

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 711 St. Lucie County Erosion District  
**SPONSOR(S):** Negron  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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| REFERENCE  | ACTION          | ANALYST         | STAFF DIRECTOR  |
|--|-----------------|-----------------|-----------------|
| 1) <u>Local Affairs (Sub)</u>                      | <u>8 Y, 0 N</u> | <u>Mitchell</u> | <u>Cutchins</u> |
| 2) <u>Local Government &amp; Veterans' Affairs</u> | <u></u>         | <u></u>         | <u></u>         |
| 3) <u>Finance &amp; Tax</u>                        | <u></u>         | <u></u>         | <u></u>         |
| 4) <u></u>   | <u></u>         | <u></u>         | <u></u>         |
| 5) <u></u>   | <u></u>         | <u></u>         | <u></u>         |

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### SUMMARY ANALYSIS

The St. Lucie County Erosion District is a *dependent* special district that was created by chapter 67-2001, Laws of Florida, and which has been amended by chapter 97-354, Laws of Florida.

This bill codifies all prior special acts of the district into a single act.

The bill deletes unnecessary language, reorganizes some subsections, and changes subsection designations throughout the charter.

The bill makes minor, stylistic changes to some of the language of the charter:

The bill permits the exercise of authority granted by the Uniform Special District Accountability Act of 1989 and other applicable general law

The bill makes the following changes to the charter: provides the status of the district; removes the bond requirement for the secretary and treasurer; adds language relating to the chair and vice chair serving at the time of the effective date of the bill; divides the District into five zones, instead of the four previously provided, for purposes of levying and collecting ad valorem taxes; creates a new Zone E; describes the creation of Zone E; adds a limit of two mills in any one year for the special ad valorem maintenance tax in zone E.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0711a.lgv.doc  
**DATE:** March 3, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

The St. Lucie County Erosion District (District) is a dependent special district<sup>1</sup> that was created by chapter 67-2001, Laws of Florida, and which has been amended by chapter 97-354, Laws of Florida.

This bill codifies all prior special acts of the District into a single act as required by section 189.429, Florida Statutes.<sup>2</sup>

The bill deletes language which became unnecessary after the initial approval of the referendum to create the District or by operation of time.

The bill reorganizes some subsections of the charter and, consistent with legislative practice, consistently changes subsection designations from letters to numbers throughout the charter.

The bill makes minor, stylistic changes to some of the language of the charter:

The bill permits the exercise of authority granted by chapter 189, Florida Statutes, and other applicable general law throughout the charter.

The bill makes the following changes to the charter:

- provides the status of the district as dependent as required by subsection (5) of section 189.404, Florida Statutes;
- removes the bond requirement for the secretary and treasurer, who is also the Clerk of the Circuit Court of St. Lucie County;
- adds language directing the chair and vice chair serving at the time of the effective date of the bill to continue to serve until their terms expire and their successors are duly elected;
- divides the District into five zones, instead of the four previously provided, for purposes of levying and collecting ad valorem taxes;<sup>3</sup>

<sup>1</sup> See Fla. Stat. § 189.403(2) (2003).

<sup>2</sup> As codification is a reenactment, it does not appear to violate the provisions of section 189.4041, Florida Statutes, which requires "a charter for the creation of a dependent district created after September 30, 1989, to be adopted only by ordinance of a county or municipal governing body having jurisdiction over the area affected."

<sup>3</sup> As provided in subsection (4) of section 8, the District currently has the power to amend by resolution existing zone boundaries, abolish or consolidate existing zones, and determine the percentage of benefit accruing to lands within the zones.

- creates a new Zone E for purposes of levying and collecting ad valorem taxes, which contains all lands within the District;
- provides that Zone E was created pursuant to County Commission Resolution 97-05 for the purpose of funding the District's share of the costs of the United States Army Corp of Engineers Fort Pierce Florida Shore Protection Project and future projects and determines that the lands and real estate within Zone E receive 100 percent of the project benefits
- removes the requirement that limited tax revenue bonds be approved at an election of the qualified electors<sup>4</sup>
- adds a limit of two mills in any one year for the special ad valorem maintenance tax in zone E.

### Background on the Codification Process

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, Florida Statutes, 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.

The 1998 Legislature amended section 189.429, Florida Statutes, to: (1) extend the codification deadline to December 1, 2004; (2) 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; (3) remove the prohibition of substantive amendments in a district's codification bill; and (4) 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.

