

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1535

Sebastian River Drainage District, Indian River County

SPONSOR(S): Mayfield

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u></u>	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</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>

SUMMARY ANALYSIS

This bill codifies, amends and reenacts special acts relating to the Sebastian River Drainage District, an independent special district in Indian River County. The bill represents a total rewrite of the district's charter, changes the district's name to the Sebastian River Improvement District, and provides the district with very broad powers and the ability to levy ad-valorem taxes. This re-creation of the district's charter further provides for: the purposes of the district; district boundaries; the applicability of general laws relating to water control districts; district compliance with county plans and regulations; the election of a board of supervisors; organization, powers, duties, terms of office and compensation of the board; meetings; compensation of certain county officers under certain circumstances; the levy of ad valorem taxes and non-ad valorem assessments; collection, enforcement and penalties; referendums under specified circumstances; and issuance of revenue bonds, assessment bonds, bond anticipation notes and general obligation bonds. The bill also provides for severability, and repeals the previous special acts relating to the district.

The bill provides an effective date of upon becoming law.

According to the Economic Impact Statement, the charter amendments will allow district landowners to provide financing for public infrastructure required for future development.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill. See, III. COMMENTS, C. Drafting Issues or Other Comments.

Also, see, III. COMMENTS, A. CONSTITUTIONAL ISSUES, for a discussion of the provisions of the bill that are prohibited pursuant to the State Constitution, and whether a three-fifths majority vote will remedy this concern.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government

This bill re-creates a special district, and expands its powers.

Ensure lower taxes

The bill may result in higher taxes and assessments paid by district landowners.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Water Control Districts

In 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 1978, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. A 1979 bill repealed provisions authorizing the creation of water control districts by circuit court decree.

Chapter 298, Florida Statutes

Chapter 298, F.S., contains provisions governing the creation and operation of water control districts. Several of these provisions are briefly described below.

Creation 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 s. 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 ch. 298, F.S.

Powers of Water Control Districts

A water control district created pursuant to 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. A water control district has full power and authority to construct, complete, operate, maintain, repair and replace any and all works and improvements necessary to execute the water control plan adopted by a district.¹ Subject to the applicable provisions of chs. 373 (the "Florida Water Resources Act of 1972") and 403 (the "Florida Air and Water Pollution Control Act"), F.S., a water control district may be authorized to engage in various water control activities, including the power to:

¹ Section 298.22, F.S.

- (1) employ persons and purchase machinery to directly supervise, construct, maintain and operate the works and improvements described in the water control plan, or may contract with others for the same. Contracts for the construction of district facilities must be awarded under s. 255.20, F.S. (relating to local bids and contracts for public construction works), and other applicable general law;
- (2) clean out, straighten, open up, widen or change the course and flow, alter or deepen any canal, ditch, drain, river, watercourse or natural stream; and concentrate, divert or divide the flow of water in or out of the district; construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and siphons, and may connect the same, with any canals, drains, ditches, levees, or other works, and with any natural stream, lake or watercourse;
- (3) build and construct other works and improvements to preserve and maintain the works in or out of the district; acquire, construct, operate, maintain, use, purchase, sell, lease, convey or transfer real or personal property, including pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment;
- (4) contract for the purchase, construction, operation, maintenance, use, sale, conveyance and transfer of pumping stations, machinery, motive equipment, electric lines and appurtenant equipment, including the purchase of electric power and energy for the operation of the same;
- (5) construct or enlarge, or cause to be constructed or enlarged, bridges that may be needed in or out of the district, across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right-of-way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of said works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut, in or out of the district; remove any fence, building or other improvements, in or out of the district;
- (6) hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right-of-way, sluice, reservoir, holding basin or franchise, in or out of said district, for right-of-way, holding basin, or for material to be used in constructing and maintaining said works and improvements for implementation of the district water control plan;
- (7) condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court as identified in the engineer's report, and follow the procedure set out in ch. 73, F.S., relating to eminent domain;
- (8) adopt resolutions and policies;
- (9) assess and collect reasonable fees for the connection to and use of the works of the district;
- (10) implement comprehensive water control activities, including flood protection, water quantity management, and water quality protection and improvement, described in the water control plan;
- (11) construct and operate facilities for the purpose of controlling and preventing the spread or introduction of agricultural pests and diseases; and
- (12) construct, manage or authorize construction and management of resource-based recreational facilities that may include greenways, trails and associated facilities.

