

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2564

SPONSOR: Senator Rossin

SUBJECT: Indian Trail Improvement District, Palm Beach County

DATE: March 7, 2002                      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION    |
|----|---------|----------------|-----------|-----------|
| 1. | Cooper  | Yeatman        | CA        | Favorable |
| 2. | _____   | _____          | RC        | _____     |
| 3. | _____   | _____          | _____     | _____     |
| 4. | _____   | _____          | _____     | _____     |
| 5. | _____   | _____          | _____     | _____     |
| 6. | _____   | _____          | _____     | _____     |

**I. Summary:**

This bill codifies all prior special acts relating to the Indian Trail Improvement District into a single act as required by section 189.429, F.S.; amends the district’s boundaries; and provides for a referendum of the district’s election procedures to provide that the Board of Supervisors will be chosen by the electors of the district rather than by proxy/acreage.

This bill repeals chapters 57-646, 67-692, 80-569, 82-352, 83-491, 88-501, 89-465, 90-446, 92-261, 97-326, and 99-473, Laws of Florida.

**II. Present Situation:**

**Indian Trail Improvement District**

The Indian Trail Improvement District (formerly known as the Indian Trail Water Control District) was originally created on June 6, 1957 by chapter 57-646, Laws of Florida. The enabling act has been amended and supplemented, and is subject to the applicable provisions of chapter 298, Florida Statutes. The district is located in Palm Beach County and was created to construct and maintain the water control and drainage systems; the roads serving the district; and provide neighborhood community parks. The district has road-paving programs designed to bring a paved road within approximately 1/2 mile of every property in the central area of the district. The district is also empowered to acquire property for recreational purposes, construct and maintain recreational facilities, and create and manage recreational programs. The district is supported by a non-ad valorem (benefits) assessment based on each acre or fraction thereof. The district currently elects board members, on a one-acre, one-vote basis.

**Codification**

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was authorized by the 1997 Legislature when it amended chapter 189, F.S., to provide for codification of all special district charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. Section 189.429, F.S. (1997), also required that no changes be made to a district's charter, as it existed on October 1, 1997. However, the 1998 Legislature amended section 189.429, F.S., to:

- extend the codification deadline to December 1, 2004;
- allow for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs;
- remove the prohibition of substantive amendments in a district's codification bill; and
- remove the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district.

As specified in the October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs, the schedule for submittals of special district charters is as follows:

- Special districts with less than 2 special acts, 1999 Legislative Session;
- Special districts with 3 - 4 special acts, 2000 Legislative Session;
- Special districts with 5 - 7 special acts, 2001 Legislative Session;
- Special districts with 8 - 12 special acts, 2002 Legislative Session;
- Special districts with more than 12 special acts, 2003 Legislative Session; and
- Special Fire Control Districts, 2004 Legislative Session.

Since the enactment of sections 189.429 and 191.015, F.S., 89 special districts have codified their charters. A list of those special districts that have codified pursuant to sections 189.429 and 191.015, F.S., is available at the office of the Committee on Local Government and Veterans Affairs, Florida House of Representatives.

### **Status Statement Language**

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the department's determination or declaratory statement regarding the status of the district.

### **History of Water Control Districts**

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts – through circuit court decree – and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

### **Creation of Water Control Districts under Chapter 298, F.S.**

Chapter 298, F.S., contains provisions governing the creation and operation of water control districts. Section 298.01, F.S., restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of section 125.01, F.S., (dependent water control districts). Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by chapter 298, F.S.

Upon the formation of a water control district, the circuit court where the majority of the land is located has jurisdiction within the boundaries of the district. Once a district is organized, notice of the first landowners' meeting must be given. The notice must be published once a week for two consecutive weeks in a newspaper. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve 3-year rotating terms, with one supervisor elected each year at a required annual meeting. To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located, unless a district's special act provides otherwise. The Department of Environmental Protection (DEP) is authorized to vote on any matter that may come before a landowners' meeting if acreage owned by the state is subject to assessment by the district.

Section 298.11(2), F.S., provides that every acre of assessable land within a district represents one share, or vote. Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well. Landowners owning more than one acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowners' acreage has been aggregated for purposes of voting.

