

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1865 (PCB LGV 03-05) Validation of all acts and proceedings/Manatee County
SPONSOR(S): Local Government & Veterans' Affairs
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	<u>15 Y, 0 N</u>	<u>Highsmith-Smith</u>	<u>Highsmith-Smith</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill validates all acts and proceedings taken in connection with a special election held May, 2002 in Manatee County, Florida. The election authorized the levy of one half-cent local option sales tax in Manatee County, Florida for the purpose of providing funds for certain capital improvements and educational facilities within the school district.

The bill provides a declaration that the special election is valid and legal and approves the issuance of sales tax revenue bonds.

The Economic Impact Statement indicates there are no fiscal impacts.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1865.lgv.doc
DATE: April 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

This bill validates all acts and proceedings taken in connection with a special election held May, 2002 in Manatee County, Florida. The election authorized the levy of one half-cent local option sales tax in Manatee County, Florida for the purpose of providing funds for certain capital improvements and educational facilities within the school district.

The bill provides a declaration that the special election is valid and legal and approves the issuance of sales tax revenue bonds.

Present Situation:

Notice of special elections must meet the requirements of s. 100.342, F. S. For any special referendum, this section, in pertinent part, provides, “there shall be at least 30 days’ notice of the election or referendum by publication in a newspaper of general circulation in the county...[t]he publication shall be made at least twice, once in the fifth week and once in the third week, prior to the week in which the referendum is to be held.”

Based on information received from bond counsel¹ for the county school board in a recent Memorandum, the election held for the approval of the local option one half-cent sales tax was advertised the ninth, seventh and fifth weeks preceding the referendum and but not in the third week prior to the referendum as required by statute. Other pertinent information contained in the Memorandum relates the following:

The Florida Supreme Court has recognized that “[s]pecial elections, and particularly those which might result in requiring the exercise of the power of taxation, must be conducted in substantial compliance with constitutional and statutory requirements.”² Moreover, in contrast to a general election, the date of a special referendum is determined by a local governing body with the authority to call it, and “the voters cannot be expected to have or take notice thereof unless notice is given.

Accordingly, a requirement for publication...must be considered as mandatory and its performance essential to the validity of the election.”³ Additionally, as the statute requires notice as a prerequisite to the issuance of bonds, “such publication is not merely formal and directory; and the required publication cannot be dispensed with upon the theory that it does not appear that the electors were misled by the failure to make the publication for the statutory period.”⁴

¹ John Stokes, Esquire and Ritesh Patel, Esquire, bond counsel, Manatee County School Board

² Special Tax School District of Duval County v. State, 123 So.2d 316, 322 (Fla. 1960).

³ State v. Shields, 140 So.2d 144, 147 (Fla. 1962).

⁴ City of Miami v. Romfh, 63So. 440,442 (Fla. 1913).

However, the notice requirements for a special referendum are procedural in nature and “after-the-fact validating legislation is perfectly proper to cure procedural defects.”⁵

In fact, “[e]ven when the [Florida] Supreme Court has prepared an opinion holding an issue of bonds to be invalid...a special act passed as a curative statute pending the appeal has been controlling in sustaining the ultimate validity of the bonds.”⁶

The complete failure to publish notice of a bond election may be cured with the passage of curative legislation.⁷

C. SECTION DIRECTORY:

Section 1 – Ratifies, validates and confirms all acts and proceedings taken in connection with the special election held in Manatee County, Florida on May 21, 2002 including, without limitation, any acts in connection with the notice of such election to authorize the levy of the one half-cent local option sales tax on tangible personal property sold in Manatee County. The purpose of the tax is to provide funding to finance the costs of acquisition, construction, and installation of, and renovation to, certain capital improvements and educational facilities within the district.

Section 2 – Ratifies, validates, confirms and legalizes in every respect, all acts and proceedings taken, had, done, and performed by the school board of Manatee County and by the duly constituted officials of the board, in connection with the authorization and issuance of sales tax revenue bonds, not to exceed \$117,500,000, to be paid from the proceeds of the sales tax authorized in the election.

Section 3 – Provides severability clause.

Section 4 – Provides for an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? March 10, 2003

WHERE? *The Bradenton Herald*, Brandenton, Manatee, 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

⁵ County of Palm Beach v. State, 342 So.2d 56,58 (Fla. 1976)(*citing*, Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967).

⁶ Coon, 203 So.2d at 498 (*citing*, State v. Florida Inland Nav. Dist., 122 So. 249 (1929)

⁷ County of Palm Beach v. State, 342 So.2d 56, 58 (Fla. 1976)(*citing*, Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.