

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1421 Indian River Farms Water Control District, Indian River County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u></u>	<u>Smith</u>	<u>Hamby</u>
2) <u>Finance & Tax Committee</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Indian River Farms Water Control District (District) is an independent special district located in Indian River County. The District was created under ch. 6458 (1913), L.O.F., a general law relating to the creation, organization, and maintenance of drainage districts. The decree of the circuit court for the Fifteenth Judicial Circuit, in St. Lucie County, created the District under ch. 6458 (1913), L.O.F., which has been amended by subsequent special acts. The District was originally in St. Lucie County. Indian River County was established in 1925 by ch. 19148 (1925), L.O.F., from land previously in St. Lucie County.

The bill deletes specified provisions relating to the District board and officers, general and special powers of the District, maximum amount of negotiable notes or certificates of indebtedness outstanding at any one time, bond issuance and valuations, taxation, non-ad valorem assessments, and user fees. The bill provides for the District's powers and authority to be in accordance with chapters 189 and 298, F.S.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- providing legal boundaries of the District;
- providing a maximum payment of the county tax collector from the proceeds of the maintenance tax;
- authorizing the District to enter into valid and legally binding covenants and agreements with bondholders;
- providing for per diem and mileage for board supervisors; and
- authorizing the District to levy fines for the introduction of pollutants into the waters of the District, and legal prosecution proceedings.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

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 initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows 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. 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. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 173 special districts have codified their charters.

Status Statement Language

Section 189.404(5), F.S., 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.

Indian River Farms Water Control District

The Indian River Farms Water Control District (District) is an independent special district located in Indian River County. The District was created under ch. 6458 (1913), L.O.F., a general law relating to the creation, organization, and maintenance of drainage districts. The decree of the circuit court for the Fifteenth Judicial Circuit, in St. Lucie County, created the District under ch. 6458 (1913), L.O.F., which has been amended by subsequent special acts. The District was originally in St. Lucie County. Indian River County was established in 1925 by ch. 19148 (1925), L.O.F., from land previously in St. Lucie County. The District has three elected board members. The District only levies non ad-valorem assessments.

Changes to the Indian River Farms Water Control District Charter

The bill deletes specified provisions relating to the District board and officers, general and special powers of the District, maximum amount of negotiable notes or certificates of indebtedness outstanding at any one time, bond issuance and valuations, taxation, non-ad valorem assessments, and user fees. The bill provides for the District's powers and authority to be in accordance with chapters 189 and 298, F.S.

This bill codifies, or reenacts, all prior special acts of the district into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill contains provisions which do not simply codify existing law, but amend the charter of the District, including:

- providing legal boundaries of the District;
- providing a maximum payment of the county tax collector from the proceeds of the maintenance tax;
- authorizing the District to enter into valid and legally binding covenants and agreements with bondholders;
- providing for per diem and mileage for board supervisors; and
- authorizing the District to levy fines for the introduction of pollutants into the waters of the District, and legal proceedings for prosecution.

Charter of the District

- Section 1: Provides for the creation of the District; provides for the legal boundaries of the District.
- Section 2: Ratifies, approves, validates, and confirms all of the acts and proceedings of the board of supervisors and all officers and agents of Indian River Farms Water Control District in Indian River County acting for and on behalf of said District.
- Section 3: Provides for the District's powers and authority to be in accordance with ch. 298, F.S., except as otherwise provided.
- Section 4: Provides taxes will be levied and apportioned pursuant to ch. 298, F.S., and amendments thereto, except as otherwise provided herein.
- Section 5: Provides for maintenance taxes per general law; provides for the collection of the taxes; provides said taxes will be a lien on the property until paid and enforced as are county taxes.
- Section 6: Provides all taxes levied by the district that become delinquent shall bear penalties in the same manner as county taxes.
- Section 7: Provides District must pay the County annually an amount equal to 1 percent of the total taxes of the district, and the Tax Collector of Indian River County must be paid annually an amount equal to 1 percent of the total taxes of the district collected, for their respective services to the District for respectively assessing and collecting the taxes, provided, however, that the total amount to be paid to the county and tax collector in any one year must not exceed the sum of \$1,500 to each; provides all compensation paid the county and the tax collector must be paid from the proceeds of the maintenance tax; provides the services of the county and the county tax collector in assessing and collecting the taxes are declared to be special services performed directly for the District and the amounts paid will not be considered a part of the general income of their

respective offices, nor will it come under the provisions of ss. 116.03, 145.10, and 145.11, F.S.; provides the personnel required to do the special work must be paid for the special services by the county or the tax collector, as the case may be, from the receipts provided for the purpose.

