

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1567 w/CS West Villages Improvements District
SPONSOR(S): Reagan
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Local Affairs (Sub), 8 Y, 0 N, Grayson, Cutchins. Row 2: 2) Local Government & Veterans' Affairs, 19 Y, 0 N w/CS, Grayson, Cutchins. Rows 3-5 are empty.

SUMMARY ANALYSIS

This bill creates the West Villages Improvement District (District) in the City of North Port, in Sarasota County, as an independent special district. The District includes approximately 7,800 acres (approximately 12 square miles or 2% of the county's acreage) consisting of property belonging to Fourth Quarter Properties XXXII, LLC (Proponent), and is better known as the Thomas Ranch (formerly "Taylor Ranch").

The bill will become the charter of this independent special district. The charter appears to be an amalgam of authorities drawn from portions of ch. 189, F.S. (governing the creation of special districts), ch. 298, F.S. (governing drainage and water control districts), mixed with extensive specific authorities and duties as contained within the charter, all of which are to be "liberally construed" as the purposes for this District.

The bill appears to generally comply with the statutory provisions prohibiting certain special acts, the submittal of a statement to the Legislature, and the minimum requirements for the creation of an independent special district respectively under ss. 189.404(2) and (3), F.S.

According to the Economic Impact Statement, the bill does not appear to impact the state budget.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill. (See section I.B. "EFFECT OF PROPOSED CHANGES: Exceptions from General Law".)

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

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

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

1. The bill creates, within an existing municipality, an independent special district with a wide array of authorities.
2. The independent special district created by this bill has the authority to levy and collect non ad valorem assessments.

#### B. EFFECT OF PROPOSED CHANGES:

##### Effect of HB 1567

This bill creates the West Villages Improvement District (District) in the City of North Port, in Sarasota County, as an independent special district. The District includes approximately 7,800 acres (approximately 12 square miles or 2% of the county’s acreage<sup>1</sup>) consisting of property belonging to Fourth Quarter Properties XXXII, LLC (Proponent), and is better known as the Thomas Ranch (formerly “Taylor Ranch”).<sup>2</sup> The property is a portion of a 26 square mile, \$78 million purchase made by Georgia-based developer, Stan Thomas, in 2001-2002.<sup>3</sup> The District is intended to contain up to 15,000 homes, retail shopping areas, offices, schools and other development. According to a representative of the owner<sup>4</sup>, the property was annexed into the City of North Port approximately three years ago.

The bill will become the charter of this independent special district. The charter appears to be an amalgam of authorities drawn from portions of ch. 189, F.S.<sup>5</sup> (governing the creation of special districts), ch. 298, F.S. (governing drainage and water control districts)<sup>6</sup>, mixed with extensive specific authorities and duties as contained within the charter, all of which are to be “liberally construed” as the purposes for this District.<sup>7</sup> Additionally, the charter authorizes the District to utilize the provisions of ch. 170, F.S., which provides *municipalities* with explicit statutory authority to levy special assessments for the purpose of making municipal improvements.

The bill appears to generally comply with the statutory provisions prohibiting certain special acts, the submittal of a statement to the Legislature, and the minimum requirements for the creation of an independent special district respectively under ss. 189.404(2) and (3), F.S. (See: “Minimum Charter Requirements”, below)

<sup>1</sup> County wary of North Port Growth,” *Sarasota Herald-Tribune*, 1/24/04.

<sup>2</sup> “Special tax district plan gains support,” *Charlotte HeraldTirbune.com*, March 5, 2004.

<sup>3</sup> “City to lobby for tax district,” *Sarasota Herald-Tribune*, 3/2/04.

<sup>4</sup> Jeffrey A. Boone, Esq., 3/23/04.

<sup>5</sup> HB 1567 § 2(1) & (3) (2004).

<sup>6</sup> HB 1567 § 3(1) (2004).

<sup>7</sup> HB 1567 § 2(3) (2004).

Several general issues of concern appeared from review of the bill. Responses prepared by the Proponent's representatives proved helpful in understanding the bill and are included as follows.

- Which provisions apply? The District charter does not appear to clarify exactly which authorities are included and which are not included from each of the three sets of statutory provisions referenced in the charter<sup>8</sup>. Therefore, it seemed difficult to discern where specific provisions of the charter are intended to supercede otherwise prevailing general law.

Proponent's Response: A representative of the Proponent stated "there are no conflicts between any of these references, rather, each of them are separate and distinct authorizations and methodologies by which the District is to operate."

Initially, the references to sections 189.401 through 189.429 are to ensure that there is no question that this district is being created and will thereafter operate in accordance with the legislative mandate contained in section 189.4031(1), which states, "All special districts, regardless of the existence of other, more specific provisions of applicable law, shall comply with the creation, dissolution and reporting requirements set forth in this chapter."

The use of Chapter 170, Florida Statutes, will not conflict with any other provisions of the Bill or Chapter 298. The Bill gives the District the powers granted under Chapter 170, simply as an alternative method by which the District can levy non-ad valorem assessments in order to pay for the installation of public infrastructure improvements. This option will permit the District to sell what are typically referred to in the underwriting field as "A" and "B" bonds when it is appropriate to more quickly defease<sup>9</sup> and retire debt.

The references to Chapter 298 are to provide the structure and procedures by which the District will carry out its day to day business, including hiring of personnel and consultants, adoption of plans for development activities, etc.<sup>10</sup>

- Special district or general purpose government? The District charter has a broad range of purposes and authorities that encompass purposes and authorities related to: control of water, sewer and effluent; roadways; security; mosquito control. The District charter when read as a whole approaches the breath and scope of authority of a general purpose local government; although the charter clearly indicates that the District *does not* have the authority to: adopt a comprehensive plan, building code, zoning code, or land development code<sup>11</sup>; exercise any police powers<sup>12</sup>; or levy and collect ad valorem taxes.<sup>13</sup> The specific purposes ascribed to this District are detailed below. (See: "SECTION DIRECTORY: Section 3 (2)").

Proponent's Response: The "Supplemental Statement for West Villages Improvement District" states in response to s. 189.404(2)(e)3, F.S., which asks "why the district is the best alternative":

This question contains two (2) parts, namely: (a) why is the District needed and (b) of the various types of governmental entities, why was this type of limited special purpose district selected.

<sup>8</sup> ss. 189.401-189.432, F.S.; ch. 298, F.S.; and ch 170, F.S.

<sup>9</sup> "Defease" means to terminate a property interest in accordance with stipulated conditions.

<sup>10</sup> Kenneth W. Edwards, Esq., Caldwell & Pacetti, E-mail of 3/26/04.

<sup>11</sup> HB 1567 § 19 (2004).

<sup>12</sup> HB 1567 § 3(2)(u) (2004).

<sup>13</sup> The bill is silent on the subject of ad valorem tax authority.

