

By Senator Bronson

18-1491-01

See HB 115

1                                   A bill to be entitled  
2           An act relating to Brevard County; providing  
3           for codification of existing special laws  
4           relating to the creation, powers, and duties of  
5           the Melbourne-Tillman Water Control District, a  
6           dependent special district in Brevard County,  
7           as provided in chapters 86-418, 90-401, 91-341,  
8           92-239, and 94-424, Laws of Florida, except as  
9           amended by this act; providing legislative  
10          purpose; amending definitions of "District,"  
11          "general obligation bonds," and "revenue  
12          bonds"; amending scope of revenue sources  
13          allowed to be bonded; clarifying provisions  
14          relating to liens, collection, and foreclosure  
15          to include special assessments and stormwater  
16          management user fees; amending liability of  
17          District where lands are made available to  
18          public for outdoor recreational purposes, as  
19          defined therein; providing editorial revisions;  
20          establishing obstruction or impeding of a  
21          drainage canal or watercourse as a criminal  
22          offense; providing for civil damages for  
23          obstruction and impeding drainage canal or  
24          watercourse; amending, codifying, reenacting,  
25          and repealing chapters 86-418, 90-401, 91-341,  
26          92-239, and 94-424, Laws of Florida;  
27          re-creating the District and re-creating and  
28          reenacting the charter; providing an effective  
29          date.

31 Be It Enacted by the Legislature of the State of Florida:

1           Section 1. Pursuant to section 189.429, Florida  
2 Statutes, this act constitutes the codification of all special  
3 acts relating to the Melbourne-Tillman Water Control District.  
4 It is the intent of the Legislature in enacting this law to  
5 provide a single, comprehensive special act charter for the  
6 district, including all current legislative authority granted  
7 to the district by its several legislative enactments and any  
8 additional authority granted by this act. It is further the  
9 intent of this act to preserve all district authority,  
10 including the authority to annually assess and levy against  
11 the taxable property in the district a tax not to exceed 0.2  
12 mills on the dollar of assessed valuation.

13           Section 2. Chapters 86-418, 90-401, 91-341, 92-239,  
14 and 94-424, Laws of Florida, are amended, codified, reenacted,  
15 and repealed as herein provided.

16           Section 3. The charter for the Melbourne-Tillman Water  
17 Control District is re-created and reenacted to read:

18           Section 1. Legislative intent.--It is hereby declared  
19 and determined by the Legislature that a special district  
20 within the definition of sections 165.031(5) and  
21 200.001(8)(d), Florida Statutes, to be known as the  
22 Melbourne-Tillman Water Control District, would be the most  
23 responsive, efficient, and effective local government entity  
24 to secure, operate, and maintain an adequate, dependable  
25 surface water management system within the boundaries set  
26 forth in Section 3 herein. It is, therefore, the intent of the  
27 Legislature that such special district shall possess the full  
28 power and authority to implement, finance, and operate all  
29 existing surface water management system facilities, and those  
30 to be constructed within the boundaries of the District,  
31 subject to being granted all permits required by the laws,

1 rules, and regulations of federal, state, and regional  
2 regulatory agencies.

3 Section 2. Definitions.--As used in this act:

4 (1) "District" means the Melbourne-Tillman Water  
5 Control District, a special district created by this act.

6 (2) "Surface water management system" means all  
7 drainage facilities whereby surface waters are collected,  
8 controlled, conveyed, channeled, diverted, impounded,  
9 obstructed, stored, detained, or retained, or other surface  
10 water management capabilities or combination of capabilities.

11 The term "facilities" includes all necessary devices,  
12 improvements, natural systems, rights-of-way, appurtenant  
13 works, and works required to accomplish the above.

14 "Facilities" also includes all dams, levees, berms, weirs,  
15 control structures, impoundments, ponds, lakes, streams,  
16 canals, ditches, swales, culverts, pipes, subsurface systems  
17 of pipes, inlets, and culverts, erosion control, floodways,  
18 greenbelts, access and maintenance ways, or similar items to  
19 accomplish the above.

20 (3) "Cost," as applied to the construction or  
21 maintenance of a surface water management system, or  
22 extensions, additions, or improvements thereto, includes the  
23 cost of construction, reconstruction, acquisition, purchase,  
24 or replacement; the cost of maintenance, operation, and  
25 repair; the cost of all labor, materials, machinery, and  
26 equipment; the cost of all lands and interest therein,  
27 property, rights, easements, and financing charges; interest  
28 prior to and during construction; the creation of initial  
29 reserve or debt service funds; bond discount; cost of plans,  
30 specifications, surveys, and estimates of costs and revenues;  
31 cost of engineering, financial, and legal services, and all

1 other expenses necessary or incidental in determining the  
2 feasibility or practicability of such construction,  
3 reconstruction, or acquisition, maintenance, operation, and  
4 repair; administrative expenses; such other expenses as may be  
5 necessary or incidental to financing authorized by this act;  
6 and reimbursement to any municipality, county, or any other  
7 person, firm, or corporation for any moneys advanced to the  
8 District for any expenses incurred by the District in  
9 connection with any of the foregoing items of cost or the  
10 creation of the District.

11 (4) "Revenue bonds" means bonds, notes, or other  
12 obligations secured by and payable from the revenue derived  
13 from a pledge of the proceeds of special assessments levied  
14 against benefited properties and/or stormwater management user  
15 fees.

16 (5) "General obligation bonds" means bonds or other  
17 obligations secured by the full faith and credit and taxing  
18 power of the District and payable from ad valorem taxes levied  
19 and collected on all taxable property within the boundaries of  
20 the District, without limitation of rate or amount, and may be  
21 additionally secured by the pledge of the proceeds of special  
22 assessments levied against benefited property and/or  
23 stormwater management user fees.

24 (6) "City" means the City of Palm Bay and/or the City  
25 of West Melbourne, as may be indicated.

26 (7) "County" means Brevard County.

27 (8) "Board of Directors" means a seven (7) member  
28 board comprising three (3) members appointed by the Brevard  
29 County Commission, three (3) members appointed by the City of  
30 Palm Bay City Council, and one (1) member appointed by the  
31 City of West Melbourne City Council.

