

STORAGE NAME: h1359a.lgva.doc

DATE: February 21, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 1359

RELATING TO: Shawano Water Control District

SPONSOR(S): Representative Harper

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill codifies all prior special acts relating to the Shawano Water Control District into a single act. This bill removes obsolete and duplicative provisions and makes other changes that do not appear to alter the effect of existing law pertaining to the District. The bill does not appear to amend the District's boundaries. The District has a three-member board of supervisors elected by landowners for 3-year term limits. Every acre of assessable land within the district represents one share, or vote.

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:

B. PRESENT SITUATION:

The Brown Drainage District was created, established and incorporated by chapter 11864, Laws of Florida (1927), approved June 6, 1927. The Brown Drainage District was incorporated within the boundaries of Palm Beach County and the territorial boundaries of the Everglades Drainage District and was renamed the Shawano Drainage District (District) in 1947 by chapter 24254, Laws of Florida (1947). Currently, the District has a three-member board of supervisors elected by landowners for 3-year term limits. Every acre of assessable land within the district represents one share, or vote. The District is authorized to levy, within the boundaries of the District, a uniform tax of twenty-five cents per acre to be used by the District, through its Board of Supervisors, for the purpose of paying expenses incurred or to be incurred in making surveys of the lands in the District, assessing benefits and damages and other expenses, as may be estimated or determined by the Board of Supervisors. The District is authorized to determine, order and levy the amount of annual installments of the total taxes, which are due at the same time that state and county taxes are due and collected. Annual installments and levies must be evidenced and certified by the Board not later than November 1 of each year to the Tax Collector of Palm Beach County.

The law firm, Caldwell & Pacetti, LLP, representing the District submitted a letter stating the following:

For the fiscal year ending 9/30/00, which is the most recent audit available, the total assessments collected, net discount, was \$204,518. The assessment amounts to \$17.70/acre.

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, 110 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.

Section 298.349, F.S. relating to uniform initial acreage assessment for payment of expenses. There is levied upon each acre of land within a water control district created on or after July 1, 1997, a uniform initial assessment of \$50 per acre for the year in which the district is created, to be used by the district, through its board of supervisors, for the purpose of district administration, paying expenses incurred or to be incurred in making surveys of the lands in the district, assessing benefits and damages, and other expenses necessarily incurred, as estimated or determined by the board of supervisors, before the board collects or receives funds under the remaining provisions of this chapter. The assessment constitutes a lien upon the lands in the district from the effective date of the special act creating the district and must be collected by the district. If the board of supervisors determines that it is necessary to obtain funds to pay any expenses incurred or to be incurred in organizing the district, or any other expenses relating to the conduct and operation of the district, before a sufficient sum can be obtained by collecting the acreage assessment levied by this section, the board may borrow a sufficient sum of money for any of those purposes, may issue notes or bonds therefore, and may pledge any and all assessments of the initial acreage assessment levied under the provisions of this section for the repayment thereof. The board of supervisors may issue notes or bonds to any person or persons performing work or services or furnishing anything of value in the organization of the district or for any other expenses necessarily incurred before the receipt of funds arising from assessments or benefits.

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 11864, Laws of Florida (1927), chapter 13579, Laws of Florida (1929), chapter 24254, Laws of Florida (1947), chapter 25328, Laws of Florida (1949), chapter 28406, Laws of Florida (1953), and chapters 57-488, 59-636, and 63-863, Laws of Florida, relating to the Shawano Water Control District (District) into a single act. The bill does not appear to amend the District's boundaries.

This bill also makes other changes to the charter including: describing the purpose for the District; describing the method of establishing 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 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; describing that the geographic boundary limitations as set forth in this act; states that this District has all the powers provided by law.

Currently the District is authorized to levy upon each and every acre of land within the boundaries of the District a uniform tax of twenty-five cents per acre to be used by the District. This bill increases the uniform initial assessment to \$50 per acre to be used by the District, pursuant to s. 298.349, F.S.

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, F.S. States the Legislative intent for the act, including the authority to annually assess and levy taxes or non-ad valorem assessments against all assessable property in the District.

Section 2. Amends, codifies, reenacts, and repeals special acts relating to the District's charter.

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

Section 1. Describes the purpose for the District; describes the method of establishing 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 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 set forth in this act; states that this District has all the powers provided by law.

Section 2. Provides the status and boundaries of the District.

Section 3. Reenacts the powers of the District.

Section 4. Reenacts provisions regarding the organization, powers, duties, terms of office, and election procedures for the governing board of the District.

Section 5. Reenacts provisions regarding an oath that must be taken by each Supervisor of the governing board of the District.

Section 6. Reenacts provisions regarding the maximum compensation of a Supervisor as set forth in chapter 298, F.S.

Section 7. Reenacts provisions regarding special meetings of landowners; reenacts provisions regarding the election of governing board members; reenacts provisions regarding

publication of notice of meetings; reenacts provisions regarding the representation of state lands in District elections; reenacts provisions regarding proxy voting by guardians, executors, administrators, trustees, and corporations.