### **Role of the Circuit Courts**

Prior to July 1, 1980, when a water control district was formed, the circuit court of the county where the majority of the land is located had exclusive jurisdiction within the boundaries of the district. Circuit courts served several functions in the creation and governance of water control districts. After a board of supervisors adopted a plan of reclamation, it petitioned the circuit court to appoint three commissioners to appraise the lands that would be acquired to implement the plan of reclamation. A circuit court may have required the report on assessment of benefits and damages to be amended to include condemned lands needed to construct the district's works. In the event a circuit court determined that the value of land within the district had changed and

additional conditions were met, the court was required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

### **Water Control Plans**

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan". The approval and implementation process has been removed from the purview of the circuit court.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider adoption of the plan or plan amendment. The board of supervisors must publish notice of a public hearing once a week for 3 consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission of the county and any municipality in which the district is located.

At the public hearing on the proposed plan or plan amendment the board of supervisors will consider any objections to the plan and then must determine whether or not to proceed with the plan. In the event the board proceeds forward, it will then direct the district Engineer to prepare a report in writing to the board of supervisors complete with maps and surveys. The report must include a full and complete water control plan for draining and reclaiming the lands described in the petition. Further, the report must contain an estimate of the costs of carrying out the completing the water control plan and an estimate of the benefits derived from the water control plan.

A final hearing on approval of the water control plan and the engineer's report, is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the engineer's report with the secretary of the district.

Before final adoption of the engineer's report and water control plan or plan amendment under section 298.301, F.S., the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment is less than the benefits determined for the lands.

The board of supervisors must review the water control plan at least every 5 years following its adoption.

### **Revenue Sources**

The primary funding source for water control district activities is special assessments, which must be imposed on the property so that the burden on every parcel will bear a just proportion to that imposed on every other. In other words, the assessment of the particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. Special assessments may be determined legislatively or judicially.

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

### **Limitation on Special Acts**

Section 11(a)(21), Article III of the State Constitution, provides that no special law or general law of local application shall be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house. However, such a general law may be amended or repealed by like vote.

Section 298.76, F.S., is an example of such a general law passed by a three-fifths vote of the membership of each house. The statute provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to chapter 298, F.S. However, s. 298.76, F.S., does not prohibit special or local legislation that:

- Amends an existing special act that provides for the levy of an annual maintenance tax of a district;
- Extends the corporate life of a district;
- Consolidates adjacent districts; or
- Authorizes the construction or maintenance of roads for agricultural purposes as outlined in this chapter.

Section 298.76 F.S., authorizes special or local legislation:

- Changing the method of voting for a board of supervisors for any water control district;
- Providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any water control district; and
- Changing the governing authority or governing board of any water control district.

Finally, section 298.76, F.S., provides that any special or local laws enacted by the Legislature pertaining to any water control district shall prevail as to that district and shall have the same force and effect as though it had been a part of chapter 298, F.S., at the time the district was created and organized.

### **Referendum**

Section 189.4051, F.S., provides a procedure for switching from electing governing boards by a one-acre/one-vote basis to an election by qualified electors. Paragraph (2)(a) provides that a referendum be called by the governing board of a special district where the board is elected on a one-acre/one-vote basis on the question of whether certain members of a district governing board should be elected by qualified electors, provided each of the following conditions has been satisfied at least 60 days prior to the general or special election at which the referendum is to be held:

- The district must have a total population, according to the latest official state census, a special census, or a population estimate, of at least 500 qualified electors.

- A petition signed by 10 percent of the qualified electors of the district must have been filed with the governing board of the district. The petition must be submitted to the supervisor of elections of the county or counties in which the lands are located. The supervisor must, within 30 days after the receipt of the petitions, certify to the governing board the number of signatures of qualified electors contained on the petition.

Upon verification of the petition, a referendum election must be called by the governing board at the next regularly scheduled election of governing board members occurring at least 30 days after verification of the petition or within 6 months of verification, whichever is earlier.

If the qualified electors approve the election procedure, the governing board of the district will be increased to five members and elections must be held beginning with the next regularly scheduled election of governing board members or at a special election called within 6 months following the referendum and final un-appealed approval of district urban area maps as provided in paragraph (b), whichever is earlier.

If the qualified electors of the district disapprove the election procedure, elections of the members of the governing board shall continue as they are currently. No further referendum on the question may be held for a minimum period of 2 years following the referendum.

### **III. Effect of Proposed Changes:**

The bill codifies all prior special acts relating to the Indian Trail Improvement District into a single act as required by section 189.429, F.S. The bill amends the district's boundaries. The bill provides for a referendum of the district's election procedures to provide that the Board of Supervisors will be chosen by the electors of the district rather than by proxy/acreage.

