

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1205 Indian River Farms Water Control District, Indian River County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

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

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.

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:

- Deleting 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.
- 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 that a quorum will consist of land owners and proxy holders of district acreage who are present at a noticed landowners' meeting.
- Providing for per diem and mileage for board supervisors.
- 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 2006-07 or 2007-08.

This bill may provide an exemption from the provisions of 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.

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

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 the 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., 201 special districts (includes local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

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

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:

- Deleting 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.
- Providing legal boundaries of the District [Please see III. COMMENTS].
- 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 that a quorum will consist of land owners and proxy holders of district acreage who are present at a noticed landowners' meeting.
- Providing for per diem and mileage for board supervisors.
- Authorizing the District to levy fines for the introduction of pollutants into the waters of the District, and legal prosecution proceedings.

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 prior to August 2, 1921 (the effective date of chapter 8882 (1921), L.O.F.) 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.¹
- Section 6: Provides all taxes levied by the district that become delinquent shall bear penalties in the same manner as county taxes.²
- Section 7: Provides the 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

¹ See ch. 67-843, L.O.F. § 2.

² See ch. 67-843, L.O.F. § 4.

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.³
- Section 9: Provides for the issuance of bonds by the board of supervisors, without the approval of the board of drainage commissioners as provided for in s. 298.47, F.S.
- 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.⁴
- 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.⁵
- Section 13: Provides for the annual landowners' meeting.⁶
- 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.⁷
- 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.⁸

³ See ch. 67-843, L.O.F. § 5.

⁴ See ch. 9988, L.O.F., 1923, § 2.

⁵ See ch. 9988, L.O.F., 1923, § 3.

⁶ See ch. 9988, L.O.F., 1923, § 5.

⁷ See ch. 10693, L.O.F., 1925, § 1. [Note.-The district was originally in St. Lucie County. Indian River County was established in 1925 by ch. 10148, L.O.F., 1925, from land previously in St. Lucie County.]

⁸ See ch. 23906, L.O.F., 1947, § 1.

- 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.⁹
- 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.¹⁰
- 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.¹¹
- Section 19: Provides for a quorum; provides for the election of board supervisors.¹²
- Section 20: Authorizes the board to assess and levy a minimum drainage tax.¹³
- Section 21: Authorizes and empowers the board of supervisors to expend the funds of the District.¹⁴
- Section 22: Prohibits acquisition of property of the District by eminent domain.¹⁵
- Section 23: Defines "absolute necessity," relating to the District's exercise of eminent domain.¹⁶
- Section 24: Authorizes the District to grant permits as it deems proper in allowing any access over, under, or across its lands.¹⁷
- 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.

⁹ See generally ch. 23906, L.O.F., 1947, § 2.

¹⁰ See ch. 23906, L.O.F., 1947, § 5.

¹¹ See ch. 28403, L.O.F., 1953, § 1.

¹² See generally ch. 28403, L.O.F., 1953, § 2.

¹³ See ch. 57-1104, L.O.F. § 3.

¹⁴ See ch. 57-1104, L.O.F. § 4.

¹⁵ See ch. 63-832, L.O.F. § 2.

¹⁶ See ch. 63-832, L.O.F. § 1.

¹⁷ See ch. 63-832, L.O.F. § 3.

Section 29: Provides for severability.

C. SECTION DIRECTORY:

- Section 1: Provides that the reenactment of existing law in this bill may not be construed as a grant of additional authority; 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? November 7, 2005.

WHERE? *Scripps Treasure Coast Newspapers*, 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.

Exemption to General Law

Current law states that “the board of supervisors may, if in their judgment it seems best, issue bonds not to exceed 90 percent of the total amount of the non-ad valorem assessments, exclusive of the amount for interest, levied under the provisions of s. 298.305, in denominations of not less than \$100, bearing interest from date at rate as provided by general law, payable semiannually, to mature at annual intervals within 30 years, commencing after a period of years not later than 10 years, to be determined by the board of supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the president of the board of supervisors, attested with the seal of said district and by the signature of the secretary of the said board. Section 12, Art. VII of the State Constitution shall be complied with as to all such bonds as are within its purview. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of supervisors may deem necessary to meet the payments for the works and improvements in the district. Said treasurer shall, at the time of the receipt by him or her of said bonds, execute and deliver to the president of the board of said district, a bond with good and sufficient sureties to be approved by the said board of supervisors, conditioned that the treasurer shall account for and pay over, as required by law and as ordered to do by said board of supervisors, any and all money received by him or her on the sale of such bonds, or any of them, and that the treasurer will only sell and deliver such bonds to the purchaser or purchasers thereof, under and according to the terms herein prescribed, and that the treasurer will return, duly canceled, any and all bonds not sold to the board of supervisors when ordered by said board so to do, which said surety bond shall remain in the custody of the said president of said board of supervisors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do.”¹⁸

Section 9 of the charter states that the board of supervisors may issue bonds without the approval of the board of drainage commissioners, as provided in s. 298.47, F.S.

Other Comments

Mr. Gregg M. Casalino, Esq., with O’haire, Quinn, Candler & Casalino, 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.

HB 1421 (2005 Legislative Session), relating to the Indian River Farms Water Control District, Indian River County, was vetoed by the Governor on June 20, 2005. According to the veto letter, the bill expanded the district’s powers by allowing the district to levy fines against those who pollute the district’s canals and those who violate Florida law, the federal Clean Water Act, and the federal National Pollutant Discharge Elimination System.

Drafting Issues

On line 416 of the bill, an obsolete term ‘drainage commissioners’ should be amended to ‘supervisors.’

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not Applicable.

¹⁸ See s. 297.47, F.S., (2005).