Election of Board of Supervisors

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 is required to 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 three-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 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.

One-Acre, One-Vote

Every acre of assessable land within a water control 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. 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.

Funding of Water Control Districts

The primary funding source for water control district activities is special assessments. The assessment imposed on a particular parcel must represent a fair, proportional part of the total cost and maintenance of an 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. Any unpaid or delinquent assessments bear penalties in the same manner as county taxes, and constitute a lien on the property until paid. The board of a water control district also 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), Art. III of the State Constitution, provides that no special law or general law of local application 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 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 ch. 298, F.S. Section 298.76, F.S., does not prohibit special or local legislation that: (a) amends an existing special act that provides for the levy of an annual maintenance tax of a district; (b) extends the corporate life of a district; (c) consolidates adjacent districts; or (d) authorizes the construction or maintenance of roads for agricultural purposes.

Section 298.76, F.S., authorizes special or local legislation: (a) changing the method of voting for a board of supervisors for any water control district; (b) 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 (c) changing the governing authority or governing board of any water control district.

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

The Uniform Special District Accountability Act

In 1989, the Legislature enacted ch. 189, F.S., the "Uniform Special District Accountability Act." The overall legislative purpose of the act was to consolidate and unify the provisions of existing law relating to the creation and accountability of special districts. The act continues to provide for the general governance of special districts, addressing issues such as the creation of special districts, operations, financial reporting requirements, funding authority, election of board members, compliance with general law provisions such as public records and meetings requirements, and comprehensive planning within special districts.

Codification

Codification is the process of compiling, updating and systematically arranging the special acts that comprise a special district's charter. After a special district's charter is created by special act of the Legislature, the original charter provisions may be amended by subsequent special acts. However, special act amendments are not automatically incorporated into one special act charter. Therefore, in order to ascertain the current status of a special district's charter, it is necessary to locate all special acts amending a district's original charter. This often can be a difficult and time-consuming process for persons interested in determining the status of a charter. Codification of special district charters is important because it permits readers to easily locate and identify such a charter.

Codification of special district charters initially was authorized by the 1997 Legislature in ss. 189.429 and 191.015, F.S., both of which were amended in 1998. The laws provide for codification of all special district charters by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor supersede 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.

The Sebastian River Drainage District

The Sebastian River Drainage District is an independent water control district in Indian River County which was created by circuit court degree in 1927. The current charter of the district (as provided by chs. 12258 (1927), 20478 (1941), 57-1109, 59-768, 63-820, 65-809, and 70-739, L.O.F.) has never been codified and contains repetitive and sometimes archaic language, providing authority for the:

- ratification of previous actions;
- authorization of the board to issue negotiable notes or certificates of indebtedness not to exceed the sum of \$50,000;
- authorization of the board to refrain from the assessment or levy of an annual maintenance tax;
- apportionment of maintenance taxes as provided for under s. 298.54, F.S.;
- inapplicability of ss. 298.45 and 298.46, F.S., to the district, and provisions to be followed in lieu of those provisions;
- taxes levied by the district to become delinquent and bear penalties in the same amounts as county taxes;
- board to procure the construction of the Plan of Reclamation by the expenditure of money or by the acceptance of services or materials;
- assessment of benefits and the levy of taxes and the collection, payment and discharge as provided by law;