1           (9) "Owner," as used in this act, means the owner of  
2 the fee simple estate, as appears by the deed of record, and  
3 it shall not include reversioners, remaindermen, trustees, or  
4 mortgagees, who shall not be counted and need not be notified  
5 by publication, or served by process, but shall be represented  
6 by the present owners of the freehold estate in any proceeding  
7 under this act.

8           (10) "Primary" means all existing numbered canals  
9 within District rights-of-way, to include facilities such as  
10 dams, weirs, control structures, culverts, pipes, and any  
11 future works so designated by the Board.

12           (11) "Secondary" means all drainage facilities that  
13 convey surface water to primary system by crossing District  
14 rights-of-way lines.

15           (12) "Tertiary" means all drainage facilities  
16 associated with and located within rights-of-way of public  
17 roadways, driveways, parking lots, etc., that convey surface  
18 water to secondary systems.

19           Section 3. Special district.--There is hereby created  
20 and incorporated the Melbourne-Tillman Water Control District,  
21 a dependent special district, for the purpose of constructing,  
22 reconstructing and repairing, maintaining, and operating a  
23 surface water management system. The boundaries of the  
24 District are:

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26           All of Township 29 South, Range 36 East, and  
27 portions of Township 29 South, Range 37 East,  
28 Township 28 South, Range 36 East and Township  
29 28 South, Range 37 East in Brevard County,  
30 Florida being more particularly described as  
31 follows:

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Township 29 South, Range 37 East:

The West 1/2 of Sections 3, 27 and 34, and all of Sections 4 through 9, 16 through 21, and 28 through 33, and the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 34.

Township 28 South, Range 36 East:

The South 1/2 of Sections 1 through 5, the Southeast 1/4 of Section 6, and all of Sections 7 through 36.

Township 28 South, Range 37 East:

The Southwest 1/4 of Section 6, the West 1/2 and Southeast 1/4 of Section 7, the West 1/2 of Section 17, the South 1/2 of Section 21, a portion of the Southwest 1/4 of Section 22 described as the West 1/2 of the Northwest 1/4 of the Southwest 1/4, less Parcel 543, the South 1/2 of Section 27, less a portion of the North 1/2 of the South 1/2 described as the area bounded by the west section line, then southerly along the section line to a point 419 feet distant, then easterly to a point along the east section line 450 feet southerly of the midpoint of the east section line, then northerly along the section line to the midpoint of the section line, then westerly to

1           the midpoint of the west section line, the  
2           point of beginning, the West 1/2, Northeast 1/4  
3           and a portion of the Southeast 1/4 described as  
4           the North 1/2 of the Southeast 1/4 and Lot 4  
5           and the West 1/2 of Lot 3, all within Section  
6           34, the West 1/2 of the Northwest 1/4 and  
7           Northwest 1/4 of the Southwest 1/4 of Section  
8           35, and all of Sections 18 through 20, and 28  
9           through 33.  
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11   The District shall constitute a dependent special district  
12   under the laws of the state.  
13           Section 4. Board of Directors; composition.--The  
14   District shall be governed by a seven (7) member Board  
15   comprising three (3) members appointed by the Brevard County  
16   Commission, three (3) members appointed by the City of Palm  
17   Bay City Council, and one (1) member appointed by the City of  
18   West Melbourne City Council. The initial Board of Directors  
19   shall be appointed in accordance with the above and shall take  
20   office on October 1, 1986. Initially, in appointment of  
21   members to the Board of Directors, in order to ultimately  
22   achieve staggered terms to have continuity, the County and  
23   City of Palm Bay shall appoint their three (3) members for  
24   terms of one (1) year, two (2) years, and three (3) years,  
25   respectively. The City of West Melbourne shall appoint its  
26   member for a term of three (3) years. As the initial terms  
27   expire, subsequent appointments shall be for full three (3)  
28   year terms. The members of the Board of Directors shall be  
29   residents of the District during their tenure as members of  
30   the Board.  
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1           Section 5. Board of Directors' oath of office.--Each  
2 member, before entering upon his or her official duties, shall  
3 take and subscribe to an oath, before some officer authorized  
4 by law to administer oaths, that he or she will honestly,  
5 faithfully, and impartially perform the duties devolving upon  
6 him or her in office, as a member of the Board of Directors of  
7 the District to which he or she was appointed, and that he or  
8 she will not neglect any of the duties imposed upon him or her  
9 by virtue of acceptance of the office.

10           Section 6. Organization of Board; compensation of  
11 members of Board.--Immediately after their appointment, the  
12 Board members shall meet at some convenient place; elect one  
13 of their number to serve as president of the Board together  
14 with any other officers the Board may choose to elect; and  
15 elect as secretary some suitable person, who may or may not be  
16 a member of the Board, and who may be required to execute bond  
17 for the faithful performance of his or her duties, as the  
18 Board members may require. Such Board shall adopt a seal with  
19 a suitable device. The members of the Board shall be  
20 reimbursed for their traveling expenses pursuant to section  
21 112.061, Florida Statutes, but shall receive no compensation  
22 for their service.

23           Section 7. Board of Directors to keep record of  
24 proceedings, etc.--The Board of the District shall cause to be  
25 kept complete books and records together with minutes of all  
26 meetings, proceedings, bonds given by all employees, and any  
27 and all corporate acts. The record shall at all usual business  
28 times be open to the inspection of anyone interested, whether  
29 taxpayer or bondholder.

30           Section 8. Powers given the Board to effect a surface  
31 water management system within District boundaries.--In order



1 to responsibly, efficiently, and effectively secure, operate,  
2 and maintain an adequate, dependable surface water management  
3 system, the Board of Directors, consistent with and supportive  
4 of the state water policy, the state water use plan, the state  
5 land development plan, and the regional policy plan, shall:

6 (1) Establish a water management system which will  
7 accomplish objectives as follows:

8 (a) Prevent damage from flood, soil erosion, and  
9 excessive drainage.

10 (b) Promote the conservation, development, and proper  
11 utilization of surface and ground water.

12 (c) Preserve natural resources, fish, and wildlife.

13 (d) Maintain water quality in the District and the  
14 receiving waters from the District.