- Section 8: Provides all drainage taxes levied by the District, together with all penalties for default in payment of the taxes and all costs in collecting the taxes, must constitute a lien of equal dignity with the liens for county taxes, and other taxes of equal dignity with county taxes, and all the lands against which taxes must be levied; provides a sale of any of the lands within the District for county or other taxes must not operate to relieve or release the lands sold from the lien for subsequent installments of District taxes, which lien may be enforced against the lands as though no sale had been made.
- Section 9: Provides for the issuance of bonds.
- Section 10: Authorizes the District to issue warrants or negotiable notes or other evidences of indebtedness or bond anticipation notes.
- Section 11: Provides for the District tax book.
- Section 12: Provides the secretary of the District may describe each tract of land according to any plat or subdivision, or by metes and bounds, or by any other convenient and feasible manner, stating the actual number of acres contained in the tract to the best of his or her knowledge, and the owner is required to pay taxes only by the acreage as shown by the District tax book.
- Section 13: Provides for the annual landowners' meeting.
- Section 14: Provides that it is unlawful for any person, firm, or corporation to connect or to maintain a connection of any farm ditch with any of the canals, ditches, laterals, or waterways constructed, controlled, or maintained by the District, except in accordance with plans and specifications showing method of the connection as prescribed by the board of supervisors; provides any violation of this act will be punished by the general law for punishment of misdemeanors; provides the board of supervisors will have the right and power to cause any connection constructed or maintained in violation of this act to be blocked or stopped up.
- Section 15: Authorizes the District to construct, install, and maintain locks, dams, and other works and facilities in the canals, ditches, and drains in the District and elsewhere.
- Section 16: Provides for raising money to pay for the cost of constructing and installing the water control and water conservation works and facilities, and to pay the principal of and interest on any bonds or other obligations which may be issued to provide funds; authorizes the board of supervisors to levy, assess, and cause to be collected an annual tax on all lands in the District subject to taxation; provides the tax must be at a uniform rate for all lands within the District and must be assessed against each acre, fraction, or fractional interest therein.
- Section 17: Provides the District is for public purposes, and the works and facilities of the District are declared to confer benefits on all lands equal to the taxes levied on said lands.

- Section 18: Provides no landowner in the District will be permitted to vote at any landowners' meeting of the District for any lands in the District on which the drainage taxes are delinquent at the time of the meeting.
- Section 19: Provides for a quorum; provides for the election of the board supervisors.
- Section 20: Authorizes the board to assess and levy a minimum drainage tax.
- Section 21: Authorizes and empowers the board of supervisors to expend the funds of the District.
- Section 22: Prohibits acquisition of property of the District by eminent domain.
- Section 23: Defines "absolute necessity," relating to the District's exercise of eminent domain.
- Section 24: Authorizes District to grant permits as it deems proper in allowing any access over, under, or across its lands.
- Section 25: Authorizes the District to enter into valid and legally binding covenants and agreements with the bond holders.
- Section 26: Grants the District the power to covenant and agree with the holders of the bonds that all of the fees and expenses for the levy and collection of taxes in the District and of any trustees or other custodians of the bond proceeds or of the construction funds or debt service funds or reserves or the cost of the expenses of any annual audits or of any other annually recurring services or costs must be paid from the maintenance taxes.
- Section 27: Declares surface waters, which shall include rainfall and the overflow of rivers and streams, are a common enemy of the District. Provides the District, and any person holding a permit from the District, to have the right to take actions to divert or pump water to protect property.
- Section 28: Provides for per diem and mileage for the board.
- Section 29: Authorizes the District to levy fines for the introduction of pollutants into the waters of the District, for violation of any rule or regulation promulgated by the Florida Department of Environmental Protection, for violation of the United States Clean Water Act, 33 U.S.C. ss. 1251-1387, or for violation of the conditions of any National Pollutant Discharge Elimination System permit; provides for legal proceedings for prosecution.
- Section 30: Provides for severability.