Additionally, the 2001 Legislature amended section 189.429, Florida Statutes, creating subsections (2) and (3). The subsections provide that reenactment of existing law pursuant to section 189.429: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

According to the schedule of submittals, Special Fire Control Districts are to submit their charters during the 2004 Legislative Session.

### C. SECTION DIRECTORY:

Section 1: Provides that the bill is the codification of all special acts relating to the District pursuant to section 189.429, Florida Statutes; sets forth the intent of the Legislature to provide a

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<sup>4</sup> See e-mail from Lewis, Longman & Walker (Feb. 26, 2004, 10:28 EST) (indicating that district counsel made the change to conform the charter to general law) (on file with the Committee on Local Government & Veterans' Affairs).

comprehensive charter and all current legislative authority; provides that the bill preserves all district authority.

Section 2: Amends, codifies, reenacts, and repeals chapter 67-2001 and 97-354, Laws of Florida.

Section 3: Recreates and reenacts the charter of the District:

- Section 1: Popular name.-- sets forth the popular name – “St. Lucie County Erosion District Act.”
- Section 2: Legislative statement.-- declares the legislative determination of the existence of soil and beach erosion problems in St. Lucie County.
- Section 3: Definitions.-- formerly section 6 of the charter; provides definitions for district, county board, erosion prevention facilities, cost, secretary/treasurer, bonds, and non-ad valorem taxation; removes the current bond requirement for the secretary and treasurer, who is also the Clerk of the Circuit Court of St. Lucie County, in the definition of secretary/treasurer.
- Section 4: District establishment; status; powers.-- formerly section 3; creates and established the District as a *dependent* special district and body corporate and politic; provides the power to sue, contract, adopt and use a corporate seal, and acquire and control real property; grants authority provided by section 189, Florida Statutes, or any other applicable general law.
- Section 5: Boundaries.-- formerly section 4; provides that the territorial boundaries of the District coincide with the territorial boundaries of St. Lucie County and include all lands and property within the county.
- Section 6: Governing board; creation; organization.-- formerly section 5; provides the designation for the governing body; provides that the board shall be made up ex officio of the five county commissioners of St. Lucie County; requires the chair and vice chair to hold office at the will of the board and until their successor is duly elected by the board; adds language directing the chair and vice chair serving at the time of the effective date of the bill to continue to serve until their terms expire and their successors are duly elected; provides for the chair to preside and perform directed duties with the vice chair to perform the duties of the chair in the absence of the chair; requires the board to hold at least one regular meeting per month; permits special meetings pursuant to chapter 189, Florida Statutes; provides for meetings in the event of a bona fide emergency.
- Section 7: District powers.-- grants the following powers to the board and adds powers granted by any other applicable general law: to adopt rules and regulations; to employ professionals, agents, and employees which shall be considered employees of St. Lucie County and its personnel or collective bargaining rules, but paid by the District; to acquire, construct, reconstruct, improve, operate or maintain erosion prevention facilities in the District; to levy and assess ad valorem taxes now without limitation of rate or amount; to assess, levy, and collect non-ad valorem assessments within the District; to regulate the acquisition, construction, reconstruction, improvement, or maintenance of erosion prevention facilities within the District; to grant or deny permits for the construction of any erosion prevention facilities with the approval of the municipality where its location so requires; to enjoin any authorized construction or work done which does not comply with any permit issued; to enter upon lands, either within or without the District, in order to make surveys and examinations; to

provide liability for any actual damages done in connection with the survey and examination; to acquire by purchase, gift, or the exercise of the right of eminent domain lands and rights as well as personal property; to exercise exclusive jurisdiction, control, and supervision over any erosion prevention facilities owned, operated, and maintained by the District; to make and enforce rules for the maintenance and operation of erosion prevention facilities; to acquire, hold, and improve beachfront lands as a part of erosion prevention facilities, and to operate such beachfront lands for public purposes; to comply with any agreements made with the Federal Government as it relates to financial assistance provided for beachfront lands; to join with any other public entities and authorities in the exercise of common powers; to enter into contracts; to accept grants, loans, or contributions; to provide funds in order to qualify for financial assistance by federal, state, or other governmental agencies or political subdivisions; to do and perform all acts necessary to obtain any required federal or state permits; to adopt all proceedings and perform all acts necessary to comply with and perform contracts and agreements; to rent, lease, sell, exchange, transfer, otherwise dispose of, or grant options for any real or personal property; to make an execute financing agreements, lease-purchase agreements, contracts, deeds, and other instruments; to provide adequate insurance on all real and personal property, equipment, employees, and other personnel; to do all other acts and things necessary or proper.