15 (e) Preserve and protect the natural systems in the  
16 District, Turkey Creek, the Indian River, and the St. Johns  
17 River.

18 (f) Purchase and establish conservation areas and  
19 passive recreation areas to protect the natural resources,  
20 including the sloughs, wetlands, and natural areas, which  
21 exist in the District or along the receiving waters, where the  
22 District finds it is appropriate for environmental protection  
23 or conservation of the natural resources. The District shall  
24 utilize the best management practices in implementing and  
25 operating its water management system.

26 (2) Clean out, straighten, open up, widen, or change  
27 the course and flow of, alter, or deepen any canal, ditch,  
28 drain, river, watercourse, or natural stream; and concentrate,  
29 divert, or divide the flow of water in or out of the District  
30 boundaries; construct and maintain main and lateral ditches,  
31 canals, levees, dikes, dams, sluices, revetments, reservoirs,

1 holding basins, floodways, pumping stations and siphons, and  
2 may connect same, or any of them, with any canals, drains,  
3 ditches, levees, or other works that may have been heretofore,  
4 or which may be hereafter, constructed.

5 (3) Build and construct any other works and  
6 improvements deemed necessary to preserve and maintain the  
7 works within said District boundaries; acquire, construct,  
8 operate, maintain, use, sell, convey, transfer, or otherwise  
9 provide for pumping stations, including pumping machinery,  
10 motive equipment, electric lines, and all appurtenant or  
11 auxiliary machines, devices, or equipment; control excessive  
12 drainage, reflow lands previously reclaimed, and dechannelize  
13 and reverse previous diversions accomplished in the past; all  
14 with emphasis upon modern water management principles and  
15 standards.

16 (4) Contract for the purchase, construction,  
17 operation, maintenance, use, sale, conveyance, and transfer of  
18 the said pumping stations, machinery, motive equipment,  
19 electric lines, and appurtenant equipment, including the  
20 purchase of electric power and energy for the operation of the  
21 same.

22 (5) Construct or enlarge, or cause to be constructed  
23 or enlarged, at its expense, any and all bridges or culverts  
24 that are needed in said District, as a result of the  
25 construction or modification of the works of the District,  
26 across any drain, ditch, canal, floodway, holding basin,  
27 excavation, public highway, railroad right-of-way, track,  
28 grade, fill, or cut, in or out of said District boundaries;  
29 remove any fence, building, or other improvements.

30 (6) Hold, control, and acquire by donation or purchase  
31 and, if need be, condemn any land easement, railroad

1 right-of-way, sluice, reservoir, holding basin or franchise,  
2 right-of-way, or holding basin for any of the purposes herein  
3 provided, or material to be used in constructing and  
4 maintaining said works and improvements for implementing  
5 authorized improvements for water management.

6 (7) Implement and authorize improvements to the  
7 surface water management plan as may from time to time be  
8 recommended by the engineer and approved and permitted by the  
9 applicable rules and regulations of all state and regional  
10 regulatory agencies.

11 (8) Sue and be sued in the name of the District and  
12 restrain, enjoin, or otherwise prevent the violation of this  
13 act or of any resolution, rule, or regulation adopted pursuant  
14 to the powers granted by this act.

15 (9) Establish and define, in conjunction with other  
16 public entities, all surface water management areas within the  
17 boundaries of the District to determine which facilities  
18 within surface water management areas of the District shall be  
19 maintained by the District. In such establishing and/or  
20 defining, the definitions of "primary," "secondary," and  
21 "tertiary" in subsections (10), (11), and (12) of Section 3  
22 herein shall serve as guidelines in making such determination.

23 (10) Enter into agreements with other units of  
24 government for such units of government to perform any  
25 function on behalf of the District which is authorized by this  
26 act.

27 (11) Exercise all of the powers necessary, convenient,  
28 incidental, or proper in connection with any of the powers,  
29 duties, or purposes authorized by this act.

30 (12)(a) Levy, assess, and collect an annual stormwater  
31 management user fee to carry out the purposes of the District,

1 beginning with the 1990-1991 budget year. Such fee must be  
2 just and equitable and shall be based upon the impact that a  
3 given parcel of land imposes on the stormwater management  
4 system.

5 (b) A fee may not be finally set by the Board of  
6 Directors or approved by the Board of County Commissioners of  
7 Brevard County during its annual budget review until after a  
8 public hearing is held by the Board of County Commissioners.  
9 The Board of County Commissioners must hold a special public  
10 hearing within the boundaries of the District. At the public  
11 hearing, all owners of property in the District shall have an  
12 opportunity to be heard concerning the proposed fee.

13 (c) Notice of such public hearing for the 1990-1991  
14 budget year must be given in the manner prescribed in  
15 subsection (2) of Section 16. Thereafter, notice must be given  
16 by publication in a newspaper of general circulation in  
17 Brevard County at least 7 days before the date of the hearing.  
18 The stormwater management user fee, when established, shall be  
19 deemed to be reasonable and necessary to carry out the  
20 obligations, responsibilities, and duties of the District. All  
21 of the proceeds of the fee are in payment for the use of the  
22 District stormwater management system. The fee must be  
23 established by resolution of the Board of Directors and  
24 approved by a majority vote of the Board of County  
25 Commissioners of Brevard County, with each County Commissioner  
26 whose county commission residency area lies wholly or  
27 partially within the District voting in the affirmative.

28 (d) The stormwater management user fee structure shall  
29 have three land classifications: Residential, Agricultural,  
30 and Commercial. The Board of Directors, in establishing the  
31 annual fee, must use the Brevard County Land Use Code Index as

1 the basis for land classification. The annual stormwater  
2 management user fee shall be levied on the parcels, as the  
3 Brevard County Land Use Code Index has them designated, for  
4 that respective budget year.

5 For the 1990-1991 budget year, the residential fee may  
6 not exceed \$10 per acre or portion thereof, the agricultural  
7 fee may not exceed \$3.50 per acre or portion thereof, and the  
8 commercial fee may not exceed \$21 per acre or portion thereof.

