject to the requirements of the Administrative Procedure Act.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] Chapter 59-994, Laws of Florida, has been the subject of numerous amendments. For purposes of this opinion, the most relevant amendments have described additional powers and duties of the district and may be found in Chs. 87-518, 88-503, 89-462, 95-489, and 97-40, Laws of Florida.

[2] Section 1, Ch. 59-994, Laws of Florida.

[3] See Ch. 95-489, Laws of Florida.

[4] Section 2, Ch. 59-994, Laws of Florida.

[5] See, e.g., s. 3, Ch. 59-994, Laws of Florida, stating that the district shall have certain specific powers and that it shall have such powers "as may be necessary or convenient to carry out the purposes, or any of the purposes, of this Act, and Chapter 298, Florida Statutes;" s. 7, Ch. 59-994, Laws of Florida, providing that the district shall levy and apportion taxes as provided for in Chapter 298, Florida Statutes, with certain exceptions; s. 22, Ch. 59-994, Laws of Florida, stating that the district's plan of reclamation may be amended or changed as provided in Chapter 298, Florida Statutes, and that landowners and bondholders must file their approval of or objections to the amended plan of reclamation as provided in section 298.27, Fla. Stat.; s. 2, Ch. 87-518, Laws of Florida, providing certain powers "in addition to the powers provided for in Chapter 59-994, Laws of Florida, Chapter 298, Florida Statutes, and other applicable laws"; s. 2, Ch. 89-462, Laws of Florida; and s. 2, Ch. 95-489, Laws of Florida.

[6] See s. 298.001, Fla. Stat.

[7] *And see* s. 298.01, Fla. Stat., regarding the formation of water control districts.

[8] See 1996 Official List of Special Districts p. 161, Florida Department of Community Affairs.