

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide for lower taxes: This bill authorizes the district to levy ad valorem tax up to 5 mills and eliminates authority to levy currently maintenance and administrative taxes. Current tax revenues of the district total approximately \$1.9 million, while the levy of a 5 mill tax will generate approximately \$76.5 million annually. Thus, if the maximum millage rate is levied, tax revenues will increase by approximately 40 times current revenues.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The South Broward Drainage District (district) was originally established by the Legislature in 1967¹ as an independent water control district. In 1998, the Legislature codified the charter of the district.² Today, the district operates as a water control district under its special act charter as well as under the provisions of ch. 298, F.S. A water control district operating under ch. 298, F.S., is organized for limited and definite purposes, and its powers are restricted to those deemed essential by the Legislature to affect its purpose. Therefore, these districts have no power or authority other than that conferred by law.

The district is governed by a board consisting of six members elected by the landowners of the district. The board is authorized to exercise any and all other powers conferred upon drainage districts by ch. 298, F.S., including, but not limited to, the power to acquire and construct drainage improvements, to issue bonds to pay the cost thereof, and to levy and collect non-ad valorem taxes upon lands benefited by the improvements.

Current Revenue Sources

Section 23 of the district charter authorizes the board to levy a tax of such portion of benefits of the district's plan of reclamation on all lands in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and improvements, as shown in said plan of reclamation and in carrying out the objects of said district; and, in addition thereto, 10 percent of said total amount for emergencies. The tax must be apportioned to, and levied on, each tract of land in said district in proportion to the benefits assessed, and not in excess thereof; and, in case bonds are issued, a tax must be levied in a sum not less than an amount 90 percent of which must be equal to the principal of said bonds.

Section 40 of the district charter authorizes to board to levy an annual installment tax. The board must annually determine, order, and levy the annual installment of the total taxes which are levied under section 23 and collected during each year that county taxes are collected. The annual installment and levy must be evidenced to and certified by the board of supervisors each year to the Broward County Property Appraiser. The tax is entered by the county property appraiser on the county tax rolls and collected by the Broward County revenue collector in the same manner and same time as county taxes and the proceeds thereof paid to the district. The tax is a lien until paid on the property against which assessed and enforceable in like manner as county taxes.

Section 41 of the district charter authorizes the board to levy an "operation and administrative tax" to carry on the business of the district and to pay the administrative and operational costs thereof and in

¹ ch. 67-904, L.O.F.

² ch. 98-524, L.O.F.

addition to any other tax or assessment authorized to be levied. The tax is levied on all the lands within the district as determined by the board for said purpose.

Section 42 of the district charter authorizes the levy of a "maintenance tax" to maintain and preserve the drainage improvements of the district. The maintenance tax must be evidenced to and certified by the board of supervisors each year to the property appraiser, entered by the property appraiser on the county tax rolls, and collected by the revenue collector in the same manner and time as county taxes and the proceeds therefrom paid to the district. The tax is a lien until paid on the property against which assessed and enforceable in like manner as county taxes. The amount of the maintenance tax is determined by the board based upon a report of the chief engineer or director and assessed by the board upon such lands, which may be all of the lands within the district, benefited by the maintenance thereof. In the alternative, the board may by resolution determine the amount of taxes as provided by s. 298.365, F.S., and thereafter the annual installments are levied, collected, and enforced as provided in ch. 298, F.S.

Section 45 authorizes the board to provide for the construction or reconstruction of assessable improvements and for the levying of special assessments upon benefited property for the payment thereof, under provisions of this section. "Assessable improvements" includes, without limitation, any and all drainage and land reclamation works and facilities, sewer systems, storm sewers and drains, water systems, streets, roads, or other projects of the district, or that portion or portions thereof, local in nature and of special benefit to the premises or lands served thereby, and any and all modifications, improvements, and enlargements thereof.

Procurement of contractual services and purchase of goods, supplies, and materials.

Section 53 of the district charter requires all contracts let by the board for professional architectural, engineering, landscape architectural, or land surveying services for any project authorized by the charter to be in compliance with s. 287.055, F. S. Unless exempt by the charter or s. 287.055, F.S., no contract may be executed by the board for the construction or maintenance of any improvements authorized under the charter, nor may any goods, supplies, or materials be purchased when the amount thereof to be paid by the district exceeds \$10,000, unless notice of bids is advertised once a week for 2 consecutive weeks in a newspaper in general circulation in Broward County, and in each case the bid of the lowest responsible bidder must be accepted, unless all bids are rejected because the bids are too high. The board may require the bidders to furnish bond with responsible surety to be approved by the board. Nothing in this section prevents the board from undertaking and performing the construction, operation, and maintenance of any project, facility, or improvements authorized under the charter by the employment of labor, material, and machinery.

Notwithstanding the bidding procedure prescribed above, if the board determines, by resolution, that the use of competitive bidding is not practicable, contractual services and purchases of goods, supplies, or materials may be procured by competitive sealed proposals. The request for proposals must include a statement of the services sought or the goods, supplies, or materials requested and all contractual terms and conditions applicable to the procurement of the contractual services or of the goods, supplies, or materials requested. The contract must be awarded to the responsive offeror whose proposal is determined to be the most advantageous to the district, taking into consideration price and other evaluation criteria set forth in the request for proposals.