- Section 8. Reenacts provisions regarding powers given to Supervisors to effect reclamation of the District.
- Section 9. Authorizes the Board of Supervisors to exercise eminent domain.
- Section 10. Reenacts provisions to grant of all necessary easements, rights-of-ways, and other rights required for the execution of the District through state lands.
- Section 11. Reenacts provisions for a water control plan; provides for Engineer to be the Superintendent of Works; provides for methods of letting contracts.
- Section 12. Reenacts provisions regarding a uniform acreage tax for payment of District organizational expenses; reenacts provisions regarding issuance of negotiable debt instruments, if needed, for the organizational expenses of the District.
- Section 13. Reenacts provisions regarding annual special assessments; reenacts provisions regarding annual levies of such special assessments.
- Section 14. Reenacts provisions regarding the requirement that the governing board of the District must employ legal counsel to act for the District and to advise the governing board of the District.
- Section 15. Reenacts provisions regarding bridges and states that all enlargements of bridges be approved by District Engineer.
- Section 16. Reenacts provisions to not allow change of venue; provides exception.
- Section 17. Reenacts provisions for Supervisors to provide compensation of all employees.
- Section 18. Reenacts definition of the word "owner".
- Section 19. Reenacts provisions regarding appointment and duties of superintendent of plant and operation and overseers.
- Section 20. Provides for Board may make any investment authorized by chapter 218, F.S., or other applicable law.
- Section 21. Reenacts provisions regarding the powers, functions, duties and procedures of the District in levying a maintenance tax for the purpose of defraying current expenses of the District.
- Section 22. Reenacts provisions regarding the readjustment of a tax levy for maintenance.
- Section 23. Reenacts provisions authorizing that the District may consolidate with other district.
- Section 24. Provides for the adoption of a new water control plan, and for procedures.
- Section 25. Reenacts provisions authorizing Supervisors to remove officers and employees.

- Section 26. Reenacts provisions regarding water courses to allow connections with drainage district, for connecting drains and completion of plan, and for scope of work.
- Section 27. Reenacts provisions regarding owners of land assessed for construction of canals, ditch's, or other improvements, may pay taxes in advance.
- Section 28. Reenacts provisions regarding the duty of a governmental entity to make payment of special assessments levied by the District against realty owned by such governmental entity.
- Section 29. Reenacts provisions allowing landowners in the District to construct drains across land of intervening landowner, allows appropriate proceedings, and allows Board and certain other persons to enter lands.
- Section 30. Reenacts provisions regarding principal office.
- Section 31. Reenacts provisions regarding unit development, powers to designate units of the District and adopt a system of progressive drainage by units, water control plans, and financing assessments for each unit.
- Section 32. Reenacts provisions regarding bond validation.
- Section 33. Reenacts provisions allowing District to maintain spoil banks, etc.
- Section 34. Reenacts provisions regarding definition of terms.
- Section 35. Reenacts provisions regarding surveys; monuments; penalty for destroying, etc., provides any person or persons found guilty is guilty of a misdemeanor and punished as provided by law.
- Section 36. Provides for obstruction of works; damage; and penalty will be deemed in violation of section 298.56, F.S., and upon conviction will be punished in the manner provided by law.
- Section 37. Reenacts provisions regarding changing boundaries of the District.
- Section 38. Reenacts provision regarding validation of contracts.
- Section 39. Reenacts provision regarding validation of final decree.
- Section 40. Reenacts provision regarding validation of assessments, taxes, bonds, and other obligations.
- Section 4.** Provides for liberal construction of the act.
- Section 5.** Ratifies prior acts and proceedings taken by, for, and on behalf of the District.
- Section 6.** Provides for the severability of any invalid provision.
- Section 7.** Repeals chapters 11864 (1927), 13579 (1929), 24254 (1947), 25328 (1949), 28406 (1953), 57-448, 59-636, and 63-868, Laws of Florida.
- Section 8.** Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 12, 2001

WHERE? The Palm Beach Post in West Palm Beach, 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:

HB 861, relating to Shawano Water Control District, by Representative Harper (2001 Session) was withdrawn from further consideration of the Legislature.

The law firm, Caldwell & Pacetti, LLP, representing the District submitted a boundary letter stating the following:

In response to your inquiry regarding the legal description in HB 1359, the codification bill for the Shawano Water Control District, it is my understanding from Charles F. Schoech, general counsel for the District, that the legal description neither adds nor subtracts land to or from the District.

Mr. Schoech eliminated lengthy "metes and bounds" legal descriptions and used shorter "section" language. The legal description describes the same land in both forms.

Pursuant to section 9, Article VII, of the State Constitution, the District cannot levy ad valorem taxes on the newly annexed area until the newly annexed area approves the ad valorem levy at referendum. This bill does not provide for such referendum. This does not prohibit the annexation of the area, just the levy of ad valorem taxes on the area.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Terri S. Boggis

Joan Highsmith-Smith