

STORAGE NAME: h4467z.ca
DATE: May 6, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 4467

RELATING TO: Tindall Hammock Irrigation and Soil Conservation District

SPONSOR(S): Representative Rayson

COMPANION BILL(S): SB 2710 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

House Bill 4467 was passed by the House Committee on Community Affairs on April 21, 1998. The bill passed the House on April 24, 1998, by a vote of 120 YEAS and 0 NAYS. The bill was received by the Senate on April 28, 1998 and was referred to the Senate Committee on Rules and Calendar. It was withdrawn from the Senate Committee on Rules and Calendar on May 1, 1998, and placed on the Senate Local Calendar. The Senate passed HB 4467 on May 1, 1998, by a vote of 40 YEAS and 0 NAYS. The bill became chapter 98-523, Laws of Florida.

II. SUMMARY:

The bill codifies all prior special acts relating to the Tindall Hammock Irrigation and Soil Conservation District into one special act.

The bill provides that the district is an independent special district.

The bill removes the requirement that persons *willfully* causing damage or obstruction to district works without prior board approval is subject to a criminal penalty. The bill also changes the penalties by removing the civil penalty of up to \$500 and increasing the criminal penalty of imprisonment up to 1 year rather than 6 months.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Codification and Status Statement

The 1997 Legislature amended chapter 189, Florida Statutes, to provide for codification of special districts' charters (including fire control districts), either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. In addition, section 189.429, Florida Statutes, requires that no changes be made to a district's charter as it exists on October 1, 1997, in the codifying legislation. However, in the 1997 interim, some districts expressed the need to request substantive changes to their charters but because of the number of amendments (special acts) to their charters, they do not have time to codify.

As a result, the Chair of the Committee on Community Affairs issued a Memorandum on October 3, 1997, explaining the policy of the Committee for charter codifications for the 1998 Legislative Session. In part the Memorandum states:

1. Although two bills are preferable (one to codify and one to accomplish the substantive change), the House Committee on Community Affairs will accept one bill (containing the codification and substantive change).
2. The substantive change, if included in the codifying local bill, ***must be advertised*** clearly and concisely, i.e., "a substantive change to the charter is being sought affecting membership of the Board," or whatever change(s) is applicable.
3. If a substantive change is needed to a District's charter this Session, but codification is too large a task to accomplish at the same time, the Committee will hear bills for any substantive changes that a legislative delegation deems necessary.
4. The Committee will accept voluntary charter codifications from any district for the 1998 Legislative Session. A schedule for submitting the codifying charter is attached and is based on the number of special acts a district currently enjoys. The attached proposed schedule of submittals is based on an extended deadline of 2004, which must be accomplished legislatively. The Committee will have a bill to address this issue during the 1998 Legislative Session. Keep in mind, if they choose to do so, a district may submit its codification earlier than the proposed schedule indicates.

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

Chapter 298, Florida Statutes

Chapter 298, Florida Statutes, contains provisions governing the creation and operation of water control districts. Some of these provisions are briefly described below.

Creation of Water Control Districts

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

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, the clerk of the circuit court with jurisdiction over the district must announce the first landowners' meeting in a newspaper. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve 3-year rotating terms, with one supervisor elected each year at a required annual meeting. In the event a quorum is not present, the Department of Environmental Protection (DEP) is required to fill the vacant seat.

One-Acre One-Vote

Section 298.11, Florida Statutes, provides for every acre of land within a district to represent one share, or vote. Each landowner within a district is entitled to one vote per acre of land they own. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well.

Role of the Circuit Courts

As noted, once a water control district is formed, the circuit court of the county where the majority of the land is located has exclusive jurisdiction within the boundaries of the district. Circuit courts serve several functions in the creation and governance of water control districts. After a board of supervisors adopts a plan of reclamation, it must petition the circuit court to appoint three commissioners to appraise the lands that will be acquired to implement the plan of reclamation. A circuit court may require the report on assessment of benefits and damages to be amended and it must condemn lands described in the report that are needed to construct the district's works. In the event a circuit court determines that the value of land within the district has changed and additional conditions are met, the court is required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

Revenue Sources

The primary funding source for water control district activities is special assessments. Once a circuit court has issued its decree on the report on assessments of benefits and damages, a board of supervisors may levy a tax on the land that will be benefited by the works. This 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,” as provided for in section 298.50, Florida Statutes. A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of assessments levied. A board of supervisors also may levy an annual maintenance tax on each tract of land in the district to maintain and preserve the district’s works once they are completed. This tax also must be apportioned on the basis of the net benefits accruing to the individual parcels.

Limitation on Special Acts

Paragraph (21) of Subsection 11(a), Article III of the State Constitution, prohibits special laws or general laws of local application pertaining to “any subject when prohibited by general law passed by a three-fifths vote of the membership of each house.” Furthermore, “such law may be amended or repealed by like vote.”

Section 298.76, Florida Statutes, was adopted pursuant to this authority. The section provides “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 this chapter.” However, this subsection does not prohibit special or local legislation that:

- (a) Amends an existing special act which 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 as outlined in this chapter.

The section also authorizes special or local laws:

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

B. EFFECT OF PROPOSED CHANGES:

The bill codifies all prior special acts relating to the Tindall Hammock Irrigation and Soil Conservation District into one special act.

The bill provides that the district is an independent special district.