- board and all officers, agents and employees to assess, levy and collect the assessments and tax levies;
- authorization of the board to construct, install and maintain locks, dams and other works and facilities in the canals, ditches and drains in the district and elsewhere;
- authorization of the board to levy and impose an annual maintenance tax upon all lands within the district;
- board to levy taxes as provided for in ch. 298, F.S. and ch. 61-1414, L.O.F., excepting the provisions of ss.298.37, 298.38, 298.39, 298.40, 298.401(1), and 298.41, F.S., and providing provisions to be followed in lieu of those provisions.
- bonds to be issued in the manner provided by the general drainage laws of the state;
- no bonds to be issued until approved at an election;
- board to let work to be performed pursuant to contract with amounts in excess of \$25,000.00 being competitively bid;
- authorization of the board to assess and levy a minimum drainage tax;
- authorization of the district to expend its funds in clearing, cleaning and maintaining any and all parts of the Sebastian River;
- authorization of the district to make application and contract for assistance in planning and carrying out works of improvement under any act of the Congress of the United States of America or of any act of the State of Florida;
- county tax assessor, if directed by the board by resolution, to extend the taxes levied by the district upon the tax rolls of Indian River County
- district to be vested with full power and lawful authority to manage, conserve and control the waters passing through said drainage system and to construct and install such works of improvement as may be necessary to accomplish the same;
- district to have the power to acquire lands, easements, or rights of way in, adjoining or near the lands of the district, or adjoining or near the Sebastian River;
- board to enter into agreements with owners of other drains to share costs in the event that any drains from land outside the boundaries of the district are connected to the drains of the district or empty into the Sebastian River;
- modification of any existing plan of reclamation, plan of improvement, and any existing facilities of the district;
- financing of the cost of any such modified or supplemental works of improvement by levying special benefit assessments or by borrowing money issuing notes, bonds or certificates of indebtedness;
- board to apportion the cost of the modified or supplemental works of improvement;
- bonds, certificates of indebtedness, notes or other evidence of indebtedness issued by the district upon such terms and at such rates of interest as the district may deem advisable.
- landowners in the district to be notified by mail of any special benefit assessment;
- authorization to levy annual assessments;
- assessment of a minimum drainage tax;
- apportionment of the cost of the modified or supplemental works of improvement, in the manner approved by the owners of the majority of acres in the district; and a notice for such tax levied;
- consideration of objections; and
- circuit court to have jurisdiction to review the actions of the board.

The charter also contains numerous conflicting provisions discussing the payment of the county tax assessor.

Effect of Proposed Changes

The bill represents a total rewrite of the district's charter. It provides the territorial boundaries for the district, unlike the previous special acts. It also changes the name of the district from "drainage" to an "improvement" district, states that an independent improvement district is created, and provides very broad powers to the board including the authority to construct roads and jogging paths, provide

transportation, construct parking facilities and parks, acquire water purification and sewer systems, engage in mosquito control, establish conservation areas and wildlife habitats, provide for public safety, fire prevention and emergency medical services, and establish facilities for schools. It further provides that the district's purposes include providing public infrastructure and services; the assessment, levy and collection of taxes, non-ad valorem assessments and fees; the operation of district facilities and services; and all other purposes consistent with chs. 189 and 298, F.S., and other applicable general law.

The bill provides for a three-member board of supervisors to be the governing body of the district, and hold office for three-year terms. Each year during the month of June, a supervisor is elected by the landowners of the district. The supervisors must be residents of the State of Florida and citizens of the United States. The remaining supervisors may fill a vacancy until the next annual meeting of the landowners. As soon as practicable after an election, the board of supervisors is required to organize by choosing one of their number as president and by electing "some suitable" person as secretary, who may or may not be a member of the board. The board must report all work undertaken or completed during the preceding year and the status of the finances of the district at each annual landowners' meeting. Each supervisor is paid for his or her services a per diem of \$25 for each day actually engaged in work pertaining to the district. Additionally, supervisors are paid travel and related expenses at rates authorized by ch. 112, F.S.

The bill declares that the district has all powers conferred by ch. 298, F.S., and specifies that the district is authorized to:

- (a) sue and be sued, to make contracts, and to use a corporate seal;
- (b) acquire and dispose of real or personal property;
- (c) construct, operate and maintain canals, ditches, drains, levees, lakes, ponds and other works for water management and control purposes;
- (d) acquire, purchase, operate and maintain pumps, plants and pumping systems;
- (e) construct, operate and maintain irrigation works, machinery and plants;
- (f) construct, improve, pave and maintain necessary roadways and roads and to include as a component, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping and all other customary elements of a modern road system;
- (g) finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain systems and facilities for providing transportation throughout the district;
- (h) finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain parking facilities within district boundaries;
- (i) finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for parks and indoor and outdoor recreational, cultural and educational uses;
- (j) acquire, construct, finance, operate and maintain water plants and systems;
- (k) acquire, construct, finance, operate and maintain sewer systems;