In response to the first part of the question, the real property located within the proposed jurisdictional boundaries of the West Villages Improvement District is currently unpopulated, undeveloped and wholly contained within the territorial limits of the City of North Port. In order to develop this real property, substantial expenses will have to be incurred in order to install those public infrastructure utilities, improvements and works that will be needed for the health, safety and welfare of the subsequent owners and residents of the District and this portion of the City. It was determined that the costs and expenses that will be incurred for the needed public infrastructure improvements should not be borne by the existing taxpayers of the City. Therefore, the usage of an independent special district was determined to be an appropriate means for financing and constructing the public infrastructure improvements, with the costs attributable to same to be paid by those that benefit from the new improvements, namely the owners of real property within the District.

In answer to the second part of the question, the formation of West Villages Improvement District pursuant to the authority contained in Chapter 189, Florida Statutes, allowed the local general purpose government (the City of North Port) to tailor those powers that the District would be entitled to exercise for construction of the public infrastructure improvements. This tailoring of the District's powers is not as readily available through usage of the other principal alternative, namely a Community Development District under Chapter 190, Florida Statutes.<sup>14</sup>

Additionally, the Proponent was asked to identify those powers listed in the bill that are more limited or circumscribed than those authorized in ch. 190, F.S., which relates to the creation of a Community Development District. A detailed outline of those provisions is provided in the Addendum to this Local Bill Staff Analysis.

- Conversion from One Acre, One Vote. The District charter establishes that elections are conducted on the basis of one acre, one vote. That means that the owner/developer will retain a controlling vote until at least 51% of the District's acreage is outside of the developer's control. Additionally, the breadth and scope of the District's authorities raises some constitutional issues; and would appear to suggest that at some point (when the ownership base has increased) it would be appropriate to convert from one acre one vote to a popular vote. No provision of the charter directly addresses conversion to a popular vote.

Proponent's Response: That is fully covered in s. 189.4051, F.S, which is incorporated into this bill.<sup>15</sup>

- Community Improvement Authority: The charter states that among its purposes, which are to be "liberally construed" are the first three sections of the Community Improvement Act," ss. 189.430-189.432, F.S. Section 189.431, F.S., most notably addresses Legislative intent and addresses downtown improvements and development of sports facilities.

Proponent's Response: The reference to ss. 189.430-189.432, F.S., was in error and should be deleted.<sup>16</sup>

- Non-Ad Valorem Assessments: The charter appears to have many non-ad valorem assessment capabilities.

Proponent's Response: There are not a number of alternative assessment and taxing methods. This District is limited to only one assessment methodology and that is the

<sup>14</sup> Charles L. Geer, P.E., Kimley-Horn and Associates, Inc., E-Mail of 3/26/04.

<sup>15</sup> Kenneth W. Edwards, Esq., Caldwell & Pacetti, E-mail of 3/26/04.

<sup>16</sup> Kenneth W. Edwards, Esq., Caldwell & Pacetti, E-mail of 3/26/04.

authority to assess and levy non-ad valorem assessments. In other words, it is not authorized to levy any sales tax or ad valorem taxes. The procedures the District must follow in order to levy non-ad valorem assessments are in accordance with established law, as set forth in Chapter 170 or Chapter 298, both of which require a determination of benefits to land before the District may levy non-ad valorem assessments.

The reason for making these two assessment options (Chapter 170 or Chapter 298) available is to permit different bond repayment methodologies to be used for the installation of public infrastructure improvements. Typically, if bonds are sold under Chapter 298, a parcel of real property cannot pre-pay its allocable share of the non-ad valorem assessments and be released from the bond indebtedness. This is due to the mechanism by which this Chapter requires the District to calculate and levy its non-ad valorem assessments. Therefore, in those instances where it is appropriate for a particular parcel of real property to be able to pre-pay all or any portion of its indebtedness and be fully relieved from the applicable bond, the method authorized in Chapter 170 would be used.

Finally, and as indicated in our phone conversation, the use of Chapter 170, is also available to special districts created under Chapter 190, Florida Statutes, and I believe being requested in several district formation bills currently pending before the legislature.

- Chapter 170, F.S. Authority: The bill addresses two methods by which the District may establish non-ad valorem assessments. The Proponent's representatives were asked to explain the difference between the "Chapter 170 authorizing documents" and the ch. 298, F.S., "plan of improvements" and "report of engineer."

Proponent's Response: The "Chapter 170 authorizing documents" are defined in lines 350 through 352 of HB 1567 as filed. They are the documents that have to be prepared and adopted by the District in order to be able to levy non-ad valorem assessments under ch. 170, F.S. Whereas, the "plan of improvement" and "report of engineer" are documents that need to be prepared and adopted pursuant to the provisions of s. 298.301, F.S., in order for the District to levy its non-ad valorem assessments under ch. 298, F.S.

In either case, the sets of documents spell out the nature of the proposed improvements, the benefits that are going to be received by the subject properties and the method by which non-ad valorem assessments will then be levied.

- Developer's Agreement and Utility Developer's Agreement: The bill contains numerous references to two documents: a developer's agreement and a utility developer's agreement. The Proponent's representatives were asked to provide copies of these agreements and to explain their role in context of the District's charter.

Proponent's Response: The Proponent's representative explained that the agreements do not presently exist, but rather are anticipated under the charter in compliance with the City of North Port's Comprehensive Plan. In addition, staff of the Committee on Local Government & Veterans' Affairs was supplied with sample development agreements of the City.<sup>17</sup> Specifically, the City's Comprehensive Plan anticipates such developer's agreements in Future Land Use Element, Goal 2, Objective 7; and Future Land Use Element Policy 13.7. Additionally, the Land Development Code addresses such developer's agreements at § 53-280.

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<sup>17</sup> The sample development agreements are on file and available at the Committee on Local Government & Veterans' Affairs.

- Eminent Domain: The Proponent's representatives were asked if it is normal for a district of this nature to have the power of eminent domain, as provided in s. 12 of the bill as filed.

Proponent's Response: Yes, the language of HB 1567 is almost verbatim from the language in ch. 190, F.S, which confers the power of eminent domain on CDDs.

- Debt of 90%: The Proponent's representatives were asked if the 90% debt limit on line 639 of the bill as filed is standard?

Proponent's Response: That limit is in accordance with s. 298.47, FS. There is no limit stated in ch. 190, F.S. (relating to CDDs).

- Floating Indebtedness: The Proponent's representatives were asked to explain the purpose of the "floating indebtedness" provision on line 743 of the bill as filed.

Proponent's Response: It enables the District to issue Bond Anticipation Notes.

- Public Relations Committee: The Proponent's representatives were asked about the purpose of the "public relations committee" on lines 380-382 of the bill as filed.

Proponent's Response: That is to provide public outreach and information to the residents and property owners in the District concerning District activities. Since the City of North Port is very concerned about assuring that the City does not have to deal with inquiries from the public about this district, the public relations committee is intended to provide that interface.