If the board determines, by resolution, that an immediate danger to the public health or safety or other substantial loss to the district requires emergency action, the board may proceed with the procurement of contractual services necessitated by the immediate danger without competition. However, such emergency procurement must be made with such competition as is practicable under the circumstances.

If no competitive bids or proposals for contractual services or for purchase of goods, supplies, or materials are received, the board may negotiate the best terms and conditions available as determined by the board.

Effect of Proposed Changes

Authorization to levy ad valorem taxes

The bill amends the district charter to authorize the district to levy ad valorem taxes, and to remove authority to levy the administrative tax and maintenance tax upon benefited lands. Commencing with the fiscal year beginning October 1, 2007, the board of supervisors of the district is authorized to levy an ad valorem tax on all taxable property within the district, up to and including 5 mills per dollar of assessed valuation. In the absence of any contrary action of the board of supervisors, the tax rate for each calendar year is automatically set at the maximum of 5 mills.

To carry on the business of the district, to implement capital improvements, to pay the administrative and operational costs thereof, and to maintain and preserve the drainage improvements of the district, and in addition to any other tax or assessment authorized to be levied, the district is authorized to levy an ad valorem tax on all taxable property within the district as determined by the board for said purposes. The ad valorem tax must be evidenced to and certified by the board of supervisors each year to the property appraiser, entered by the property appraiser on the county tax rolls, and collected by the revenue collector in the same manner and time as county taxes and the proceeds therefrom paid to the district. Until paid, the tax is a lien on the property against which assessed and shall be enforceable in like manner as county taxes. The amount of the ad valorem tax is to be determined by the board based upon a report of the chief engineer or director and assessed by the board upon such taxable property, which may be all of the taxable property within the district benefited by the operation, administration, and maintenance thereof.

The manner and basis for taxation for the fiscal year 2006-2007 shall be the same as existed for the South Broward Drainage District prior to the enactment of this act.

The ad valorem tax provided for herein is in addition to county and municipal ad valorem taxes provided for by law. The district is not authorized to levy ad valorem taxes unless taxing authority has been approved in a referendum by a majority vote of the electors residing in the district voting on the question.

Referendum

The bill requires the Broward County Supervisor of Elections to place the following ballot question on the November 7, 2006, general election ballot: Shall the South Broward Drainage District's method of taxation be changed from assessment per acre/unit to ad valorem tax upon taxable property, at a rate not to exceed 5 mills?

Procurement of contractual services and purchase of goods, supplies, and materials.

Currently, the board may not execute a contract for the construction or maintenance of any improvements, nor may any goods, supplies, or materials be purchased, when the amount to be paid by the district exceeds \$10,000 unless the district complies with public notice and competitive bidding requirements in the charter. This bill amends the district charter to increase the threshold from \$10,000 to \$25,000, the threshold amount provided in s. 287.017(1), F.S. for CATEGORY TWO purchases.

C. SECTION DIRECTORY:

- Section 1. Amends ch. 98-524, L.O.F.; authorizing the board to levy and collect an annual ad valorem tax upon all taxable property within the district and removing authority to collect an administrative taxes;
- Section 2. Amends ch. 98-524, L.O.F., changing the amount for which advertisement for bids is required for the procurement by the district of contractual services and purchase of goods, supplies, and materials to comply with state statutory requirements;

- Section 3. Repealing section 42 of section 2 of chapter 98-524, L.O.F. relating to the levy of a maintenance tax;
- Section 4. Providing for recording of the Act in the public record;
- Section 5. Providing for a referendum;
- Section 6. Providing severability;
- Section 7. Providing an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 31, 2005

WHERE? Sun-Sentinel, Fort Lauderdale, Broward County, Boca Raton, Palm Beach County, Miami, Miami-Dade County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? November 7, 2006

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES: See Drafting Issues or Other Comments.

B. RULE-MAKING AUTHORITY: Rule-making is not addressed in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: As filed, the charter as amended by this bill, appears to be inconsistent with the ballot question included in section 5 of the bill. The ballot question reads as follows: Shall the South Broward Drainage District's method of taxation be changed from assessment per acre/unit to ad valorem tax upon taxable property, at a rate not to exceed 5 mills?" The phrasing of the question may lead voters to assume that the only manner in which the district may raise revenues is the levy of a 5 mill ad valorem tax on all taxable property. However, the charter as amended by the bill continues to allow the district to levy assessments on benefited property under sections 23, 40, and 45. Also, since section 13(19) of the charter authorizes the district "to exercise any and all other powers conferred upon drainage districts by chapter 298", the district will continue to have the power to levy any taxes and assessments authorized by that chapter including maintenance taxes, drainage taxes, and administrative taxes. The ballot question may not be considered constitutionally sufficient in that it may not correctly advise the voters as to the impact of changing the district's charter. According to the Florida Supreme Court, requirements in elections include (1) the voter should not be misled and (2) the voter should have an opportunity to know and be on notice as to the proposition on which he is to cast his vote.³

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

³ *Hill v. Milander*, 72 So.2d 796 (Fla. 1954).

Representative Sobel is expected to offer a strike-all amendment at the meeting of the Local Government Council to:

- Clarify that the administrative tax and maintenance tax will no longer be levied by the district if the ad valorem tax referendum is approved;
- Clarify the ballot question;
- Reduce the ad valorem millage rate from 5 mills to 2 mills; and
- Delete a provision allowing the automatic assessment of the maximum millage rate unless the board takes action otherwise.