The bill removes the requirement that persons *willfully* causing damage or obstruction to district works without prior board approval is subject to a criminal penalty. The bill also

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changes the penalties by removing the civil penalty of up to \$500 and increasing the criminal penalty of imprisonment up to 1 year rather than 6 months. The bill refers to the misdemeanor criminal penalties in section 775.08, Florida Statutes.

The bill eliminates obsolete language.

The bill corrects scrivener errors.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 27428, Laws of Florida, 1951; chapter 28935, Laws of Florida, 1953; chapter 78-477, Laws of Florida; chapter 86-370, Laws of Florida; and chapter 90-475, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1: Codifies, reenacts, amends, and repeals chapter 27428, Laws of Florida, 1951, as amended.

Section 2: Recreates and reenacts the Tindall Hammock Irrigation and Soil Conservation District to read:

Section 1 -- Provides purpose of district; creates the irrigation and soil conservation district; provides the boundaries of the district.

Section 2 -- Provides for governing board of district; provides membership to board of supervisors; provides for meetings and notice of meetings; provides for election of chair and secretary; provides that every acre of land in the district represents one vote; provides for calling of a special election to fill vacancies in specific situations; allows landowners to be represented by legal counsel; prohibits landowners with lands delinquent in taxes for 2 years from voting or being considered in determining quorum; requires oath to faithfully perform duties; and provides for compensation for attending board meetings.

Section 3 -- Grants powers to the board of supervisors; provides that the district has the exclusive authority for district purposes; provides applicability of chapter 298 if not inconsistent; and authorizes the district to construct a specific waterway.

Section 4 -- Provides for contracts for work within the district; requires bids in specific circumstances; provides for notice of bids; provides bid procedures; provides for a surety bond; and provides that the work may be performed without contract and by labor under direction of the district.

Section 5 -- Provides for levy and collection of tax; provides for maximum millage; provides for referendum; provides that every acre of land in the district represents one vote; and provides that approval in future years to levy the previously approved millage is not required.

Section 6 -- Provides that the board may purchase any government tax certificate, including tax certificates from the district; grants the power to foreclose, sell, or receive deeds and titles for such properties; and grants the authority to sell or lease land acquired by tax deed by either public or private sale.

Section 7 -- Authorizes the board to borrow money on short and long term basis; allows for issuance of promissory notes; provides for rates of interest; authorizes issuance of district negotiable coupon bonds; and provides aggregate maximum for bonds.

Section 8 -- Provides bond requirements; authorizes the board to provide by resolution that one-half of the tax is devoted to the payment of interest and principal on the bonds; provides for first lien against tax; prohibits other liens against first lien; and provides for bond issuance validation.

Section 9 -- Provides that the district's bonds have the qualities of negotiable paper; provides that there is an irrevocable contract between the district and bond holders; requires the board to consider maturing bonds and interest when determining taxes; provides that all bonds are equal in priority; provides that the treasurer holds the bonds until the board sells or disposes of them as necessary; and prohibits bonds being sold for less than 95% of par value plus accrued interest.

Section 10 -- Provides for the Board of County Commissioners of Broward County to hold an election to determine whether the bonds should be issued; provides registration procedures; provides for making up list of qualified voters; and provides voter qualifications.

Section 11 -- Provides ballot requirements; provides for voting procedures; provides for certificates of declaration; requires a majority of landowners voting and a majority of votes cast in order for the bonds to be authorized; provides for recording results in the minutes; and provides that certificates are prima facie evidence of the facts.

Section 12 -- Provides that no other bond elections are necessary; and provides that the board may follow general election laws of Florida.

Section 13 -- Provides that the district shall pay the costs of bond elections.

Section 14 -- Provides quorum; requires resolution setting regular meeting place and time; provides for special meetings; provides for the employment of a treasurer; provides duties; provides that the treasurer may also act as secretary; requires treasurer to execute a bond; requires all funds to be paid out by the treasurer and countersigned by a board member; authorizes the appointment of a chief engineer; provides duties; and provides that the chief engineer may be required to enter into a bond.

Section 15 -- Provides liens upon lands as of January 1 in each year the in which the assessment is made; provides super priority over other liens; and provides equal priority with state and county tax liens.

Section 16 -- Provides penalty for any damage or obstruction to any district works which was done without prior approval by the district.

Section 17 -- Provides that chapter 298, Florida Statutes, is applicable to the district when not in conflict with the district's charter.

Section 18 -- Provides district purpose; and grants exclusive control over water levels in district.

Section 19 -- Validates and binds all district's obligations; provides that this act does not impair or avoid any of the district's obligations; and provides continuation of district.

Section 20 -- Provides that all assets of the district pass and vest in the district.

Section 21 -- Provides that obligations and contracts of district are not invalidated by this act; provides that debts, obligations, contracts, and improvement construction is

binding on the district; and provides that all debts and claims against the district remain valid against the district.

Section 22 -- Provides that all existing district rules which are not in conflict with this act remain in effect unless later repealed or amended by the district.

Section 3: Repeals chapter laws relating to the district's charter.

Section 4: Provides severability clause.

Section 5: Provides that this act controls in the event of a conflict with any other act.

Section 6: Provides effect of October 1 of year of enactment.

IV. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 9, 1998

WHERE? Fort Lauderdale, Florida; Sun-Sentinel

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

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by:

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