### **Special District – Background**

A special district is a local unit of *special purpose government* whose special purpose or purposes are implemented by specialized functions and related prescribed powers within a limited boundary.<sup>18</sup> An independent special district is one which does not have any of the following:

- The membership of its governing body as identical to that of the governing body of a single county or a single municipality;
- All members of its governing body appointed by the governing body of a single county or a single municipality;
- Members of the governing body of the special district subject to removal at will by the governing body of a single county or a single municipality during their unexpired terms; or
- A budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.<sup>19</sup>

An independent special district must comply with the creation, dissolution, and reporting requirements set forth in chapter 189, Florida Statutes.<sup>20</sup> An independent special district, except for a community development district, is also required to have a charter that meets certain minimum requirements.<sup>21</sup>

<sup>18</sup> See Fla. Stat. § 189.403(1) (2003). Exempted from the definition of special district are: school districts, community college districts, a special improvement districts created pursuant to 285.17, municipal service taxing or benefit units, or boards which provide electrical service and which is a political subdivision of a municipality or is part of a municipality.

<sup>19</sup> See Fla. Stat. § 189.403(3) (2003).

<sup>20</sup> See Fla. Stat. § 189.4031(1) (2003).

<sup>21</sup> See Fla. Stat. §§ 189.4031(2) and 189.404(3) (2003).

## Minimum Charter Requirements

By creating an independent special district, certain minimum requirements must be addressed in the charter set forth in the bill pursuant to chapter 189, Florida Statutes. The bill provides these minimum requirements:

### Purpose of the District

The bill does appear to clearly state the District's purpose.<sup>22</sup> Rather, the bill states that the District "is created for all purposes as shall be liberally construed from and set forth in this act, under ss. 189.401-189.432, F.S." with one exception<sup>23</sup>. Thus, the bill appears to provide that the District is created to carry out any purpose which may be liberally construed from the statutory provisions of the Uniform Special District Accountability Act of 1989. Additionally, the bill draws upon all the purposes that shall be liberally construed from ch. 298, F.S. (relating to Drainage and Water Control Districts).

According to a statement prepared by the Proponent, the purpose of the District and the intention of its formation is to create a limited special purpose government that will be able to construct those public infrastructure improvements which are authorized in its charter, all of which must comply with the local general purpose government's (City of North Port) Comprehensive Land Use Plan.<sup>24</sup>

### Powers Duties and Functions of the District

The charter of the District must set forth the powers, functions, and duties of the district regarding ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements.<sup>25</sup>

*Ad Valorem Taxation* - The District does *not* have ad valorem taxation authority.

*Bond Issuance* - The District does have full authority to issue bonds.<sup>26</sup> The bill provides that s. 10 of the bill constitutes the full and exclusive authority for the issuance of bonds by the District.<sup>27</sup> The bill provides that all loans or bonds of the District are non-recourse to the City of North Port and may not exceed 90% of the total amount of the non-ad valorem assessments levied under s. 298.305, F.S.<sup>28</sup>; or equal to the total amount levied under ch. 170, F.S. The District may issue refunding bonds<sup>29</sup>; issue bond anticipation notes<sup>30</sup>; revenue bonds<sup>31</sup>; issue warrants or negotiable notes or other evidences of debt termed "floating indebtedness"<sup>32</sup>; general obligation bonds (not in excess of 35% of the assessed value of taxable property within the District)<sup>33</sup>, however, certain assessments and revenues are specifically excluded from the calculation of the amount of general obligation bonds permitted to be outstanding at any one

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<sup>22</sup> HB 1567 § 2(3) (2004).

<sup>23</sup> The bill specifically excludes as not applicable to the District s. 189.4045(2), F.S., which provides that, unless otherwise provided by law or ordinance, the title and indebtedness of a special district will, respectively, transfer to, and be assumed by, the local general purpose government in the case of dissolution of the special district.

<sup>24</sup> "Supplemental Statement for West Villages Improvement District" prepared in satisfaction of s. 189.404(2)(e), F.S.

<sup>25</sup> See Fla. Stat. § 189.404(3) (2003).

<sup>26</sup> HB 1567 § 10(1) (2004).

<sup>27</sup> HB § 10(1) (2004).

<sup>28</sup> Relating to assessing land for development and for the apportionment of that assessment within a drainage and water control district.

<sup>29</sup> HB 1567 § 10(3) (2004).

<sup>30</sup> HB 1567 § 10(4) (2004).

<sup>31</sup> HB 1567 § 10(5) (2004).

<sup>32</sup> HB 1567 § 10(6) (2004).

<sup>33</sup> HB 1567 § 10(7) (2004).

time<sup>34</sup>. Additionally, no bonds issued by the District shall be required to be validated under ch. 75, F.S.<sup>35</sup>

*Other Revenue-Raising Capabilities* - The District is provided numerous other revenue raising capabilities. The District has the following specific other revenue raising capabilities:

- An annual non-ad valorem assessment including sufficient funds to finance and maintain roads as a part of the plan of improvement.<sup>36</sup>
- Charge access, user, or connection fees and charges for the production, desalination, purification, sales, and distribution of water for consumption, irrigation, or other purpose.<sup>37</sup>
- Charge access, user, or connection fees and charges for the collection, disposal, and reuse of effluent, waste, residue, or other byproducts of a waste and effluent system, to prevent pollution, and to improve water quality.<sup>38</sup>
- Fix and collect rates, fees, rentals, fares, or other charges to recover the cost of making or authorizing the connection to any district facility or system or installing works or improvements on or within district property interests.<sup>39</sup>
- Collect reasonable penalties, including reasonable attorney's fees, against those delinquent in the payment of rates, fees, rentals or other charges.<sup>40</sup>
- Borrow money.<sup>41</sup>
- Collect fees and costs, including construction, review, inspection, copying, engineering, legal, and administrative expenses of the District, as paid by an applicant for authorization to construct structures in, over, under, upon, or occupying district property of right-of ways, or connecting to or utilizing District works.<sup>42</sup>
- To levy non-ad valorem assessments based upon the benefits assessed to the land under ch. 170, F.S.<sup>43</sup>
- Receive grants.<sup>44</sup>
- Levy the amount of the annual installments of the non-ad valorem assessments levied under s. 298.305, F.S.<sup>45</sup>
- Determine, order, levy, impose, collect, and enforce special assessments under ch. 170, F.S., as an alternative, in addition to, or in combination with the levy under s. 298.305, F.S.<sup>46</sup>
- Levy an annual maintenance assessment in lieu of any maintenance assessment under ch. 298, F.S.<sup>47</sup>
- Levy a non-ad valorem organizing assessment.<sup>48</sup>
- Levy a one-time organizational special assessment tax per acre on the lands in a newly created unit.<sup>49</sup>

*Budget Preparation and Approval* -The board of supervisors of the District is required to prepare an annual balanced budget in accordance with generally accepted accounting practices and in the manner prescribed by section 189.418, Florida Statutes.<sup>50</sup>

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<sup>34</sup> HB 1567 § 10(7)(d) (2004).