9 Thereafter, the stormwater management fee for  
10 residential parcels, agricultural parcels, or commercial  
11 parcels may not be more than 10 percent above the fee for the  
12 preceding year. However, the maximum fee per acre or portion  
13 thereof for residential parcels may not exceed \$25, the  
14 maximum fee per acre or portion thereof for agricultural  
15 parcels may not exceed \$8.50, and the maximum fee per acre or  
16 portion thereof for commercial parcels may exceed \$52.50.

17 (13) Levy and assess ad valorem taxes without  
18 limitation of rate or amount on all taxable property within  
19 the boundaries of the District for the purpose of paying  
20 principal of and interest on any general obligation bonds by  
21 the Board of County Commissioners and which may be issued for  
22 the purposes of this act after approval of the issuance of  
23 such bonds by referendum of the electors.

24 (14) Levy and impose special assessments against the  
25 real property within the boundaries of the District upon a  
26 determination that the construction, reconstruction, repair,  
27 maintenance, and operation of the surface water management  
28 system provides a benefit to such real property. The benefits  
29 shall be assessed upon the property specially benefited by the  
30 construction of improvements or provision of operation and  
31 maintenance services in proportion to the benefits to be

1 derived therefrom, and the special benefits shall be  
2 determined and prorated by a method prescribed by the Board of  
3 Directors.  
4 (a) The Board of Directors, if it elects to assess a  
5 special assessment, shall declare by a resolution the nature  
6 of the proposed improvement or the services provided to  
7 existing improvements, designate the location of the  
8 improvement or the service provided to existing improvements,  
9 and state the part or portion of the expense thereof to be  
10 paid by special assessments, the manner in which said  
11 assessments shall be made, when said assessments are to be  
12 paid, and what part, if any, shall be apportioned to be paid  
13 from the funds of the District. The resolution shall also  
14 designate the lands upon which the special assessment shall be  
15 levied, and, in describing said lands, it shall be sufficient  
16 to describe them as "all lands and lots abutting and  
17 contiguous to or bounding and abutting upon such improvements,  
18 or where services are to be provided to existing improvements  
19 specifically benefited thereby and further designated by the  
20 assessment plat herein provided for." The resolution shall  
21 state the total estimated cost of the improvement or service  
22 to be provided to existing improvements. Such estimated cost  
23 may include the cost of construction or reconstruction; the  
24 cost of all labor and materials; the cost of equipment and  
25 maintenance and operation thereof; the cost of all lands,  
26 property, rights, and easements acquired; financing charges;  
27 interest; cost of all engineering, legal, financial, and other  
28 services; all other expenses necessary or incidental to  
29 determine the feasibility or practicability of such  
30 construction or reconstruction or provision of service;  
31 administrative expenses; operating expenses; and such other

1 expenses as may be necessary or incidental to the financing  
2 herein authorized.

3 (b) Upon the adoption of the resolution, the Board of  
4 Directors shall cause said resolution to be published one time  
5 in a newspaper of general circulation published in Brevard  
6 County.

7 (c) Upon the adoption of the resolution, the Board of  
8 Directors shall cause to be made an assessment roll in  
9 accordance with the method of assessment provided for in said  
10 resolution, which assessment roll shall be completed and filed  
11 with the records of the Board of Directors as promptly as  
12 possible. The lots and lands assessed, the amount for the  
13 benefit to and the assessment against each lot or parcel, and,  
14 if said assessment is to be paid in installments, the number  
15 of annual installments in which the assessment is divided  
16 shall be entered and shown on said assessment roll.

17 (d) On the completion of said assessment roll, the  
18 Board of Directors shall by resolution fix a time and place at  
19 which the owners of the property to be assessed, or any other  
20 persons interested therein, may appear before said Board of  
21 Directors and be heard as to the propriety and advisability of  
22 making such improvements or providing said services, as to the  
23 cost thereof, as to the amount of payment therefor, and as to  
24 the amount thereof to be assessed against each property so  
25 improved. Notice in writing of such time and place shall be  
26 given to such property owners.

27 (e) At a time and place named in the notice provided  
28 for in paragraph (d), the Board of Directors of the District  
29 shall meet as an equalization board to hear and consider any  
30 and all complaints as to the special assessments and shall  
31 adjust and equalize the assessments on the basis of justice

1 and right. After the special assessments are so equalized and  
2 approved by resolution, such assessments shall stand confirmed  
3 and, until paid, shall remain legal, valid, and binding first  
4 liens upon the property against which such assessments are  
5 made; however, upon completion of the improvement, acquisition  
6 of equipment, or provision of service, the Board of Directors  
7 shall credit to each of the assessments the difference in the  
8 assessment as originally made, approved, and confirmed and the  
9 proportionate part of the actual cost of the improvement,  
10 equipment, or service to be paid by special assessments as  
11 finally determined on the completion of the improvement or  
12 service, but in no event shall the final assessments exceed  
13 the amount of benefits originally assessed. Promptly after  
14 confirmation, the assessments shall be recorded in the public  
15 records of Brevard County and the record of the lien shall  
16 constitute prima facie evidence of its validity.

17 (f) The special assessments shall be payable at the  
18 time and in the manner stipulated in the resolution  
19 authorizing the improvement, equipment, or service. Such  
20 assessments shall remain liens, coequal with the lien of all  
21 state, county, or other district taxes, and municipal taxes,  
22 and superior in dignity to all other liens, titles, and  
23 claims, until paid. Such assessments shall bear interest at a  
24 rate prescribed by the Board of Directors in the resolution  
25 which it adopts.

26 (g) Each annual installment provided for shall be paid  
27 upon the date specified in said resolution, with interest upon  
28 all deferred payments, until the entire amount of said  
29 assessment has been paid, and, on the failure of any property  
30 owner to pay any annual installment due or any part thereof,  
31 or any annual interest on deferred payments, the Board of



1 Directors shall cause to be brought the necessary legal  
2 proceedings to enforce payment thereof with all accrued  
3 interest and penalties, together with all legal costs  
4 incurred, including a reasonable attorney's fee, to be  
5 assessed as part of the costs, and, in the event of default in  
6 the payment of any installments of any assessment or any  
7 accrued interest on said installment, the whole assessment,  
8 with the interest and penalties thereon, shall immediately  
9 become due and payable and subject to foreclosure. In the  
10 foreclosure of any special assessment, service of process  
11 against unknown or nonresident defendants may be had by  
12 publication as now provided by law. The foreclosure  
13 proceedings shall be prosecuted to a sale and conveyance of  
14 the property involved in said proceedings as now provided by  
15 law in suits to foreclose mortgages.