- (l) levy ad valorem taxes and non-ad valorem assessments and to establish and collect rates, fees, rentals, fares or other charges, and to revise the same, for the facilities and services furnished by the district;
- (m) provide for the discontinuance of service and reasonable penalties, including attorney's fees, against any user or property for any such rates, fees, rentals, fares or other charges that become delinquent and require collection;
- (n) enter into agreements with any person, firm or corporation for the furnishing of any facilities and services;
- (o) enter into impact fee credit agreements with local general purpose governments;
- (p) construct and maintain facilities for and take measures to control mosquitoes and other arthropods;
- (q) finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for conservation areas, mitigation areas and wildlife habitat, and any related interest in real or personal property;
- (r) borrow money and issue negotiable or other bonds not exceeding the maximum interest allowable by law;
- (s) provide public safety, including security, guardhouses, fences and gates, electronic intrusion detection systems and patrol cars, when authorized by proper governmental agencies (except that the district may not exercise any police power);
- (t) provide systems and facilities for fire prevention and control and emergency medical services;
- (u) finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip and maintain additional systems and facilities for school buildings and related structures, which may be leased, sold or donated to the school district for use in the educational system;
- (v) establish such departments, committees, boards or other agencies, and to delegate administrative duties and other powers;
- (w) exercise all other powers necessary, convenient or proper in connection with any of the powers or duties of the district stated in the act, including the powers provided for in ch. 298, F.S.

Additionally, the district has the authority to employ engineers, attorneys, agents, employees and representatives, and to fix their compensation and duties.

The bill grants the board, subject to referendum approval pursuant to s. 9, Art. VII of the State Constitution,² the power to levy and assess an ad valorem tax on all the taxable real and tangible personal property in the district to pay the principal of and interest on any general obligation bonds, to provide for any sinking or other funds established in connection with any such bonds, and to pay the costs for construction or maintenance of projects. The total amount of such ad valorem taxes levied in

² This provision in the constitution provides that special districts may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, except ad valorem taxes on intangible person property and taxes prohibited by the constitution. Ad valorem taxes, exclusive of taxes levied for the payment of bonds and for periods not longer than two years shall not exceed 1.0 mills for water management purposes; and for all other special districts a millage authorized by law approved by vote of the electors.

any year is not to exceed 10 mills. The ad valorem tax provided for in the bill is in addition to county and municipal ad valorem taxes provided for by law.

Additionally, the board can assess, levy and collect non-ad valorem assessments for the construction, operation or maintenance of district facilities, services and operations pursuant to chs. 298, 170 or 197, F.S.

The following general provisions in the bill also relate to taxes and assessments:

- All taxes and assessments provided for in the act, together with any penalties, constitute a lien.
- The property appraiser, tax collector and clerk of the circuit court of Indian River County are entitled to compensation for services performed in connection with taxes and assessments of the district as provided by general law.
- Each tract or parcel of land less than one acre in area is assessed as a full acre, and each tract or parcel of land more than one acre in area that contains a fraction of an acre is assessed at the nearest whole number of acres, a fraction of one half or more to be assessed as a full acre.
- All taxes and assessments provided for in this act shall be and become delinquent and bear penalties on the amount of said taxes in the same manner as county taxes.
- The collection and enforcement of all taxes and assessments levied by the district are at the same time and in like manner as county taxes

The district also has the power, pursuant to ch. 298, F.S., and applicable general law, to borrow money, and to issue bonds and bond anticipation notes. Pursuant to ch. 298, F.S., and applicable general law, the district has the power to issue assessment bonds and revenue bonds. These revenue bonds may be secured by, or payable from, the gross or net pledge of the revenues to be derived from any project or combination of projects; from the rates, fees or other charges to be collected from the users of any project or projects; from any revenue-producing undertaking or activity of the district; from special assessments; or from any other source or pledged security. The bonds are not to constitute an indebtedness of the district, and the approval of the qualified electors is not required unless the bonds are additionally secured by the full faith and credit and taxing power of the district.

Any issue of bonds may be secured by a trust agreement between the district and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company. The resolution authorizing the issuance of the bonds or trust agreement may pledge the revenues to be received from any projects of the district and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as the board may approve.

The district additionally has the power to issue bonds for the purpose of refunding any outstanding bonds of the district. The district may issue general obligation bonds to finance or refinance capital projects or to refund outstanding bonds in an aggregate principal amount of bonds outstanding at any one time not in excess of 35 percent of the assessed value of the taxable property within the district. Except for refunding bonds, no general obligation bonds can be issued unless the bonds are issued to finance or refinance a capital project and the issuance has been approved at an election held in accordance with the requirements for such election as prescribed by the State Constitution. Such elections must be called by the Indian River Board of County Commissioners upon the request of the board of the district. The expenses of calling and holding an election shall be at the expense of the district.