<sup>35</sup> HB 1567 § 10(12) (2004).

<sup>36</sup> HB 1567 § 3(2)(i) (2004).

<sup>37</sup> HB 1567 § 3(2)(l) (2004).

<sup>38</sup> HB 1567 § 3(2)(m) (2004).

<sup>39</sup> HB 1567 § 3(2)(q) (2004).

<sup>40</sup> HB 1567 § 3(2)(r) (2004).

<sup>41</sup> HB 1567 § 3(2)(t) (2004).

<sup>42</sup> HB 1567 § 3(2)(x) (2004).

<sup>43</sup> HB 1567 § 3(2)(z) (2004).

<sup>44</sup> HB 1567 § 3(2)(ff) (2004).

<sup>45</sup> HB 1567 § 6(1) (2004).

<sup>46</sup> HB 1567 § 6(2) (2004).

<sup>47</sup> HB 1567 § 7 (2004).

<sup>48</sup> HB 1567 § 9 (2004).

<sup>49</sup> HB 1567 § 11(5) (2004).



*Liens and Foreclosure of Liens* – Non-ad valorem assessments shall be liens against the real property against which they were assessed until paid.<sup>51</sup>

*Use of Tax Deeds and Tax Certificates As Appropriate* - The bill makes no provision for the use of tax deeds and tax certificates.

*Contractual Agreements* - The District has the power to “contract and be contracted with.”<sup>52</sup>

#### Methods for Establishing the District

The bill establishes the District.<sup>53</sup>

#### Method for Amending the Charter

The charter of the District may only be amended through action of the Legislature.<sup>54</sup>

#### Membership and Organization of the Governing Board

The bill sets forth the membership and organization of the governing board:<sup>55</sup>

- The District is governed by a board of supervisors composed of five persons elected by the landowners on a one acre-one vote basis.<sup>56</sup> As ownership information is unknown, it appears possible that the property is owned by a single owner, and that a single owner/developer would have a controlling vote until such time as 51% of the acreage ownership is outside of the control of a single owner.
- The term of office of each supervisor is five years and each supervisor serves until their successor is duly elected and qualified.<sup>57</sup> The initial board of supervisors will have terms of 6, 5, 4, 3, and 2 years, respectively to establish staggered terms for the board.<sup>58</sup> After the initial term, elections will be conducted annually in June.<sup>59</sup>
- Members or the board of supervisors may be removed by the Governor at any time for malfeasance, misfeasance, dishonesty, incompetency, or failure to perform duties imposed by ch. 298, F.S.<sup>60</sup>
- Vacant supervisor seats are filled by the remaining supervisors to serve the remaining unexpired term.<sup>61</sup>

#### Maximum Compensation of a Governing Board Member

The supervisors serve without compensation<sup>62</sup>, but shall be reimbursed for their travel expenses in compliance with s. 112.061, F.S.<sup>63</sup>

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<sup>50</sup> HB 1567 § 16 (2004).

<sup>51</sup> HB 1567 §§ 6(1), 7(1), 9, and 11(2) (2004).

<sup>52</sup> HB 1567 §§ 3(2)(s), (u); 10(10); and 11(6) (2004).

<sup>53</sup> HB 1567 § 2(1) (2004).

<sup>54</sup> HB 1567 § 2(4) (2004).

<sup>55</sup> HB 1567 § 4 (2004).

<sup>56</sup> HB 1567 § 4(1) & (2) (2004).

<sup>57</sup> HB 1567 § 4(2) (2004).

<sup>58</sup> HB 1567 § 4(2) (2004).

<sup>59</sup> HB 1567 § 4(4) (2004).

<sup>60</sup> s. 298.11(4), F.S.

<sup>61</sup> HB 1567 § 4(4) (2004).

## Administrative Duties of the Governing Board

The board of trustees shall select a chair and vice chair; and shall elect a secretary and treasurer who may or may not be members of the board.<sup>64</sup>

## Applicable Financial Disclosure, Noticing, and Reporting Requirements

The charter requires the District to prepare and submit reports, budgets, and audits as provided in ss. 189.415 (Special district public facilities report) and 189.418 (Reports; budgets; audits), F.S.<sup>65</sup> However, the charter additionally contains numerous specific disclosure, notice and reporting requirements as follows:

### Disclosure

- The District is required to provide disclosure concerning the District and its assessments to current and potential property owners as provided in s. 20 of the charter; specific disclosure in any contract for sale of real property within the District to the general public.<sup>66</sup> Additionally, according to the Proponent's representatives, the City of North Port required numerous specific additional notice provisions which are found in the Addendum to this bill analysis.

### Notice

- The charter provides that the board of supervisors shall hold their meetings pursuant to ss. 189.416 (Designation of registered office and agent) and 189.417 (Meetings; notice; required reports), F.S.<sup>67</sup>
- Notice of the special meeting of the landowners to elect the first board of supervisors; and two weeks written notice with agenda and backup material to City of North Port.<sup>68</sup>
- Notice of intention to be a candidate for the office of supervisor.<sup>69</sup>
- Notice of all meetings of the landowners; and two weeks written notice with agenda and backup material to City of North Port.<sup>70</sup>
- Notice of meeting regarding division of property into units; two weeks written to City of North Port City Manager; and notice of the formation or organization of a unit(s).<sup>71</sup>

## Authority, Procedures, and Requirements for Issuing Bonds

The charter includes specific and exclusive authority for the issue of bonds<sup>72</sup>, discussed more fully above. (See: *Bond Issuance*) However, s. 298.47, F.S., provides discretionary authority to the board of supervisors of a ch. 298, F.S. district. Additional provisions of ch 298, F.S., address various aspects

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<sup>62</sup> HB 1567 § 4(7) (2004).

<sup>63</sup> s. 298.14, F.S.

<sup>64</sup> HB 1567 § 4(5) (2004).

<sup>65</sup> HB 1567 § 16 (2004).

<sup>66</sup> HB 1567 § 20(2) (2004).

<sup>67</sup> HB 1567 § 16 (2004).

<sup>68</sup> HB 1567 § 4(3) (2004).

<sup>69</sup> HB 1567 § 4(4) (2004).

<sup>70</sup> HB 1567 § 5(1) (2004).

<sup>71</sup> HB 1567 § 11(1) (2004).

<sup>72</sup> HB 1567 § 10(1) (2004).

of the bond process for ch. 298, F.S., districts. Therefore, the exclusivity of s. 10(1) of the bill appears to be an exception to general law.

### Procedures for Conducting Elections or Referenda

The charter contains several provisions specifically addressing either elections or referenda.

