

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|--------|------|--------|
| 1. Reduce government? | Yes[] | No[] | N/A[X] |
| 2. Lower taxes? | Yes[] | No[] | N/A[X] |
| 3. Expand individual freedom? | Yes[X] | No[] | N/A[] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[X] |
| 5. Empower families? | Yes[] | No[] | N/A[X] |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill amends the charter of the Pensacola Downtown Improvement Board to revise the provisions for referendum elections for the:

- levy of ad valorem property tax;
- change of district boundaries; or
- repeal of the act (see Constitutional Issues below).

The bill changes referendum approval from a vote representing in excess of 50 percent of the assessed value of the property within the district to a vote of the majority of the freeholders in the district.

Although the bill appears to authorize the voters the ability to repeal the “act,” only the Legislature can repeal the special act.

A freeholder is one who holds legal or equitable title to realty for life or in fee simple. Thus, the referendum required by the bill is a vote of the landowners of the district as opposed to a vote of all individuals living within the district. Freeholder voting is provided for in s. 100.241, F.S.

Additionally, the bill deletes obsolete provisions.

Background

The Pensacola Downtown Improvement District was created as a dependent special district of the City of Pensacola in 1972 (ch. 72-655, L.O.F.).

Chapter 76-466, L.O.F., authorized the Board to levy an ad valorem tax at a rate not to exceed 1 mill. The act also provided that the ad valorem rate could be increased 1 additional mill if approved by a referendum election held in accordance with s. 13 of the district charter which provides the referendum requirements of the district. In accordance with s. 13, a referendum is decided by an approval vote of qualified electors representing in excess of 50 percent of the assessed value of the property within the downtown area.

According to a representative of the City of Pensacola¹, this bill revises the election provisions relating to the levy of ad valorem tax to provide an equal vote to each freeholder within the district boundaries. In a previous referendum, although a majority of the individuals within the district voted in favor of an increase in the ad valorem rate, two of the voters representing a majority of the assessed value of the property failed to vote and therefore the referendum failed.

¹ Robert Payne, Assistant City Manager, 3/7/03.

There are no known opponents to the bill, according to a representative of the City.²

C. SECTION DIRECTORY:

Section 1. Amends the charter of the Pensacola Downtown Improvement Board revising provisions relating to referendum elections for the levy of ad valorem property tax; authorizing repeal of the act by a vote as established in s. 13(3) of the charter after being petitioned by 20 percent of electors in the downtown area.

Section 2. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 31, 2003.

WHERE?

Pensacola New Journal, a daily newspaper of general circulation in Escambia County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 1(5) of the bill amends the charter of the Pensacola Downtown Improvement Board to revise the provisions for referendum elections for, among other matters, the repeal of the act and the repeal of the Board.

The legislative power of the state is vested in the Legislature (s. 1, Art. III, State Constitution). It is fundamental that the Legislature may not, except when authorized by constitution, delegate its power to enact laws, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law.³ The authorization to "repeal the act" given to the voters of the improvement district, as provided in s. 1(5) of the bill, appears to be an unauthorized delegation of legislative authority and should be amended.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

² John Fleming, Assistant City Attorney, 3/7/03.

³ 10 Fla. Jur. 2d Constitutional Law s. 188.

Drafting Issues

Section 1(5) of the bill amends the charter of the Pensacola Downtown Improvement Board to revise the provisions for referendum elections for the repeal of the act and the repeal of the Board. This appears to be an unauthorized delegation of legislative authority (see Constitutional Issues above).

It would seem the intent of existing law was to allow the affected persons an opportunity to retain or remove the Pensacola Downtown Improvement Board. A proposed amendment by the Sponsor allows the affected persons to vote to abolish the district while repeal of the special acts relating to the district is left to the Legislature.

Other Comments

The Sponsor stated that she filed this bill to allow the City of Pensacola and the Downtown Improvement Board the option to change the tax structure.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Sponsor intends to offer a curative amendment to resolve the constitutional and drafting issues.