Section 8: Ad valorem assessments; zones.-- finds, determines, and declare that all of the lands and real estate in the District are benefited by erosion prevention facilities and that the full faith and credit and ad valorem taxing power of the District, without limitation as to rate or amount, is pledged for the payment of the principal and interest of any bonds issued by the District; divides the District into five zones (A, B, C, D, and E), instead of the four previously provided, for purposes of levying and collecting ad valorem taxes; sets forth the boundaries of the five zones; creates a new Zone E which contains all lands within the District; sets forth the percentages of the total benefits which the lands and real estate in each zone receive from the erosion prevention facilities; provides that Zone E was created pursuant to County Commission Resolution 97-05 for the purpose of funding the District's share of the costs of the United States Army Corp of Engineers Fort Pierce Florida Shore Protection Project and future projects and determines that the lands and real estate within Zone E receive 100 percent of the project benefits; requires the ad valorem taxes to be levied in each zone in ratio to the percentage of benefits; provides for the event that the full amount of taxes in any zone are not collected and for deficits; permits reimbursements to owners; allows the board, by resolution, to amend exiting zone boundaries, abolish or consolidate zones, create new zones, and determine benefits to lands; requires ad valorem taxes to be levied and collected as a separate tax which the county board certifies the total amount of to the property appraiser; directs the property appraiser to levy and collect the taxes like other general county taxes are collected and then given to the District.

Section 9: Non-ad valorem assessments.-- authorizes the board to assess, levy, and collect non-ad valorem assessments for facilities of the District; limits non-ad valorem taxes to beneficial real property at a rate based upon the special benefit accruing to the property; provides what may be included in the costs; makes non-ad valorem assessments liens that are co-equal with other liens and bear interest; provides for collection of liens a provided in chapter 197, Florida Statutes, or as the District may prescribe.

- Section 10: Bond issuance.-- authorizes the board to issue general obligation bonds, limited tax revenue bonds, revenue bonds, and non-ad valorem assessments bonds; requires general obligation bonds to have been approved at an election of the qualified electors; removes the requirement that limited tax revenue bonds be approved at an election of the qualified electors; sets forth the requirements of the bonds and their execution; permits the board to sell the bonds either at a public or private sale and for the price it determines to be in the best interest of the District provided the maximum bond interest rate is not more than that permitted by general law; provides for the use of proceeds from the sale of any general obligation bonds, limited tax revenue bonds, revenue bonds, and non-ad valorem assessments bonds; permits the issuance of interim reports, temporary notes, or other forms of temporary obligations; allows the board to provide for the replacement of bonds; authorizes the board to make the bonds payable from and secured by a pledge from revenues of any District facility, proceeds from the sale or lease of District facilities, money received from the United States or any agency or instrumentality thereof, the full faith and credit of the District, the taxing power or limited ad valorem taxes levied by the District, and the proceeds from any non ad-valorem assessments.
- Section 11: Bond trust agreement.-- allows any bonds issued to be secured by a trust agreement by and between the District and a corporate trustee; permits the trust agreement to contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and no in violation of law, including covenants setting forth the duties of the District; provides for the furnishing of indemnifying bonds or the pledge of securities; permits the trust agreement or resolution to set forth the rights and remedies of bondholders and of the trustee as well as restricting the individual right of action by bondholders; allows provisions as may be reasonable and proper for the security of the bondholders; includes these costs as part of the cost of the operation of the district facilities.
- Section 12: Notice of bonds issuance.-- permits the board, at its discretion, to publish a notice stating the date of adoption of the resolution authorizing bonds with information about the bonds and the requirement that any action or proceeding questioning the validity of the bonds or the proceedings authorizing the issuance of the bonds must be implemented within 20 days of the notice or the validity of the bonds or the proceedings may not be questioned in any court; provides that if no action or proceeding is initiated, then the validity of the bonds and the proceeding is conclusive and any questions as to the validity of the bonds or proceedings is forever barred in any court.
- Section 13: Bond covenants.-- provides that all bonds have the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of Florida; prohibits the invalidity of the bonds for any irregularity in the proceeding for the issuance and sale of the bonds and makes the bonds incontestable in the hands of bona fide purchasers for value; eliminates the requirement for any proceeding with respect to the issuance of the bonds; provides that the provisions of the charter constitute an irrevocable contract between the District and the holders of bonds or coupons issued by the District pursuant to its provisions; allows any holder of bonds, at law or in equity, by suit, action, or mandamus to force and compel the duties required by the charter in relation to the bonds or the payment thereof.