#### Elections

The charter contains specific provisions regarding elections as follows:

- Election of board of supervisors.<sup>73</sup>
- Elections regarding the issuance of general obligation bonds.<sup>74</sup>

#### Referenda

The charter does contain provisions regarding referenda for the amendment of a resolution for unit development.<sup>75</sup>

### Qualifications of an Elector of the District

The basis for voting on District matters is one acre-one vote. Thus, any owner of an acre of real property, or fraction thereof, within the District is entitled to cast a vote.<sup>76</sup>

### Methods for Financing the District

The District has numerous methods for financing its work. (See: *Bond Financing and Other Revenue-Raising Capabilities* above)

### Millage Rate Authorized for Ad Valorem Taxes

The district has no ad valorem taxing authority, so no millage rate is authorized.

### Methods for Collecting Non-Ad Valorem Assessments, Fees, or Service Charges

The charter provides the District with authority to levy and collect non-ad valorem assessments, fees and service charges as described below.

#### Non-ad Valorem Assessments

- To provide sufficient funds to finance and maintain roads as a part of a plan of improvements.<sup>77</sup>
- For property, facilities, and services made available by the District; and to recover the cost of making or authorizing the connection to any district facility or system or installing works or improvements on or within District property interests.<sup>78</sup>

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<sup>73</sup> HB 1567 §§ 4 and 14(4) (2004).

<sup>74</sup> HB 1567 § 10(7)(a) (2004).

<sup>75</sup> HB 1567 §§ 11(2), (7) and 14(4) (2004).

<sup>76</sup> HB 1567 §§ 4(3) and 5(1) (2004).

<sup>77</sup> HB 1567 § 3(2)(i) (2004).

<sup>78</sup> HB 1567 § 3(2)(q) (2004).

- Based upon benefits and damages incurred to lands of the district, assessed in relation to a plan of improvement, an engineer's report, or ch. 170, F.S., authorizing documents.<sup>79</sup>
- As levied under s. 298.305, F.S., relating to water control plans.<sup>80</sup>
- For the purpose of paying expenses incurred or to be incurred in organizing the district.<sup>81</sup>

#### Fees and Other Charges

- Related to the production, desalination, purification, sales, and distribution of water for consumption, irrigation, or other purposes.<sup>82</sup>
- For collection, disposal, and reuse of effluent, waste, residue, or other byproducts of sewer systems.<sup>83</sup>
- To recover costs of making or authorizing the connection to any district facility or system or installing works or improvements on or within district property interests.<sup>84</sup>
- Reasonable attorney's fees in relation to delinquencies.<sup>85</sup>
- From applicants seeking authorization to construct structures on district property or for connecting or utilizing the works of the District.<sup>86</sup>

#### Planning Requirements

The charter contains numerous planning requirements related to the infrastructure and other works of the District, but specifically provides that the District does have authority to adopt a comprehensive plan, building code, zoning code, or land development code.<sup>87</sup> There are no other planning requirements in the bill.

#### Geographic Boundary Limitations

The territorial boundaries of the District are set forth in the bill.<sup>88</sup>

#### **Exceptions from General Law**

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

The following provisions of the bill appear to constitute exceptions from general law and are noted along with the Proponent's justification for their inclusion in the bill.<sup>89</sup>

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<sup>79</sup> HB 1567 § 3(2)(z) (2004).

<sup>80</sup> HB 1567 § 6(1) (2004).

<sup>81</sup> HB 1567 § 9 (2004).

<sup>82</sup> HB 1567 § 3(2)(l) (2004).

<sup>83</sup> HB 1567 § 3(2)(m) (2004).

<sup>84</sup> HB 1567 § 3(2)(q) (2004).

<sup>85</sup> HB 1567 § 3(2)(r) (2004).

<sup>86</sup> HB 1567 § 3(2)(x) (2004).

<sup>87</sup> HB 1567, § 19 (2004).

<sup>88</sup> HB 1567 §§ 2(2) and (17) (2004).

<sup>89</sup> Kenneth W. Edwards, Esq., Caldwell & Pacetti, E-mail of 3/26/04.

- Section 2(3) – Excludes s. 189.4045(2), F.S. The Proponent asserts that this was included at the request of the local general purpose government (City of North Port) and comports with the concept that any debt issued by a special district should be the responsibility of that district and without recourse to the State of Florida, the county or municipal governments. Rather, the security for such District debt should be the District's non-ad valorem assessment authority and the usage of s. 197.363 and s. 197.3632, F.S., for the collection of said non-ad valorem assessments.<sup>90</sup>
- Section 7(1) – Provides for a maintenance assessment in lieu of that provided for in ch. 298, F.S. According to the Proponent, the primary reason for use of an alternative provision in lieu of s. 298.54, F.S., is that s. 298.54, F.S., is limited in scope to only those ditches, drains or other improvements made pursuant to the authorities granted in ch. 298, F.S. Since HB 1567 authorizes the construction of additional public infrastructure improvements, there needed to be a means of levying maintenance assessments to pay for the administration, operation and maintenance of these other public infrastructure improvements.
- Section 10(1) – Provides exclusive authority for the issuance of bonds by the District. However, s. 298.47, F.S., provides authority for the issuance of bonds to the board of supervisors of a ch. 298, F.S., district.<sup>91</sup>
- Section 10(12) – Provides that no bonds issued by the District shall require validation under ch. 75, F.S. This section allows, but does not require that the District validate bonds under Chapter 75, Florida Statutes, or other provisions of the law. As indicated in s. 75.02, F.S., any county, municipality, taxing district or other political district, may determine its authority to incur bonded debt by means of a validation proceeding.<sup>92</sup>
- Section 14(3) – Provides that regardless of any contrary language in ch. 298, F.S., ch. 170 authorizing documents, or provisions of the charter, when an amendment is made to the plan of improvement, the engineer's report, or the ch. 170 authorizing documents, no approval or consent of the bondholders shall be required. Under s. 298.77, F.S., adjustments to assessments may only be made provided the owners of 25% of the acreage and the holders of not less than 95% of any outstanding indebtedness, petition for a readjustment of assessments.<sup>93</sup>
- Section 14(4) – Requires a referendum prior to the amendment of a plan of improvement for any unit which has been sold to the general public. Existing law, s. 298.329, F.S., allows the board of supervisors to amend the plan of improvement and levy an additional assessment.<sup>94</sup>

### History of Water Control Districts - Background

As early as the 1830s, the Legislature passed special acts authorizing landowners to construct drainage ditches across adjacent lands for the discharge excess water. Following the passage of

<sup>90</sup> Additionally, the Proponent noted that ss. 197.3633 and 197.3632, F.S., allow the County Tax Collector to include a District's non-ad valorem assessments in the annual uniform real estate tax bill. Therefore, if anyone should fail to pay their annual real property tax bill, the Tax Collector is in a position to sell a Tax Certificate for which there is a significant demand in Florida.