16 (h) If any special assessment made under the  
17 provisions of this section to defray the whole or any part of  
18 the expense of any improvement or provision of any service is  
19 either in whole or in part annulled, vacated, or set aside by  
20 the judgment of any court, or if the Board of Directors of the  
21 District is satisfied that any such assessment is so irregular  
22 or defective that the same cannot be enforced or collected, or  
23 if the Board of Directors omitted to make such assessment when  
24 it might have done so, the Board shall take all necessary  
25 steps to cause a new assessment to be made for the whole or  
26 any part of any improvement or service provided or against any  
27 property benefited by any improvement or service provided,  
28 following as nearly as possible the provisions of this act,  
29 and, in case such second assessment shall be annulled, said  
30 Board of Directors may obtain and make other assessments until  
31 a valid assessment is made.

1           (i) An informality or any irregularity in the  
2 proceedings in connection with the levy of any special  
3 assessment under this act shall not affect the validity of the  
4 same where the assessment roll has been confirmed by the Board  
5 of Directors, and the assessment roll as finally approved and  
6 confirmed shall be competent and sufficient evidence that the  
7 assessment was duly levied, that the assessment was duly made  
8 and adopted, and that all other proceedings adequate to the  
9 adoption of said assessment roll were duly had, taken, and  
10 performed as required by this act; no variance from the  
11 directions hereunder shall be held material unless it is  
12 clearly shown that the party objecting was materially injured  
13 thereby.

14           Section 9. The Board of Directors to establish  
15 budget.--The present Board of Directors of the  
16 Melbourne-Tillman Water Control District shall establish a  
17 proposed budget to be submitted to the Brevard County  
18 Commission by July 1, 1986, to provide the initial operating  
19 expenses until such time as the District receives revenue from  
20 user fees, taxes, and/or special assessments as provided  
21 herein. The term "operating expenses" means all contemplated  
22 capital and operating costs and expenses of the District  
23 necessary to carry out any of the purposes of the District  
24 provided under this act. The initial proposed budget shall be  
25 modified or approved by the Brevard County Commission at the  
26 times and in the manner in which the annual County budget is  
27 approved by the Board of County Commissioners of Brevard  
28 County. Thereafter, the Board of Directors of the new District  
29 shall establish an annual operating expense budget for each  
30 fiscal year, which shall commence on the first day of October  
31 and terminate on the last day of September of the next year.

1 The Board of Directors shall adopt a tentative annual  
2 operating expense budget prior to July 1 of each year, to be  
3 approved by the Board of County Commissioners in the manner  
4 contemplated under section 200.001(8)(d), Florida Statutes,  
5 and deliver a copy of such tentative annual operating expense  
6 budget to the Board of County Commissioners of Brevard County,  
7 to the City Council of the City of Palm Bay, and to the City  
8 Council of the City of West Melbourne. Such budget shall be  
9 modified or approved by the Brevard County Commission at the  
10 times and in the manner in which the annual County budget is  
11 approved by the Board of County Commissioners of Brevard  
12 County.

13 Section 10. Appointment of engineers, attorneys,  
14 accountants, surveyors, financial or other experts, District  
15 manager, and other agents and employees.--The Board of  
16 Directors shall appoint such engineers, attorneys,  
17 accountants, treasurer, surveyors, financial or other experts,  
18 and other agents and employees as the District may require or  
19 the Board of Directors deems necessary to effectuate the  
20 purpose of this act as set forth herein. The persons,  
21 partnerships, or corporations so appointed or agents and  
22 employees so employed shall perform such duties and have such  
23 responsibilities as they may from time to time be given or  
24 assigned by the Board of Directors. The terms and conditions,  
25 including compensation, under which such appointment or  
26 employment is undertaken shall be, except for employees of the  
27 District, evidenced by an agreement in writing.

28 Section 11. Appointment and duties of treasurer of  
29 District.--The Board of Directors shall select and appoint  
30 some competent person, or bank or trust company organized  
31 under the laws of the state, as treasurer of the District, who

1 shall receive and receipt for the taxes collected by the  
2 county collector or collectors. Said treasurer shall give bond  
3 in such amount as shall be fixed by the Board of Directors,  
4 conditioned that he or she will well and truly account for and  
5 pay out, as provided by law, all moneys received by him or her  
6 as taxes from the county collector, and the proceeds from tax  
7 sales for delinquent taxes, and from any other source whatever  
8 on account or claim of said District, which bond shall be  
9 signed by at least two sureties, or by some surety or bonding  
10 company, approved and accepted by said Board of Directors.  
11 Said treasurer shall keep all funds received by him or her  
12 from any source whatever deposited at all times in some bank,  
13 banks, or trust company to be designated by the Board of  
14 Directors. All interest accruing on such funds shall, when  
15 paid, be credited to the District. The Board shall audit or  
16 have audited the books of the said treasurer of the District  
17 at least once each year and make a report thereof at a  
18 regularly scheduled meeting in November of each year, and  
19 publish a statement within 30 days thereafter, showing the  
20 amount of money received, the amount paid out during such  
21 year, and the amount in the treasury at the beginning and end  
22 of the year. A certified copy of said annual audit shall be  
23 filed with the state auditor, the County, and the Cities.

24 Section 12. Board may remove officers and  
25 employees.--The Board of Directors may at any time remove any  
26 officer, attorney, engineer, employee, or agent appointed or  
27 employed by said Board within the bounds of any agreement with  
28 such person, firm, partnership, or corporation.

29 Section 13. When existing system inadequate, Board has  
30 power to make new plans.--In the event that the Board of  
31 Directors determines that the existing water management system

1 of the District is inadequate to accomplish the purposes set  
2 forth in this act, the Board shall proceed to develop and  
3 adopt new plans for modifying its surface water management  
4 system, assess for benefits, and apportion and levy taxes as  
5 follows:

6 (1) The Board shall cause to be made by the District  
7 engineer, or such other engineers as the Board may employ for  
8 that purpose, complete and comprehensive water management and  
9 control plans for all or a portion of the lands located within  
10 the District that will be improved in any part or in whole by  
11 any system of facilities that may be outlined and adopted, and  
12 the engineer shall make a report in writing to the Board with  
13 maps and profiles of said surveys and an estimate of the cost  
14 of carrying out and completing the plans.

