

STORAGE NAME: h0879.br.doc
DATE: April 9, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 879
RELATING TO: South Indian River Water Control
SPONSOR(S): Representative Atwater
TIED BILL(S): None

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

- (1) BUSINESS REGULATION (SGC)
 - (2) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill codifies all prior special acts relating to the South Indian River Water Control District into a single act and then repeals the prior special acts. This bill also makes other changes that do not appear to alter the effect of existing law pertaining to the District.

No fiscal impacts are anticipated according to the Economic Impact Statement (EIS).

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

N/A

B. PRESENT SITUATION:

The South Indian River Water Control District (District) was originally the South Indian River Drainage District. The District was created by decree of the Circuit Court of the Fifteenth Judicial Circuit on July 3, 1923 and has been repeatedly validated by the Legislature. Since the passage of chapter 71-820, Laws of Florida, the Legislature has not only validated the District and its actions, but has modified its powers through special act.

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was authorized by the 1997 Legislature when it amended chapter 189, Florida Statutes, to provide for codification of all special district charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. Section 189.429, Florida Statutes (1997), also required that no changes be made to a district's charter, as it existed on October 1, 1997. However, the 1998 Legislature amended section 189.429, Florida Statutes, to: (1) extend the codification deadline to December 1, 2004; (2) allow for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs; (3) remove the prohibition of substantive amendments in a district's codification bill; and (4) remove the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district.

Schedule of Submittals of Special Districts' Charters

Special Districts with less than 2 special acts

1999 Legislative Session

| | |
|--|--------------------------|
| Special Districts with 3 - 4 special acts | 2000 Legislative Session |
| Special Districts with 5 - 7 special acts | 2001 Legislative Session |
| Special Districts with 8 - 12 special acts | 2002 Legislative Session |
| Special Districts with more than 12 special acts | 2003 Legislative Session |
| Special Fire Control Districts | 2004 Legislative Session |

Since the enactment of sections 189.429 and 191.015, Florida Statutes, 89 special districts have codified their charters. A list of those special districts that have codified pursuant to sections 189.429 and 191.015, Florida Statutes, is available at the office of the Committee on Local Government and Veterans Affairs, Florida House of Representatives.

Status Statement Language

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 to the department's determination or declaratory statement regarding the status of the district.

History of Water Control Districts

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts – through circuit court decree – and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

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, notice of the first landowners' meeting shall be given. The notice shall be published once a week for two consecutive weeks in a newspaper. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve 3-year rotating terms, with one supervisor elected each year at a required annual meeting. To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located, unless a district's special act provides otherwise. The Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting if acreage owned by the state is subject to assessment by the district.

One-Acre, One-Vote

Section 298.11(2), Florida Statutes, provides that every acre of assessable land within a district represents one share, or vote. Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well. Landowners owning more than one acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowners' acreage has been aggregated for purposes of voting.

Role of the Circuit Courts

Prior to July 1, 1980, when a water control district was formed, the circuit court of the county where the majority of the land is located had exclusive jurisdiction within the boundaries of the district. Circuit courts served several functions in the creation and governance of water control districts. After a board of supervisors adopted a plan of reclamation, it petitioned the circuit court to appoint three commissioners to appraise the lands that would be acquired to implement the plan of reclamation. A circuit court may have required the report on assessment of benefits and damages to be amended to include condemned lands needed to construct the district's works. In the event a circuit court determined that the value of land within the district had changed and additional conditions were met, the court was required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

Water Control Plans

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan". The approval and implementation process has been removed from the purview of the circuit court.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider adoption of the plan or plan amendment. The board of supervisors shall publish notice of a public hearing once a week for 3 consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission of the county and any municipality in which the District is located.

At the public hearing on the proposed plan or plan amendment the board of supervisors will consider any objections to the plan and then shall determine whether or not to proceed with the plan. In the event the board proceeds forward, it will then direct the District Engineer to prepare a report in writing to the board of supervisors complete with maps and surveys. The report shall include a full and complete water control plan for draining and reclaiming the lands described in the

petition. Further, the report must contain an estimate of the costs of carrying out the completing the water control plan and an estimate of the benefits derived from the water control plan.

A final hearing on approval of the water control plan and the engineer's report, is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the engineer's report with the secretary of the district.

Before final adoption of the engineer's report and water control plan or plan amendment under section 298.301, Florida Statutes, the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment is less than the benefits determined for the lands.

The board of supervisors must review the water control plan at least every 5 years following its adoption.

Revenue Sources

The primary funding source for water control district activities is special assessments, which must be imposed on the property so that the burden on every parcel will bear a just proportion to that imposed on every other. In other words, the assessment of the particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. Special assessments may be determined legislatively or judicially.

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

Limitation on Special Acts

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

Section 298.76, Florida Statutes, is an example of such a general law passed by a three-fifths vote of the membership of each house. The statute provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to chapter 298, Florida Statutes. Section 298.76 Florida Statutes, does not prohibit special or local legislation that:

- (a) Amends an existing special act that provides for the levy of an annual maintenance tax of a district;
- (b) Extends the corporate life of a district;
- (c) Consolidates adjacent districts; or
- (d) Authorizes the construction or maintenance of roads for agricultural purposes as outlined in this chapter.

Section 298.76 Florida Statutes, authorizes special or local legislation:

- (a) Changing the method of voting for a board of supervisors for any water control district;

- (b) Providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any water control district; and
- (c) Changing the governing authority or governing board of any water control district.

Finally, section 298.76, Florida Statutes, 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 chapter 298, Florida Statutes, at the time the district was created and organized.