<sup>91</sup> Not addressed by Kenneth W. Edwards, Esq., Caldwell & Pacetti, E-mail of 3/26/04.

<sup>92</sup> The proponent contends that this is discretionary and the proposed provision of H.B. 1567 conforms with that concept as opposed to the provision contained in s. 298.52(7), F.S.

<sup>93</sup> The proponent asserts that it is virtually impossible to obtain the consent of the holders of 95% of outstanding bonds, this requirement is burdensome and not fair to the owners of real property within the District, especially in light of the listed reasons for such a readjustment. In addition, it clarifies whether a contractual veto to never update or change a Plan of Improvements has been bestowed on a bondholder when bonds are sold.

<sup>94</sup> The proponent stated that this was added so that the District could not impose any additional principal debt on a parcel of real property without first holding a referendum when the parcel has already been sold to the general public for residential and non-commercial purposes. This is a safeguard that was requested by the City of North Port which is the local general purpose government.

several special acts creating these districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913. The purpose of this Act was to establish that all drainage districts would be created by 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 Act was amended to change the name of the entities from drainage districts, to water management districts, and finally to water control districts. Although the Legislature did not enact a major reform of the Act in either year, the 1979 amendment repealed provisions in the Act that authorized the creation of water control districts by circuit court decree.

### Ch. 298, F.S., Drainage and Water Control Districts

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

A water control district can be created as a dependant, or an independent special district, and this decision determines the powers and authority wielded by the special district. Section 298.01, Florida Statutes, restricts the creation of independent water control districts to special acts of the Legislature, and dependant water control districts to the provisions of section 125.01, Florida Statutes. 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, jurisdiction within the district's boundaries is given to the circuit court where the majority of the land is located. Once a district is organized, a notice of the first landowners' meeting must be given. This notice must be published once a week for two consecutive weeks in a newspaper of general circulation, in each county where district lands are located. At the first meeting, the landowners are required to elect a three-member board of supervisors. The district supervisors serve for 3-year rotating terms, with one supervisor elected each year at an 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. If acreage owned by the state is subject to assessment by the district, the Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting.

#### 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. Landowners within a district are entitled to one vote per acre of assessable land that they own. Landowners owning less than one assessable acre are entitled to one vote. When all of the landowners' acreage has been aggregated for purposes of voting, landowners with more than one acre of assessable land are entitled to one additional vote for any fraction of an acre greater than 1/2 acre. The section also allows landowners to vote by proxy.

#### 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 amendment. The board of supervisors must 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 amendment, the board of supervisors must consider objections before determining whether or not to proceed with the plan, or amendment. 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 must 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, and completing the water control plan, in addition to an estimate of the benefits derived from it.

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 engineer's report is filed with the secretary of the district.

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

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. Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. The greatest challenge to a valid special assessment is its classification as a tax by the courts.

As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax.

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use, and the parcel's physical characteristics.

A special assessment may provide funding for capital expenditures, or the operational costs of services, provided that the property subject to the assessment derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, storm-water management services, and water and sewer line extensions.

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, a general law may be amended or repealed by a like vote.

Section 298.76, Florida Statutes, is an example of 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 that:

- (a) Changes the method of voting for a board of supervisors for any water control district;
- (b) Provides a change in the term of office of the board of supervisors, and changes the qualifications of the board of supervisors of any water control district; and
- (c) Changes 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.

#### Board of Supervisors

The bill provides for a 5 member elected board, elected on a one-acre, one vote basis. Board members serve without compensation.

### **Chapter 170, F.S. – Supplemental and Alternative Method of Making Local Municipal Improvements**

Chapter 170, F.S., provides municipalities with explicit statutory authority to levy special assessments for making municipal improvements. Under ch. 170, F.S., municipalities have the authority to make local municipal improvements and provide for the payment of all or any part of the costs of such



improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. Such decision by the governing body to make any authorized public improvement and to defray all or part of the associated expenses of such improvement shall be so declared by resolution.

C. SECTION DIRECTORY:

Section 1. Creates the West Villages Improvement District Act.

Section 2. Provides for the District's creation, jurisdiction, and purpose as follows:

- (1) Creates an independent special district in the City of North Port, Sarasota County.
- (2) Provides that the District's boundary is as described in s. 17 of the bill.
- (3) Generally describes purposes of the District.
- (4) Adopts the definitions of chs. 189 and 298, F.S., except as may be otherwise provided for in the bill.

Section 3. Provides for the District's powers, functions and duties as follows:

- (1) Provides that the District, in addition to powers, functions and duties set forth in the act, has the authority to exercise those powers, functions and duties set forth in ch. 298, F.S., to the extent they are not in conflict with the provisions of this act.

(2) Grants specific powers as follows:

- (a) Adopt bylaws by resolution regarding the regulation of the District's affairs and the conduct of its business.
- (b) Adopt rules by resolution for implementation, regulation and enforcement consistent with the District's purposes.
- (c) Adopt an official seal reflecting the name and nature of the district.
- (d) To acquire by grant, loan, purchase, gift, transfer, exchange, dedication, lease, devise, or when necessary to implement the District's public infrastructure works, exercise the right of eminent domain to acquire real or personal property, easements, licenses, estates, or interest in real or personal property for the purposes of the act; and to sell or otherwise convey out all or any portion of those interests to or with other entities.

However, the District is not authorized to obtain fee simple title to real property within the District except by dedication on an approved plat, and with the approval of the North Port Commission, or if otherwise required by another governmental entity or agency.

All District property interests used for nonpublic or private commercial purposes, are subject to all taxes and assessments as if privately owned.

- (e) To finance and carry on specific planning functions related to the design, acquisition, modification and maintenance of components of a "modern comprehensive water management drainage; environmental; mitigation preservation; erosion, quality and control purposes."

However, the District shall agree at the request of the City of North Port and subject to a developer's agreement with the City of North Port, to donate any and turn over operation of any or all of the water management system to the City.

- (f) To regulate, modify, control, and redirect the supply of water within the District, including division of waters between water bodies and control facilities, if consistent with City and Southwest Florida Water Management District rules and regulations.

To control and restrict development and use of natural or artificial water bodies; and to prevent or alleviate erosion, flooding, or water quality problems, in accordance with applicable federal, state and local rules and regulations.

- (g) Related to studies to assist in implementing the District's purposes.

- (h) Related to irrigation works.

- (i) Related to roadways, parkways, bridges, bicycle and jogging paths, street lighting, entry features, traffic signals; including an annual non-ad valorem assessment

- (j) Related to entry features, garages, parking facilities, district offices, buildings, facilities, and structures.

- (k) Related to community of public preserves, uplands, wetlands, playgrounds, parks, gymnasiums, stadiums, ballfields, greenways, waterways, and facilities for indoor and outdoor recreational, sport, cultural and educational uses.

- (l) Related to the production, desalination, purification, sales, and distribution of water for consumption, irrigation, or other purposes.