15 (2) Upon the completion of such plans, the Board shall  
16 hold a hearing thereon to hear objections thereto, shall give  
17 notice of the time and place fixed for such hearing by  
18 publication once each week for two (2) consecutive weeks in a  
19 newspaper of general circulation published in the general area  
20 of the District, and shall permit the inspection of the plan  
21 at the office of the District by all persons interested. All  
22 objections to the plan shall be filed at or before the time  
23 fixed in the Notice of Hearing and shall be in writing.

24 (3) After the hearing, the Board shall consider the  
25 proposed plan and any objections thereto and may modify,  
26 reject, or adopt the plan or continue the hearings to a day  
27 certain for further consideration of the proposed plan or  
28 modifications thereof.

29 (4) When the Board approves a plan, a resolution shall  
30 be adopted and a certified copy thereof shall be filed in the  
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1 office of the secretary and incorporated by him or her into  
2 the records of the District.

3 Section 14. Board may issue bonds; procedures.--The  
4 District is authorized to provide from time to time for the  
5 issuance of revenue bonds and general obligation bonds of the  
6 District to pay all or any part of the cost of a surface water  
7 management system, improvements thereto, and any structures  
8 necessary to support said system. The principal of and  
9 interest on any such bonds shall be payable from revenue  
10 sufficient to pay the bond in the manner provided in the bond  
11 by the District, and may be secured by the full faith and  
12 credit and taxing power of the District and payable from ad  
13 valorem taxes levied and collected on all taxable property  
14 within the boundaries of the District in the manner provided  
15 in this act and the resolution authorizing such revenue bonds  
16 and all general obligation bonds. Revenue bonds may also be  
17 issued and secured by the pledge of special assessments and/or  
18 stormwater management user fees levied pursuant to this act.  
19 Any bonds which pledge the full faith and credit and ad  
20 valorem taxing power of the District shall be submitted to the  
21 qualified voters within the boundaries of the District as  
22 required by the State Constitution. Said bonds may be  
23 authorized by resolution or resolutions of the District, which  
24 may be adopted at the same meeting at which they are  
25 introduced by a majority of all the members thereof then in  
26 office and need not be published or posted. Said bonds shall  
27 bear interest at a rate or rates without limitation, except as  
28 provided by law, as determined by resolution of the Board, may  
29 be in one or more series, may bear such date or dates and may  
30 mature at any time or times not exceeding forty (40) years  
31 from their respective dates, may be payable in such medium of

1 payment, at such place or places within or without the state,  
2 may carry such registration privileges, may be subject to such  
3 terms of prior redemption, with or without premium, may be  
4 executed in such manner, may contain such terms, covenants,  
5 and conditions, and may be in such form otherwise as such  
6 resolution or subsequent resolutions shall provide. Said bonds  
7 may be sold or exchanged for refunding bonds, or delivered to  
8 contractors in payment for any part of the work or  
9 improvements financed by such bonds, or delivered in exchange  
10 for any properties, either real, personal, or mixed, to be  
11 acquired for such works or improvements, all at a time or in  
12 blocks from time to time, in such manner as the District in  
13 its discretion shall determine. Pending the preparation of the  
14 definitive bonds, interim certificates or receipts or  
15 temporary bonds in such form and with such provisions as the  
16 District may determine may be issued to the purchaser or  
17 purchasers of the bonds issued hereunder. Said bonds and such  
18 interim certificates or receipts or temporary bonds shall be  
19 fully negotiable and shall be and constitute negotiable  
20 instruments within the meaning of and for all purposes of the  
21 law merchant and the uniform commercial code of the state or  
22 transferability may be subject to registration. The proceeds  
23 of the sale of any such bonds shall be used solely for the  
24 payment of the costs of the construction of a surface water  
25 management system, any structures necessary to support said  
26 system, or the reconstruction or construction or acquisition  
27 of extensions, improvements, and additions thereto, and shall  
28 be disbursed in such manner and under such restrictions as the  
29 District may provide in the authorizing resolution. The  
30 District may also provide for the replacement of any bonds  
31 which become mutilated or are destroyed or lost, upon proper

1 indemnification. A resolution providing for the issuance of  
2 revenue bonds or general obligation bonds may also contain  
3 such limitations upon the issuance of additional bonds secured  
4 on a parity with the bonds theretofore issued, as the District  
5 may deem proper, and such additional bonds shall be issued  
6 under such authorizing resolution.

7 Section 15. Bonds issued secured by liens on lands  
8 benefited; assessment and collection of taxes may be  
9 enforced.--All bonds issued by the Board under the provisions  
10 of this act shall be secured by a lien on all lands and other  
11 property benefited, and the Board shall see to it that a tax  
12 and/or assessment is levied annually and collected under the  
13 provisions of this act, so long as it may be necessary to pay  
14 any bond issued or obligation contracted under its authority;  
15 and the making of said assessment and collection may be  
16 enforced by mandamus.

17 Section 16. Collection of stormwater management user  
18 fees, assessments, or taxes.--

19 (1) Annual stormwater management user fees,  
20 assessments, or taxes levied under this act shall become due  
21 and be collected during each year at the same time that county  
22 taxes are due and collected, and said annual levy shall be  
23 evidenced to and certified by the Board not later than August  
24 31 of each year to the property appraiser of Brevard County.  
25 Said fee, assessment, or tax shall be extended by the county  
26 property appraisers on the county tax rolls and shall be  
27 collected by the tax collectors in the same manner and time as  
28 county taxes and the proceeds thereof paid to said District.  
29 Said fee, assessment, or tax shall be a lien until paid on the  
30 property against which assessed and enforceable in like manner  
31 as county taxes.