The district may pledge its full faith and credit for the payment of the principal and interest on general obligation bonds and for any reserve funds, and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all taxable property within the district, to the extent necessary for the payment thereof, without limitations as to rate or amount.

If the board determines to issue general obligation bonds for more than one capital project, the approval of the issuance of the bonds for each project may be submitted to the electors on one ballot. The failure of the electors to approve the issuance of bonds for any one or more of the capital projects shall not defeat the approval of bonds for any capital project that has been approved by the electors.

In arriving at the amount of general obligation bonds permitted to be outstanding at any one time, there shall not be included any general obligation bonds that are additionally secured by the pledge of:

- special assessments levied in the amount sufficient to pay the principal and interest on a general obligation bond so additionally secured, which assessments have been equalized and confirmed by resolution or ordinance of the board pursuant to s. 170.08, F.S.
- water revenues, sewer revenues, or water and sewer revenues of the district to be derived from user fees in an amount sufficient to pay the principal and interest on the general obligation bond so additionally secured.
- any combination of assessments and revenues.

Finally, the act provides that the development, operation or maintenance of any district facilities or services shall comply with the adopted comprehensive plan for Indian River County and any associated land development regulations, and provides an effective date of upon becoming a law.

C. SECTION DIRECTORY:

Section 1:

(1) Restates s.189.429(2), F.S., providing that reenactment of existing law not be construed as a grant of additional authority, and that exceptions to law contained in any special act hereby reenacted shall continue.

(2) Restates s. 189.429 (3), F.S., providing that reenactment of existing law not be construed to modify, amend, or alter any covenants, contracts, or other district obligations, or ability of the district to levy and collect taxes, assessments, fees, or charges.

Section 2: Codifies, amends, reenacts and repeals chs.12258 (1927), 20478 (1941), 57-1109, 59-768, 63-820, 65-809, and 70-739, L.O.F.

Section 3: Recreates the Sebastian River Drainage District, and its charter as follows:

Section 1: Renames district.

Section 2: Creates the district and provides its boundaries.

Section 3: Provides for applicability of ch. 298, F.S.

Section 4: Provides for district powers.

Section 5: Provides for a board of supervisors; organization, powers, duties and terms of office.

Section 6: Provides for compensation of board.

Section 7: Provides for meetings of landowners and election of supervisors.

Section 8: Provides for taxes and non-ad valorem assessments.

Section 9: Provide for delinquent and unpaid taxes and assessments, and penalties.

Section 10: Provides for enforcement of taxes and assessments.

Section 11: Provides for issuance of bonds.

Section 4: Provides for severability.

Section 5: Repeals chs.12258 (1927), 20478 (1941), 57-1109, 59-768, 63-820, 65-809, and 70-739, L.O.F.

Section 6: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? November 27, 2006

WHERE? The *Vero Beach Press Journal*, a daily newspaper of general circulation published in Indian River 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 ☐

According to the Economic Impact Statement, the district charter amendments will allow district landowners to provide financing for public infrastructure required for future development.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

Section 298.76, F.S., is an example of 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 ch. 298, F.S.

Although this district originally was created by circuit court degree, it derives its existence and authority from ch. 298, F.S. Section 4 of this bill grants ad valorem taxing authority to the board. Neither ch. 298, F.S., nor the previous special acts of the district grant such power.³ The bill also grants broad additional powers to the board in Section 4, including the authority to construct roads, jogging paths,

³ Also, as noted previously in this analysis, s. 9 of Art. VII of the State Constitution limits ad valorem taxes levied for water management purposes to 1.0 mills. In this case, although the district is a water control district (which would be designated as a special improvement district by the bill), it is presumed that if additional broad powers were approved by the Legislature that any tax it would levy in excess of that amount would be for other purposes. Nonetheless, this provision of the constitution contemplates either a tax levied for "water management purposes" or one levied "for all other special districts."

provide transportation, construct parking facilities and parks, acquire water purification and sewer systems, engage in mosquito control, establish conservation areas and wildlife habitats, provide for public safety, fire prevention and emergency medical services, and establish facilities for schools.

Section 6 of the bill provides that each supervisor will be paid for his or her services a “per diem” of \$25 for each day engaged in work pertaining to the district. This provision conflicts with s. 298.14, F.S., which provides that board members will receive no compensation for their service unless the landowners at the annual meeting determine to pay a compensation, which in no event may exceed \$50 per day.