- (m) Related to the collection, disposal and reuse of effluent, waste, residue, or other byproducts of a sewer system; the prevention of pollution, and improvement of water quality; including the charging of connection fees and charges.

- (n) Related to mosquito control

- (o) Related to preservation areas, conservation areas, environmental areas, mitigation areas, and wildlife habitat or sanctuaries, including the maintenance of any plant or animal species.

- (p) Related to systems and facilities for school buildings and related structures.

- (q) To levy non-ad valorem assessments; establish and collect rates, fees, rentals, fares or other charges for property, facilities, and services made available by the district; to

- (r) To discontinue service and charge reasonable penalties, including attorney's fees, related to delinquent charges.

- (s) To enter agreements.

- (t) To borrow money, issue negotiable or other bonds, and issue negotiable or other notes, in anticipation of the collection of levies, fees, penalties, charges, fares, and assessments or revenues of the district; to pledge such non-ad valorem assessments and other revenues to secure bonds, note or other obligations, and to sell, discount, negotiate or dispose of such instruments.

- (u) Related to the provision of safety enhancements.

- (v) Related to fire prevention, including the construction or purchase of fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
- (w) Related to the application for permits and to enter contracts; to employ consultants and other employees and agents.
- (x) Require any individual or entity to obtain written authorization for use of certain district property, rights-of-way, or to connect to works of the district.
- (y) Related to ch. 170, F.S., authorizing documents (Supplemental and Alternative Method of Making Local Municipal Improvements).
- (z) Related to assessing benefits and damages to the district's lands as regards ch. 170, F.S.
- (aa) Related to the establishment of departments, committees, boards, or other agencies, including a public relations committee.
- (bb) Related to compliance with the City of North Port comprehensive plan, unified land development code, zoning code and other city codes.
- (cc) Related to employee benefits.
- (dd) Related to the investment of surplus funds.
- (ee) Requiring the submittal of an infrastructure improvements plan to the City of North Port.
- (ff) Related to grants.

(3) Authority related to utilizing ch. 170, F.S., for the exercise of the district's powers beyond its territorial boundary, when necessary to benefit the district's lands.

Section 4. Related to the board of supervisors, their election, organization, powers, duties and term of office, including board member qualifications, and board vacancies.

Section 5. Related to landowner meetings.

Section 6. Related to installment assessments, levy, apportionment, and collection thereof.

Section 7. Related to a maintenance assessment in lieu of the maintenance assessment provision of ch. 298, F.S.

Section 8. Related to the compensation of the property appraiser and tax collector.

Section 9. Related to acreage assessment for payment of initial formation and organization expenses.

Section 10. Related to the issuance of bonds, the sale and disposition of proceeds; interest; levy to pay bonds; bonds and duties of treasurer; includes the authority to issue refunding bonds, revenue bonds, and general obligation bonds.

Section 11. Related to unit development; the powers of the supervisors to designate units of development and to adopt systems of progressive development by units; plan of improvements and financing assessments, for each unit.

Section 12. Related to eminent domain.

Section 13. Related to defining 51% of acreage for any purpose.

Section 14. Related amending the plan of improvements, engineer's report, or ch. 170 authorizing documents.

Section 15. Related to meetings and notices.

Section 16. Related to reports, budgets, and audits.

Section 17. Legally describing the district boundary.

Section 18 Related to severability.

Section 19. Related to limitation on powers.

Section 20. Related to public disclosure.

Section 21. Relates to criteria for a preservation area land sale.

Section 22. Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

January 24, 2004.

WHERE?

*Sarasota Herald-Tribune*, a newspaper published at Sarasota, in Sarasota County.

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

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill contains rulemaking authority at s. 3(2)(h) for the control of traffic, noise levels, crime, and the use of the roadways by those authorized.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Supremacy clauses: Supremacy clauses are provisions that attempt to resolve conflicts between legislative enactments by assigning supremacy or prominence to one provision or set of provisions over another. When specifically stated as in “notwithstanding the provisions of s. \_\_\_, F.S., the provisions of this section shall govern,” the provision is helpful in declaring the Legislature’s intentional action to give superiority of one provision over another. However, when stated generally, the determination of superiority between provisions is left not to the Legislature, but rather to the court system to determine. An example of a general supremacy clause follows. “In the event of a conflict between the provisions of this act and any other act, the provisions of this act will govern.” Such general provisions should be deleted.

- Section 3(1) of the bill contains a supremacy clause that should be removed.<sup>95</sup>
- Section 14(3) of the bill contains a supremacy clause that should be removed.<sup>96</sup>
- Section 14(4) of the bill contains a supremacy clause that should be removed.<sup>97</sup>
- Section 11(7) of the bill contains a supremacy clause that should be removed.<sup>98</sup>

Community Improvement Authority: The charter states that among its purposes, which are to be “liberally construed” are the first three sections of the Community Improvement Act,” ss. 189.430-189.432, F.S. These provisions relate to improvements in urban downtown areas and to sports facilities. According to a representative of the developer, these three sections were inadvertently included in the bill and should be deleted.<sup>99</sup>

Subsequent Reorganization of the Charter: The bill, and the district charter contained therein, appears to be the product of numerous public meetings and extensive negotiations between the Proponent and local government. The charter as contained within the bill would benefit from reorganization in a subsequent Legislative Session. Reorganization could more clearly track the sectional headings of the statutory sections from which the District draws substantial powers and more clearly delineate when a specific provision in the charter is intended to supercede specific authority contained in the statutes. Such reorganization would ultimately prove most beneficial to the eventual residential and commercial landowners within the District in their efforts to understand the District’s functions, authorities, and duties.

#### **IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES**

On April 14, 2004, the Committee on Local Government & Veterans’ Affairs adopted one strike all amendment and two amendments to the strike all.

The strike all amendment contained the following features:

- Removed the ability of the District to expand within unincorporated Sarasota County. [s. 2(4) – lines 53-57].
- Removed the District’s power of eminent domain in unincorporated Sarasota County and removes the power of eminent domain outside of the boundaries of the district and within the City of North Port. [s. 3(1) - lines 62-67].

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<sup>95</sup> The supremacy language found at lines 66-67 is “...to the extent same are not in conflict with the provisions of this act.”

<sup>96</sup> The supremacy language found at line 1122 is “Regardless of any language to the contrary...”

<sup>97</sup> The supremacy language found at line 1133 is “Notwithstanding anything to the contrary...”

<sup>98</sup> The supremacy language found at line 1056 is “Notwithstanding anything to the contrary contained... in Florida Statutes...”

<sup>99</sup> Charles L. Geer, P.E., Kimley-Horn and Associates, Inc., E-Mail of 3/26/04.