**Section 1** provides that this act is the codification required under section 189.429, F.S., and declares the legislative intent for the act.

**Section 2** amends, codifies, reenacts, and repeals special acts relating to the district's charter.

**Section 3** provides for the re-creation of the district and the re-creation and reenactment of the charter for the district and the following provisions.

Section 1 of the charter addresses

- The purpose for the district;
- The powers, functions, and duties of the district regarding non-ad valorem assessments, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other similar issues;
- The special act establishing the district;
- The method for amending the charter of the district;
- The membership and organization of the governing board of the district;
- The compensation of a governing board member;
- The administrative duties of the governing board of the district;
- The applicable financial disclosure, noticing, and reporting requirements;

- The procedures and requirements for issuing bonds;
- The procedures for conducting any district elections and the qualifications of an elector of the district;
- The methods for financing the district;
- The levy of ad valorem taxes in the district;
- The methods for collecting non-ad valorem assessments, fees, or service charges; and
- The planning requirements for the district.

Section 2 of the charter provides the purpose and boundaries of the district.

Section 3 of the charter provides that the provisions of chapter 298, F.S. (Drainage and Water Control), apply to the district, except as otherwise provided in the act.

Section 4 of the charter provides that the provisions of chapter 153, F.S. (Water and Sewer Systems), apply to the district, so far as not inconsistent with this act.

Section 5 of the charter provides the powers, functions, and duties of the district. Such functions include providing works for drainage and water control, construction and maintenance of roads, construction and maintenance of gas mains and facilities, and construction and maintenance of recreational facilities.

Section 6 of the charter provides the membership and organization of the five-member Board of Supervisors for the district; provides the qualifications of a candidate for membership of the governing board of the district; provides the term of office for members of the governing board of the district; provides the procedures for conducting district elections; and provides the procedures for filling vacancies on the governing board of the district.

Section 7 of the charter provides for the compensation of the supervisors.

Section 8 of the charter provides the time, place, frequency, and notice requirements of landowner's meetings; and provides for public hearings prior to adopting the annual budget, authorizing a special assessment, or making a material expenditure.

Section 9 of the charter provides that installment and maintenance taxes must be levied and apportioned as provided for in ch. 298, F.S.

Section 10 of the charter provides discounts for prompt payment of taxes and the method of enforcing taxes.

Section 11 of the charter provides for liens of taxes and foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments.

Section 12 of the charter provides for a \$50 per acre tax for surveying expenses, and "assessing district administrator benefits and damages and offer expenses necessarily incurred, as estimated or determined by the board of supervisors..."

Section 13 of the charter provides the procedures and requirements for issuing bonds.

Section 14 of the charter authorizes the issuance of bonds; provides for the rights of bondholders; and provides for the redemption of bonds.

Section 15 of the charter authorizes the Board of Supervisors to exercise eminent domain authority.

Section 16 of the charter provides for unit development within the district; provides notice and hearing procedures; and provides for a water control plan.

Section 17 of the charter provides for amendments to the water control plan.

Section 18 of the charter ratifies, validates, and confirms prior acts and proceedings taken by, for, and on behalf of the district.

**Section 4** repeals chapters 57-646, 67-692, 80-569, 82-352, 83-491, 88-501, 89-465, 90-446, 92-261, 97-326, and 99-473, Laws of Florida.

**Section 5** provides for liberal construction of the act.

**Section 6** provides for the severability of any invalid provision.

**Section 7** provides controlling law in the event of conflict.

**Section 8** provides for a referendum within 60 days after the effective date of this act on the district's election procedures provided in section 6 of the charter contained in section 3 of this act.

**Section 9** provides an effective date.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.



**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The House Committee on Local Government and Veterans' Affairs states that the law firm, Lewis, Longman & Walker, P.A., representing the district, submitted a boundary letter stating the following:

The property added to the district boundaries represents a strip of non-residential property under single ownership which formerly received services from the district under contract. Under the terms of the contract, the property owner paid the district for such services equal to the district's assessment rate. The property owner has requested inclusion in the district boundaries as a result of this arrangement.

Pursuant to section 9, Article VII, of the State Constitution, the district cannot levy ad valorem taxes on the newly annexed area until the newly annexed area approves the ad valorem levy at referendum. This bill does not provide for such referendum. This does not prohibit the annexation of the area, just the levy of ad valorem taxes on the area.

**VIII. Amendments:**

None.