1           (2) On the completion of said assessment roll, the  
2 Board of Directors shall by resolution fix a time and place at  
3 which the owners of the property to be assessed, or any other  
4 persons interested therein, may appear before said Board and  
5 be heard as to the propriety and advisability of making such  
6 improvements or providing said services, as to the cost  
7 thereof, as to the amount of payment therefor, and as to the  
8 amount thereof to be assessed against each property so  
9 improved. Notice in writing of such time and place shall be  
10 given to such property owners. Such notice may be given by  
11 placing in the U.S. Postal Service, at least ten (10) days  
12 prior to such hearing, a copy of such notice to each property  
13 owner at his or her last known address, the names and  
14 addresses of such property owners to be obtained from the  
15 records of the county property appraiser or from such other  
16 sources the Board deems reliable. The proof of such mailing  
17 shall be made by an affidavit of the president of the Board of  
18 Directors, said proof to be filed with the minutes of the  
19 Board. Failure to mail said notice or notices shall not  
20 invalidate any of the proceedings herein. Notice of the time  
21 and place of such hearing shall also be given by two (2)  
22 publications, a week apart, in a newspaper of general  
23 circulation in Brevard County. The last publication shall be  
24 at least seven (7) days prior to the date of the hearing. Said  
25 notice, which shall be published, shall contain a map showing  
26 the general area which will be specially benefited and shall  
27 contain the name and the amount to be assessed against each  
28 piece or parcel of property.

29           Section 17. When unpaid fees, assessments, and taxes  
30 delinquent; penalty.--All fees, assessments, and taxes  
31 provided for in this act shall be due and become delinquent

1 and bear penalties on the amount of said fees, assessments,  
2 and taxes in the same manner as county taxes.

3 Section 18. Property appraisers and tax collectors;  
4 compensation; characterization of services.--

5 (1) The office of the property appraiser of the county  
6 where taxes are assessed on the county tax roll by the county  
7 property appraiser shall be paid an amount equal to one (1)  
8 percent of the total of taxes of the District assessed within  
9 his or her county, except errors, and one (1) percent on  
10 delinquent taxes when redeemed. The office of the tax  
11 collector of the county shall be paid an amount equal to one  
12 (1) percent of the total of taxes of the District collected,  
13 and one (1) percent upon delinquent taxes when collected.

14 (2) The services of the offices of the property  
15 appraiser and tax collector in assessing and collecting such  
16 District taxes are hereby declared to be special services  
17 performed directly for the District, and any payment therefor  
18 shall not be considered a part of the general income of the  
19 office nor come under the provisions of section 116.03,  
20 Florida Statutes. The personnel required to do said special  
21 work shall be paid for such special services from the receipts  
22 provided in subsection (1).

23 Section 19. Fees, assessments, and taxes and costs a  
24 lien on land against which fees, assessments, and taxes  
25 levied.--All fees, assessments, and taxes provided for in this  
26 act, together with all penalties for default in payment of the  
27 same, all costs in collecting the same, including a reasonable  
28 attorney's fee fixed by the court and taxed as costs in the  
29 action brought to enforce payment, shall, from the date of  
30 assessment of same until paid, constitute a lien of equal  
31 dignity with the liens for state and county taxes, and other

1 taxes of equal dignity with state and county taxes, upon all  
2 the lands against which such fees, assessments, and taxes  
3 shall be levied as is provided in this act.

4 Section 20. District fees, assessments, and taxes;  
5 delinquent; discounts, etc.--The collection and enforcement of  
6 all fees, assessments, and taxes levied by said District shall  
7 be at the same time and in like manner as county taxes, and  
8 the provisions of the Florida Statutes relating to the sale of  
9 lands for unpaid and delinquent county taxes, the issuance,  
10 sale, and delivery of tax certificates for such unpaid and  
11 delinquent county taxes, the redemption thereof, the issuance  
12 to individuals of tax deeds based thereon, and all other  
13 procedures in connection therewith shall be applicable to said  
14 District and the delinquent and unpaid taxes of said District  
15 to the same extent as if said statutory provisions were  
16 expressly set forth in this act. All fees, assessments, and  
17 taxes shall be subject to the same discounts as county taxes.

18 Section 21. Lands may be acquired for rights-of-way  
19 and other purposes.--The District may acquire by gift,  
20 purchase, exchange, donation, or condemnation any lands within  
21 or without the said District for canal rights-of-way or for  
22 other general purposes of the said District, and if acquired  
23 by condemnation, the procedure shall be as prescribed in  
24 chapters 73 and 74 of the Florida Statutes.

25 Section 22. Obstruction of drainage canals, etc.,  
26 prohibited; damages; civil and criminal penalties.--No person  
27 may willfully, or otherwise, obstruct any canal, drain, ditch,  
28 or watercourse or damage or destroy any surface water  
29 management facility within the District boundaries.

30 (1) Any person who shall willfully obstruct any canal,  
31 drain, ditch, or watercourse or shall damage or destroy any

1 water control or management facility constructed by the  
2 District shall be liable to any person injured thereby for the  
3 full amount of the injury occasioned to any land or other  
4 property by reason of such misconduct, and shall be liable to  
5 the District constructing the said work for double the cost of  
6 removing such obstruction or repairing such damage.

7 (2) Whoever shall willfully or otherwise obstruct any  
8 canal, drain, ditch, or watercourse, or impede or obstruct the  
9 flow of water therein, or shall damage or destroy any water  
10 control facility existing within the District boundaries,  
11 shall be guilty of a misdemeanor of the first degree as  
12 provided in sections 775.082 and 775.083, Florida Statutes,  
13 and punishable as provided therein.

14 Section 23. Modifications.--Any individual,  
15 corporation, or governmental entity within the boundaries of  
16 the District is prohibited from undertaking any permanent  
17 modification, alteration, or improvement to the surface water  
18 management system as they drain into the works of the District  
19 without the approval of the District. The District shall  
20 approve or disapprove any request for approval within 60 days  
21 after the receipt of such request and adequate information to  
22 evaluate the specific request.

23 Section 24. Expanded functions.--The Board of  
24 Directors may request that the function of the District be  
25 expanded. Said expanded functions shall be provided for by  
26 special act of the Legislature.

27 Section 25. District boundaries.--The Board of  
28 Directors of the District may expand or contract the  
29 boundaries of the District or merge with another District by  
30 special act of the Legislature.