- Added a restriction to the District's ability to construct improvements within the district that would cause concurrency regulated facilities in unincorporated Sarasota County to drop below adopted level of service standards without paying "Fair Share" contribution to Sarasota County. [s. 3(2)(gg) – between lines 416-417].
- Added a section which gives the District the power to collect "Fair Share" contributions from the County should the County approve a development in unincorporated Sarasota County which creates impacts to concurrency regulated facilities within the district. [s. 3(2)(hh) – between lines 416-417 and following (gg) added above].
- Added requirements regarding the District's authority to construct improvements outside of the District's territorial boundaries. [s. 3(3) – following the period on line 425].
  - Such construction must be in compliance with the County's comprehensive plan, master plans, and thoroughfare plan.
  - Requires the District to cooperate and coordinate its activities with the City and the County.
  - Authorizes the district to enter into interlocal agreements.
  - Requires the District to provide copies of planned infrastructure projects to the County; and provides a 20 day comment period to the County.
- Added language between the word "municipality" and the comma that requires the District board to approve the use of eminent domain, and removes the authority for the District to exercise eminent domain within unincorporated Sarasota County. [s. 12, line 1070].
- Added a requirement for the District board to approve use of eminent domain, removes power of the District to exercise power of eminent domain in unincorporated Sarasota County. [s. 14(1), lines 1101-1113].
- Corrected a scrivener's error to add legal description of an area which was previously annexed into the City and inadvertently omitted from the bill as drafted [After the period on line 1309 and before the word "LANDS" on line 1311].
- Corrected the total acreage figure on line 1346 from 7853.3497 to 8193.7478 acres.
- Added a new s. 21 related to criteria for a preservation area land sale; and renumbers the remaining section.

Amendment 1 to Amendment No. 1 added the "the county" to s. 3(2)(gg), line 409 following the word "to".

Amendment 2 to Amendment No. 1 removed the words "or beyond" from s. 12, lines 1099-1100.

ADDENDUM TO

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS  
HB 1567 (2004)

**Request:** Identify those powers listed in H.B. 1567 that are more limited or circumscribed than those authorized in Chapter 190, Florida Statutes.

**Proponent's Response:** Please see the chart below that reflects those powers that have been limited. The development of the language contained in H.B. 1567 was a cooperative process between the owner of the property and the City of North Port Commission and Staff. During development of the Bill, the over-arching requirement of the City was that the District's powers be specifically tailored and limited to reflect the City's situations.

In the bill as filed, it is clear that the District powers and responsibilities are similar to the powers conferred on Community Development Districts (CDDs) under ch. 190, F.S., except that the powers and responsibilities have very specific limitations and requirements requested by the City of North Port.

The table below provides references to the sections that contain the limitations requested by the City of North Port: (Line Numbers refer to HB 1567, as filed)

Section	Line Numbers	Restriction
2 (4)	54-57	Requires approval of the City to expand District's powers or boundaries.
3 (2)(d)	89-99	Prohibits District from obtaining real property without approval of City and restricts ability of District to remove property from tax rolls.
3 (2)(e)	100-102	Requires consistency with City plans and ordinances.
3 (2)(e)	110-116	Requires District to donate water management system to the City.
3 (2)(f)	118-120	Requires consistency with City and SFWMD Rules
3 (2)(h)	135-137	Requires consistency with City plans and ordinances.
3 (2)(i)	140-142	Requires consistency with City plans and ordinances.
3 (2)(i)	162-168	Restricts Districts ability to limit access on roads
3 (2)(i)	169-172	Requires consistency with City plans and ordinances.
3 (2)(i)	172-178	Requires District to donate roadway system to the City.
3 (2)(j)	179-181	Requires consistency with City plans and ordinances.
3 (2)(k)	185-187	Requires consistency with City plans and ordinances.
3 (2)(l)	195-197	Requires consistency with City plans and ordinances.
3 (2)(l)	202-205	Requires District to obtain approval from City prior to constructing a water system
3 (2)(l)	205-211	Requires District to donate water system to the City.
3 (2)(m)	212-214	Requires consistency with City plans and ordinances.

<b>Section</b>	<b>Line Numbers</b>	<b>Restriction</b>
3 (2)(m)	220-222	Requires District to obtain approval from City prior to constructing a wastewater system
3 (2)(m)	223-228	Requires District to donate wastewater system to the City.
3 (2)(n)	229-230	Requires consistency with other responsible agencies or authorities.
3 (2)(o)	235-237	Requires consistency with City plans and ordinances.
3 (2)(o)	243-245	Requires District to provide City and public access to certain improvements.
3 (2)(p)	246-248	Requires consistency with City plans and ordinances.
3 (2)(p)	254-258	Requires District to obtain approval from City and School Board prior to constructing school facilities.
3 (2)(v)	309-315	Requires District to donate fire and EMS facilities to the City.
3 (2)(x)	328-337	Authorizes District to require developers of private facilities in the District to conform to City plans, rules, regulations, etc.
3 (2)(x)	345-347	Mandates that any conflicts between City and District plans, rules, etc. be resolved in favor of the City.
3 (2)(aa)	391-394	Prevents District from superseding powers of City.
3 (2)(bb)	395-399	Requires consistency with City plans and ordinances.
3 (2)(ee)	406-410	Addresses coordination of District Capital Improvement Plan (CIP) with City CIP.
3 (2)(ff)	413-416	Requires prior approval from City for District to apply for grants.
3 (3)	424-425	Requires consistency with City plans and ordinances.
4 (3)	447-453	Requires District to publish notice in the newspaper the City uses; requires District to provide meeting notices and agenda to City Manager; requires that District meetings be held within City.
5 (1)	523-530	Requires District to publish notice in the newspaper the City uses; requires District to provide meeting notices and agenda to City Manager; requires that District meetings be held within City.
10 (2)	637-638	Requires that District debt be non-recourse to the City
11 (1)	879-882	Requires District to publish notice in the newspaper the City uses; requires District to provide notices to City Manager.
11 (7)	1056-1064	Requires District to obtain a referendum vote of qualified electors as a condition of any amendment which would increase the principal debt load on properties owned by those electors.



<b>Section</b>	<b>Line Numbers</b>	<b>Restriction</b>
14 (4)	1133-1141	Requires District to obtain a referendum vote of qualified electors as a condition of any amendment which would increase the principal debt load on properties owned by those electors.
19	1358-1379	Section 19 in it's entirety is devoted to enumerating that the District's powers are limited and superceded by the City.
20	1380-1410	Section 20 in it's entirety is devoted to special provisions of disclosure to potential purchasers of the existence of the District, the assessments on the property. The terms of Section 20 were specifically requested by the City.

There are no similar limitations imposed upon the powers authorized in Chapter 190, Florida Statutes, nor is there a reasonable means of imposing such limitations on a Community Development District created pursuant to Chapter 190. This is one of the primary reasons why the formation of the proposed West Villages Improvement District is being implemented pursuant to Chapter 189, Florida Statutes., rather than as a Community Development District option contained in Chapter 190, Florida Statutes.