

STORAGE NAME: h4691.ca

DATE: April 16, 1998

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

BILL #: HB 4691

RELATING TO: Flagler Estates Road and Water Control District

SPONSOR(S): Representative Wiles

COMPANION BILL(S): None

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

- (1) COMMUNITY AFFAIRS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill codifies the Final Judgment Incorporating the district, a Circuit Court Order, and all prior special acts relating to the Flagler Estates Road and Water Control District into one special act.

The bill clarifies the district powers and duties by defining road authority and providing examples.

The bill grants the district the authority to make available surplus real property to the public for passive use.

The bill also permits the district to enter into lease or interlocal agreements with other governmental entities for the operation and/or maintenance of such passive use areas within the district boundaries.

II. 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 the Final Judgment Incorporating the district, a Circuit Court Order, and all prior special acts relating to the Flagler Estates Road and Water Control District into one special act.

The bill clarifies the district powers and duties by defining road authority and providing examples such as street lighting, road stripping, reconstruction and safety features.

The bill grants the district the authority to make available surplus real property to the public for passive use.

The bill also permits the district to enter into lease or interlocal agreements with other governmental entities for the operation and/or maintenance of such passive use areas within the district boundaries.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapters 81-481, 82-294, 83-509, 87-502, and 89-505, 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: Provides that this is the codified charter for the Flagler Estates Road and Water Control district.

Section 2: States that the district was originally the Sixteen Mile Creek Water Control District when it was created as a public corporation by Final Judgment of the Seventh Judicial Circuit Court.

Section 3: Repeals special acts relating to the district's charter.

Section 4: Recreates and reenacts the Flagler Estates Road and Water Control District; and provides the charter to read:

Section 1 -- Provides history of district; provides that the district operates under chapter 298; provides that the district has the authority to maintain roadways and roads for the exercise of the district's powers and duties; provides that the district has the authority to maintain roadways and roads to provide access to areas made suitable as a result of district operations; provides examples of district's authority relating to roads; grants the district the authority to make available surplus real property to the public for passive use; and permits the district to enter into lease or interlocal agreements with other governmental entities for the operation and/or maintenance of such passive use areas within the district boundaries.

Section 2 -- Provides quorum for the district landowner's meetings; and provides that landowners must be notified of meetings by first class mail.

Section 3 -- Describes the district boundaries; and provides history of boundaries.

Section 5: Repeals special acts relating to the district's charter.

Section 6: Provides effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 10, 1997; December 13, 1997

WHERE? St. Augustine, Florida; The St. Augustine Record; Flagler County; Flagler/Palm Coast News-Tribune

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

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C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The bill does not change the current boundaries of the District. Please see attached letter relating to the boundaries.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor offers the following technical amendments:

Amendment #1 -- Inserts the language "an independent special district" into section 1 of the bill in compliance with section 189.404(5), Florida Statutes; and

Amendment #2 -- Clarifies repeal language.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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