- Section 14: Public purpose declaration.-- declares the exercise of the powers conferred by the charter to be the performance of essential public functions and that any erosion prevention facilities are public property used for public purposes.
- Section 15: Bonds as legal investments.-- provides that all bonds issued pursuant to the charter are legal investments for public funds and certain fiduciaries; declares the bonds to be securities eligible as collateral security for public funds.
- Section 16: Bonds as payments.-- authorizes the District to enter into agreements for the delivery of any bonds as full or partial payment for the services of any engineer or work done by any contractor provided such bonds were authorized and issued as required by the charter.
- Section 17: District authority to purchase or procure.-- requires the board to exercise its power of purchase or procurement in accordance with the rules, regulations, ordinances, practices, and procedures of St. Lucie County; provides for the District to requisition commodities and services through any purchasing agent as the county may from time to time appoint; permits requisitions or contracts to be in the name of St. Lucie County; requires the costs of such purchases, procurements, and contracts of the District to be paid with funds of the District.
- Section 18: Maintenance tax.-- authorizes the District to levy a special ad valorem maintenance tax of a sufficient number of mills upon the dollar of assessed valuation of taxable property in the District to pay for the maintenance and operation of such erosion prevention facilities and other corporate purposes of the District; prohibits the special maintenance tax from exceeding one mill in any one year for Zone A, eight-tenths of a mill in any one year for Zone B, sixth-tenths of a mill in any one year for Zone C, and four-tenths of a mill in any one year for Zone D; adds a limit of two mills in any one year for the special ad valorem maintenance tax in zone E; provides that the special ad valorem maintenance tax is to be collected in the same manner as ad valorem taxes; permits the District to levy an ad valorem maintenance tax within new, amended, or consolidated zones; provides that the ad valorem maintenance tax is to be determined by the board at a rate determined to be the proportionate share for each zone; requires the proportionate share to be based on the determined percentage benefit accruing to the land.
- Section 19: District contracts.-- provides that any contract entered into by the District is deemed to have been made for the benefit of any bondholders and the terms of any contract are enforceable by the bondholders in any appropriate legal proceeding; declares that any contract made with another public body or municipality is enforceable without the requirement of formal consideration.
- Section 20: Real property; personal property; advancement of funds.-- authorizes St. Lucie County, any municipality, or any other political subdivision to sell, lease, grant, or convey any real or personal property to the District, which may be done without formal consideration; permits St. Lucie County to advance any moneys available to the District to pay any of the preliminary expenses of the District; requires any advanced moneys to be repaid to the county from the proceeds of bonds issued or from ad valorem or maintenance taxes levied in the District for the operation and maintenance of erosion prevention facilities and other purposes of the District.
- Section 21: Authority to delegate.-- authorizes the board to establish and create such departments, boards, or other agencies as it deems necessary or desirable;

permits delegation to the same except that the issuance of bonds, levy of taxes, and authorization related to erosion prevention facilities must be authorized by resolution of the board.

Section 22: Exemption from taxation.-- provides that all District property is exempt from levy and the sale by virtue of an execution; prohibits execution or other judicial process to issue against property of the District or for any judgment against the District to be a charge or lien on its property or taxes or other revenues; limits application to the rights of bondholders.

Section 23: Covenant not to impair.-- declares that the state pledges, covenants, and agrees that it will not limit or alter the rights hereby vested in District related to erosion prevention facilities, the levy and collection of ad valorem taxes, the fulfillment of any agreement with or the rights of bondholders, or exemptions from taxation until all bonds have been fully met and discharged.

Section 24: Liberal construction.-- provides that the charter shall be liberally construed to effect its purposes; prohibits the exercise of the powers provided in charter and the issuance of bonds from being subject to the limitations or provisions of any other law or laws except as provided in the charter.