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1           Section 26. Legislative intent.--It is the intent of  
2 the Legislature that the authority created by this act is a  
3 dependent special district within the definition of section  
4 200.001(8)(d), Florida Statutes, and not an independent  
5 special district within the provisions of section 190.049,  
6 Florida Statutes, and sections 165.031(5) and 200.001(8)(e),  
7 Florida Statutes, or any other applicable provision of general  
8 law. In recognition of such legislative intent, it is hereby  
9 declared that the provisions of section 190.049, Florida  
10 Statutes, and sections 165.022 and 165.041, Florida Statutes,  
11 or any other applicable provision of general law shall not be  
12 construed or interpreted to prohibit or restrict the creation  
13 of the District by special law. Pursuant to the language of  
14 section 200.001(8)(d), Florida Statutes, it is the intent of  
15 the Legislature that the millage of the District shall be  
16 included in the millage computation of Brevard County as  
17 provided by law.

18           Section 27. Suits against the District.--Any suit or  
19 action brought or maintained against the District for damages  
20 arising out of tort, including, without limitation, any claim  
21 arising upon account of an act causing an injury or loss of  
22 property, personal injury, or death, shall be subject to the  
23 limitations provided in section 768.26, Florida Statutes, and  
24 this act.

25           Section 28. Exemption of District property from  
26 execution.--All District property shall be exempt from levy  
27 and sale by virtue of an execution, and no execution or other  
28 judicial process shall issue against such property except as  
29 may be provided for in other sections of the Florida Statutes,  
30 nor shall any judgment against the District be a charge or  
31 lien on its property or revenues; however, nothing contained

1 herein shall apply to or limit the rights of bondholders to  
2 pursue any remedy for the enforcement of any lien or pledge  
3 given by the District in connection with any of the bonds or  
4 obligations of the District.

5 Section 29. Reservation of rights and obligations.--It  
6 is the express intent of this act to preserve and transfer  
7 over to the District created by this act simultaneously with  
8 the effective date any and all causes of action, suits,  
9 claims, counter-claims, demands, contracts, moneys due or  
10 owed, liens, agreements, rights, judgments, and settlements  
11 which the prior district had or has against all persons,  
12 firms, or corporations or which any and all persons, firms, or  
13 corporations may have against the prior district operating  
14 under chapter 298, Florida Statutes. The District shall  
15 recognize permits previously approved by the Melbourne-Tillman  
16 Water Control District, as well as those which have been or  
17 will be approved by the District prior to October 1, 1986,  
18 provided construction has commenced on the permitted facility  
19 in accordance with those plans and specifications and further  
20 that construction has begun prior to October 1, 1991.

21 Section 30. When any reference herein is made to any  
22 gender, such reference shall be deemed to include either  
23 masculine, feminine, or neuter, as appropriate, and any  
24 reference herein to any number shall be deemed to include both  
25 singular and plural where the context of this act shall permit  
26 or require.

27 Section 31. (1) The purpose of this section is to  
28 encourage Melbourne-Tillman Water Control District to make  
29 available land to the public for outdoor recreational purposes  
30 by limiting its liability to persons going thereon and to  
31

1 third persons who may be damaged by the acts or omissions of  
2 persons going thereon.

3 (2) Except as provided in subsection (4), if the  
4 District provides the public with land for outdoor  
5 recreational purposes, or allows access to District lands for  
6 outdoor recreational purposes, it owes no duty of care to keep  
7 the land safe for entry or use by others or to give warnings  
8 to persons entering or going on such land of any hazardous  
9 conditions, structures, or activities thereon. The District,  
10 when providing land for outdoor recreational purposes, does  
11 not, by providing that land, extend any assurance that such  
12 land is safe for any purpose, does not incur any duty of care  
13 toward a person who goes on the land, and is not responsible  
14 for any injury to persons or property caused by an act or  
15 omission of a person who goes on that land. This subsection  
16 does not apply if there is any charge made or usually made for  
17 entering or using the land, or if any commercial or other  
18 activity from which profit is derived from the patronage of  
19 the public is conducted on any such land or any part thereof.

20 (3)(a) Except as provided in subsection (4), if the  
21 District leases any land to any other governmental entity for  
22 outdoor recreational purposes, or enters into a joint use  
23 agreement of any kind, or provides access for outdoor  
24 recreational purposes, the District owes no duty of care to  
25 keep that land safe for entry or use by others or to give  
26 warning to persons entering or going on that land of any  
27 hazardous conditions, structures, or activities thereon. If  
28 the District leases or enters into a joint use or similar  
29 agreement regarding any of its land with any other  
30 governmental entity for outdoor recreational purposes, the  
31 District does not, by giving such lease or agreement, extend

1 any assurance that such land is safe for any purpose, incur  
2 any duty of care toward a person who goes on the leased land  
3 or land subject to the joint use or similar agreement, and is  
4 not responsible for any injury to persons or property caused  
5 by any act or omission of a person who goes on the land  
6 subject to any lease or joint use or similar agreement.

7 (b) This subsection applies to any person going on the  
8 leased land or land subject to a joint use or similar  
9 agreement, irrespective of whether the person goes as an  
10 invitee, licensee, or trespasser or in any other capacity.

11 (4) This section does not relieve the District of any  
12 liability that would otherwise exist for gross negligence or a  
13 deliberate, willful, or malicious injury to a person or  
14 property. This section does not create or increase the  
15 liability of the District or person beyond that which is  
16 authorized by section 768.28, Florida Statutes.

17 (5) The term "outdoor recreational purposes," as used  
18 herein, includes bicycling, hiking, and canoeing or activities  
19 similar thereto.

20 Section 4. In the event any section or provision of  
21 this act is determined to be invalid or unenforceable, such  
22 determination shall not affect the validity of or  
23 enforceability of each other section and provision of this  
24 act.

25 Section 5. In the event of a conflict of the  
26 provisions of this act with the provisions of any other act  
27 the provisions of this act shall control to the extent of such  
28 conflict.

29 Section 6. Chapters 86-418, 90-401, 91-341, 92-239,  
30 and 94-424, Laws of Florida, are repealed.

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1           Section 7. This act shall take effect upon becoming a  
2 law.  
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