C. EFFECT OF PROPOSED CHANGES:

The bill codifies chapter 11006, Laws of Florida (1925), chapter 12271, Laws of Florida (1927), chapter 19344, Laws of Florida (1939), chapter 20654, Laws of Florida (1941), chapter 21731, Laws of Florida (1943), and chapters 69-1411, 71-820, 78-582, 79-534, 80-575, 81-462, 87-515, 87-517, 91-402, and 2000-435, relating to the South Indian River Water Control District into a single act and then repeals the prior special acts.

This bill also makes other changes to the District's charter, including: describing the purpose for the District; describing the powers, functions, and duties of the district regarding ad valorem taxation, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other similar issues; describing the method of establishing the District; describing the method for amending the charter of the District; describing the membership and organization of the governing board of the district; describing the compensation of a governing board member; describing the administrative duties of the governing board of the District; describing the applicable financial disclosure, noticing, and reporting, requirements; describing the procedures and requirements for issuing bonds; describing the procedures for conducting any district elections or referendum and the qualifications of an elector of the district; describing the methods for financing the district; describing the methods for collecting non-ad valorem assessments, fees, or service charges; describing the District planning requirements. However, these changes to the District's charter do not appear to alter the effect of existing law pertaining to the District.

In compliance with section 189.404(5), Florida Statutes, this bill provides that the District is an independent special district.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that this act is the codification required under section 189.429, Florida Statutes. States the Legislative intent for the act.

Section 2: Provides that this act amends, codifies, reenacts, and repeals the special acts relating to the District's charter.

Section 3: Provides for the re-creation and reenactment of the charter for the District and the following provisions.

Section 1: Describes the method for establishing the District; provides the status of the District as an independent water control district; reenacts the geographical boundaries of the District.

Section 2: Describes the purpose for the District; describes the powers, functions, and duties of the district regarding ad valorem taxation, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other

similar issues; describes the method of establishing the District; describes the method for amending the charter of the District; describes the membership and organization of the governing board of the district; describes the compensation of a governing board member; describes the administrative duties of the governing board of the District; describes the applicable financial disclosure, noticing, and reporting, requirements; describes the procedures and requirements for issuing bonds; describes the procedures for conducting any district elections or referendum and the qualifications of an elector of the district; describes the methods for financing the district; describes the methods for collecting non-ad valorem assessments, fees, or service charges; describes the District planning requirements; describes that the geographic boundary limitations are as set forth in section 1.

- Section 3: Reenacts provisions regarding the membership and organization of the governing board of the District; reenacts procedures for conducting District elections; reenacts terms of office for the members of the governing board of the District.
- Section 4: Reenacts the powers, functions, and duties of the District regarding non-ad valorem assessments; reenacts the duties of the county property appraiser regarding assessment of lands within the District; reenacts the duties of the county tax collector regarding collection of non-ad valorem assessments levied by the District; reenacts the duties of the District treasurer regarding receipt of disposition of monies from the county tax collector; reenacts the powers, functions, and duties of the District regarding liens and foreclosure of liens and use of tax deeds and tax certificates as appropriate for non-ad valorem assessments; reenacts provisions regarding the compensation of the county property appraiser and county tax collector for services to the District.
- Section 5: Reenacts applicable financial disclosure, notice, and reporting requirements; reenacts the definition of "water control works" as used in this act; reenacts the powers, functions, and duties of the District regarding budget preparation and approval.
- Section 6: Reenacts powers, functions, and duties of the governing board of the District regarding the publication of notice of the annual landowners' meeting; reenacts procedures for conducting district elections and for proxy and absentee voting; reenacts authority for the District to expend funds for the publication of notice of the annual landowners' meeting.
- Section 7: Reenacts the definition of "road maintenance" as used in this act; provides that the placement of stable materials within the District constitutes road maintenance rather than road construction.
- Section 8: Reenacts the definition of "parcel" as used in this act; provides that land is deemed to constitute as many parcels as there are residences.
- Section 9: Reenacts provisions regarding the annexation of land by the District upon certification to the Secretary of State of the approval of the circuit court of a certain plan of reclamation.

Section 10: Reenacts authority for the District to formulate a road plan and water control plans for all lands within the District and to formulate plans for providing potable water distribution and wastewater collection systems for certain lands within the District; reenacts authority for the governing board of the District to implement and authorize construction and maintenance of planned improvements and systems.

Section 11: Reenacts a provision prohibiting the formation of an engineering plan unless there is documented evidence that at least 25 percent of the affected landowners desire to have such a plan formulated; reenacts a provision prohibiting construction of any new road or increasing the quality of an existing road within certain lands within the District without approval of the owners of a majority of the parcels affected.

Section 12: Reenacts authority for the governing board of the District to expend funds of the District to pay for certain engineering studies; reenacts authority for the District to cooperate with the Town of Jupiter and the Loxahatchee River Environmental Control District in planning certain facilities; reenacts authority for the district to construct, maintain, improve, and repair facilities not serviced by other governmental bodies; reenacts authority and methods for the levy of special assessments; reenacts authority for the District to receive and maintain real and personal property for recreational purposes.

Section 13: Reenacts authority for the District to levy a one-time special assessment for an improvement project upon land to be benefited by said improvement project.

Section 14: Reenacts authority for the District to transfer road and potable water distribution or wastewater collection systems to another governmental entity.

Section 15: Reenacts authority for the District to issue bonds to pay for the purchase of equipment and the construction, improvement, and maintenance of District improvements.

Section 16: Reenacts clause providing that nothing in this act will be construed to affect the rights of bondholders.

Section 4: Provides for liberal construction of this act.

Section 5: Provides for the severability of any invalid provision.

Section 6: Repeals special acts relating to the District's charter.

Section 7: Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 31, 2001

WHERE?

Jupiter Courier, Jupiter, Palm Beach County, Florida

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Janet Clark Morris

M. Paul Liepshutz