Section 11 provides the district with the authority to issue bonds “without limitation as to amount for the purpose of financing” specified systems and facilities. However, s. 298.47, F.S., provides that such boards may not issue bonds to exceed 90 percent of the total amount of the non-ad valorem assessments, exclusive of the amount for interest levied under the provisions of s. 298.395, F.S. Again, this provision would appear to conflict with the requirements of s. 298.76, F.S.

The law is unsettled with respect to whether the “like vote” requirement to amend or repeal a law on a subject that was added to the prohibited subject list means that the amendment or repeal may be made (1) by any general or special law passed by a three-fifths vote; or (2) only by amending or repealing the underlying general bill that created the prohibited special law by a three-fifths vote. There is no case law on the issue and Florida Attorney Generals have issued conflicting opinions.

The most current opinion concludes that a general law passed by a three-fifths vote of the Legislature prohibiting special or local laws on a particular subject may be amended or repealed by a special act which has passed by a like vote of three-fifths of each house of the Legislature.⁴ The Attorney General advised that the constitutional provision does not expressly provide that amendment or repeal may only be accomplished in the same manner or by general law.

In 1969, the Attorney General was asked whether it was possible to pass special legislation providing compensation to county officers, although such compensation was prohibited by s. 145.16(2), F.S. (a general law passed by 3/5 vote). The Attorney General then advised that the general chapter law creating the prohibition, ch. 69-211, L.O.F., operated to “prohibit and prevent effectiveness of any special act on the specified subject thereafter until amendment or repeal of... Ch. 69-211.”⁵ When the 1983 opinion was issued it raised concerns with both House and Senate bill drafting offices. Senate Bill Drafting promptly expressed disagreement with the opinion in a memorandum of May 10, 1983. Specifically:

The Florida Constitution, and particularly Article III, limit the power of the Legislature, especially the power, by any vote, to pass a local bill that conflicts with a constitutional prohibition implemented by general law;

The plain and obvious meaning of the prohibition “must be construed as implying that the general law must be expressly amended or repealed by another general law enacted by like vote”;

As was true in 1968 when the provision was added to the Florida Constitution, local bill history reveals that most local bills pass unanimously; thus, no construction should be applied to a constitutional provision that would render it a nullity;

The constitutionally prescribed method for circumventing a general law is by amending or repealing the general law; therefore, a conflicting local law is impliedly prohibited by general rules of constitutional construction; and finally,

⁴ Op. Att’y Gen. 83-27 (May 5, 1983).

⁵ Op. Att’y Gen. 69-80 (August 28, 1969).

General laws enacted pursuant to s. 11(a)(21), Art. III of the State Constitution are given the same effect as constitutional prohibitions. The purpose of this section is to specify subject matters with respect to which uniformity throughout the state is required and to negate, with respect to local laws on these subjects, the statutory rule of construction that local acts may supersede conflicting general law.

Senate Bill Drafting concluded that, “[u]ntil a general law enacted pursuant to Art. III, section 11(a)(21) is expressly amended by another general law in the manner specified by the Constitution, the Legislature is without the power to pass, by any vote, a local bill which conflicts with the general law constitutional prohibition.”

In its manual entitled Drafting Local Legislation in Florida (1985), House Bill Drafting also took issue with the 1983 opinion and argued that the interpretation therein “negates the whole point of the constitutional provision.” As stated in the 1969 Attorney General Opinion, the chapter law containing the prohibition would have to be amended or repealed before contrary special legislation could be passed. According to House Bill Drafting, “[t]he plain meaning of Section 11(a)(21) of Article III is that the subject of the prohibition itself may be directly altered or removed by extraordinary vote of the Legislature, not that exceptions to it may be created and the prohibition disregarded by the quiet passage of single-county local bills.

Notwithstanding these expressions of disagreement with the 1983 Attorney General Opinion, the Legislature has continued to pass by more than three-fifths vote, special acts that are exceptions to matters added by general law to the prohibited subject list of the Florida Constitution.⁶

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill. See, III. Comments, A. CONSTITUTIONAL ISSUES, above, for a discussion of how the bill fails to comply with ch. 298, F.S.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁶ Local Bill and Procedures Manual, Florida House of Representatives, Committee on Urban & Local Affairs, 2007.