Section 25: Severability.-- provides for severability in the event that one or more of the sections or provisions of the bill are held unconstitutional or invalid and that such will not affect the validity or continuation of the other sections or provisions.

Section 4: Repeals chapters 67-2001 and 97-354, Laws of Florida.

Section 5: Provides that the bill takes effect upon becoming law.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? WHERE?

An Affidavit of Proof of Publication states that a Notice of Intent to Seek Legislation was published in Fort Pierce/Port St. Lucie Tribune on November 1, 2003.

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:



There may be potential state constitutional issues related to sections 2<sup>5</sup> and 9<sup>6</sup> of Article VII of the Florida Constitution.

**B. RULE-MAKING AUTHORITY:**

The bill continues provisions of the charter that provide rulemaking authority:

Subsection (1) of section 7 of the charter gives the district board the power “to adopt rules and regulations for its own government and proceedings and to adopt an official seal for the district and for complete exercise of jurisdiction and control over district operations, projects, and facilities.”

Subsection (9) of section 7 of the charter gives the district board the power “to make and enforce such rules and regulations for the maintenance and operation of such erosion prevention facilities as in the judgment of the district board are necessary or desirable for the efficient operation of such erosion prevention facilities in accomplishing the purposes of this act.”

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 24 of the charter currently includes, and this bill is recodifying, a provision which might act as a type of “supremacy clause.” The exercise of the powers provided in this act and the issuance of bonds hereunder shall not be subject to the limitations or provision of any other law or laws except as expressly provided herein.

**IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES**

On March 3, 2004, the Subcommittee on Local Affairs recommended the adoption of an amendment which removes lines 779-783, which is a type of “supremacy clause” that declares that the act is not subject to the limitations or provisions of any other law or laws except as provided.

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<sup>5</sup> Section 2 of Article VII of the Florida Constitution requires all ad valorem taxation to be at a uniform rate in each taxing unit. The District is a taxing unit but levies its ad valorem taxes in “zones” in ratio to the percentage of benefits for the zone and not at a “uniform rate.” Although there was a similar provision in the Constitution of 1885 (Article 9, section 1, required the Legislature to provide for a uniform and equal rate of taxation), the fact that the District was established in 1967, before the 1968 revision to the Florida Constitution, may permit this type of ad valorem assessment through the provisions of section 2, article XII which provides that “tax millages authorized in counties, municipalities and special districts, on the date this revision becomes effective, may be continued until reduced by law.” See also *Bannerman v. Catts*, 80 Fla. 170, 85 So. 336 (Fla. 1920). Counsel for the District asserts that the interpretation of section 2 of Article VII of the Florida Constitution in *Gallant v. Stephens*, 358 So.2d 536 (Fla. 1978) (relating to municipal service taxing units), is controlling as to this issue. See e-mail from Lewis, Longman & Walker (Mar. 1, 2004, 09:44 EST) (on file with the Committee on Local Government & Veterans’ Affairs).

<sup>6</sup> Section 9 of Article VII of the Florida Constitution provides “special districts a millage authorized by law approved by the vote of the electors.” Notwithstanding any issues related to section 2 of Article VII, the millages for Zones A, B, C, and D were approved as part of the referendum which approved the act creating the District. This bill creates a new zone E. This bill also authorizes the levy of a special ad valorem maintenance tax in Zone E, not to exceed two mills in any one year. No information has been provided which indicates that such a millage was approved by the electors in St. Lucie County. Counsel for the District believes the requirements of section 9 of Article VII of the Florida Constitution have been met: “The District has been authorized by referendum to levy the tax in question on a District wide basis since it was created. Levying it within zone E (which does not constitute an addition of new property to the District) would be authorized so long as the cap is not exceeded.” See e-mail from Lewis, Longman & Walker (Mar. 1, 2004, 09:44 EST) (on file with the Committee on Local Government & Veterans’ Affairs). District counsel also notes that because this is a dependent district, it is subject to the constitutional millage limitation of ten mills for all county purposes in section 9 of Article VII of the Florida Constitution. See Fla. Stat. §200.071(2) (2003); see also *Board of County Com’rs, Hernando County v. Florida Dept. of Community Affairs*, 626 So.2d 1330 (Fla. 1993).