C. SECTION DIRECTORY:

- Section 1:** Provides that the bill constitutes the codification of all special acts relating to the District; provides legislative intent.
- Section 2:** Codifies, reenacts, amends and repeals chapters 8882 (1921), 9988 (1923), 10693 (1925), 12057 (1927), 12058 (1927), 14737 (1931), 16048 (1933), 17066 (1935), 19188 (1939), 23906 (1947), 28403 (1953), 57-1104, 63-832, and 67-843, L.O.F.
- Section 3:** Recreates the District and recreates and reenacts the charter of the District.

Section 4: Repeals chapters 8882 (1921), 9988 (1923), 10693 (1925), 12057 (1927), 12058 (1927), 14737 (1931), 16048 (1933), 17066 (1935), 19188 (1939), 23906 (1947), 28403 (1953), 57-1104, 63-832, and 67-843, L.O.F.

Section 5: Provides for the bill to take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? August 24, 2004.

WHERE? *Scripps Treasure Coast Newspaper*, Vero Beach, Indian River 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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the Authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Notice

The published notice of intent to seek legislation states that this act provides for codification of the existing charter of the Indian River Farms Water Control District (of Indian River County) as required by section 189.429, F.S.; the notice does not state that the charter is being amended.

Status Statement

The bill does not provide that the district is an independent special district pursuant to section 189.404(5), F.S.

Validation and Ratification

The bill codifies in section 1 of the charter that the District, and all subsequent proceedings taken in said circuit court concerning said district are hereby ratified, confirmed, and approved, including its territorial boundaries as follows:... and also in section 2 of the charter that all acts and proceedings of the board of supervisors and all officers and agents of Indian River Farms Water Control District in Indian River County acting for an on behalf of said district be and they are hereby ratified, approved, validated, and confirmed.

As a general rule, the legislature may ratify, validate, or confirm through a curative act anything that it could have authorized initially if the subsequent statute or other measure is itself a proper exercise of legislative power under the State Constitution.¹

The Florida Supreme Court has upheld a variety of curative acts of the legislature, including curative acts ratifying or validating special assessments, certain tax levies, municipal contracts, county contracts, and bond issuances. However, the court also invalidated a general law intended to ratify unspecified actions of municipalities and their officers performed under special and local laws.² In support of its conclusion, the court stated that “[The statute] is too general to be effective. A curative Act contemplates that the legislature has been advised of the nature of the matters done and performed which it purports to validate, ratify or confirm and any law as general as the aforesaid section which attempts to validate any and all acts and doings of a class of officers or public corporations is too general to be effective as a valid exercise of legislative power.”

Other Comments

Mr. Michael O’Haire, Esq., representing the District, sent the following letter relating to the boundaries of the District:

The lengthy legal description of the boundaries of the Indian River Farms Water Control District comes from two sources: First, the District was originally established by Circuit Court Order in 1913 when the District was incorporated by an agricultural developer which at the time owned virtually all of the lands within the District. Subsequently, in 1921, the District was expanded and the legal description was amended to include additional lands through a condemnation proceeding in the Circuit Court. Today the District makes up 50,000 acres including most of the City of Vero Beach.

Over the years since the District was created, it has evolved from an agricultural swamp reclamation project to an urban area which no longer is substantially agricultural. With urbanization, debris and obstruction in the District’s canals and ditches has increased exponentially as land fill fees levied by Indian River County have increased and made the temptation to dump trash in the District without payment of fees in canals and ditches. Accordingly, the District feels it essential that it have the power to levy fines for dumping on its property.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

¹ *Charlotte Harbor & Ny. Co. v. Welles*, 260 U.S. 8 (1922); *State v. Sarasota County*, 155 So. 2d 543 (Fla. 1963); *State v. Haines City*, 137 Fla. 616, 188 So. 831 (1939); *Dover Drainage Dist. v. Pancoast*, 102 Fla. 267, 135 So. 518 (1931); *City of Winter Haven v. A. M. Klemm & Son*, 132 Fla. 334, 181 So. 153 (1938), reh’g denied, 133 Fla. 525, 182 So. 841 (1938).

² *Certain Lots Upon Which Taxes are Delinquent v. Town of Monticello*, 31 So.2d 905 (Fla. 1947); *Sullivan v. Volusia County Canvassing Bd.*, 679 So.2d 1206 (Fla. 5th DCA 1996) (citing *Certain Lots*).