HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1559 Brevard County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill creates the Viera Stewardship District (district), which encompasses approximately 14,000 undeveloped acres within Brevard County, for the purpose of providing community development systems, facilities, services, projects, improvements, and infrastructure to the area. The bill provides the minimum requirements that must be included in the charter when creating an independent special district. The bill authorizes the district to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, hardscaping, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the district; conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements; buildings and structures for district offices, maintenance facilities, meeting facilities, community centers, or any other project authorized by this bill. The district may, using its general and special powers, provide any project within or without the boundaries of the district when the project is the subject of an agreement between the district and the Brevard County Board of County Commissioners or with any other applicable public or private entity, or is approved or required by a development order and is not inconsistent with the effective local comprehensive plan.

The district may levy user charges and fees; non-ad valorem maintenance taxes as authorized by general law; and special assessments. The district may impose ad valorem taxes not to exceed 3 mills upon voter approval at referendum conducted after the entire board is elected by electors of the district.

The bill creates a five-member Board of Supervisors to govern the district. The Board is initially elected on a one-acre/one-vote basis, however, as population in the district increases, members are elected by qualified electors of the district. Five years after creation, one board member will be elected by qualified electors, and ten years after creation a second board member is elected by qualified electors. When the district is populated by 60 percent of the projected total qualified electors, the third governing board member is elected by qualified electors. Five years later, all five board members are elected by qualified electors. It is not known when the district will be populated by 60 percent of the projected total qualified electors.

The attached Economic Impact Statement does not project any fiscal impact in FY 05-06 and FY 06-07; however, the district is authorized to levy special assessments, fees, non ad-valorem assessments, and ad valorem taxes (upon approval at referendum) but the amount of revenues generated by these assessments is indeterminate. The district is authorized to perform numerous functions and undertake a wide range of projects within the district; therefore, expenditures are expected to be substantial but indeterminate.
This bill appears to provide exemptions 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. [Please see p. 20 of this analysis.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill creates an independent special district that is authorized to perform a wide range of functions within its jurisdictional boundaries and extraterritorially, and that may adopt a wide range of administrative rules pursuant to ch. 120, F.S.

Provide for Lower Taxes: The district is authorized to raise revenues by levying ad valorem taxes up to 3 mills, if approved at referendum; non-ad valorem maintenance taxes; non-ad valorem assessments; benefit special assessments; maintenance special assessments; special assessments; and fees, or service charges.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Special Districts Generally

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; rather, they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter.

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s.189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and Board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

Election Procedure for Independent Special Districts Generally

The bill specifies that "[t]he transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes." Section 189.4051, F.S., provides a transition process for boards of special districts to convert from board members elected on a one-acre-one vote basis, to board members elected by qualified electors of the district. That section requires a referendum to be called by the board of a district that is elected on a one-acre/one vote basis on the question of whether certain members of a district governing board should be elected by qualified electors, provided that all of the following conditions are satisfied at least 60 days prior to the referendum:

1. The district has a total population of at least 500 qualified electors; and
2. A petition signed by 10 percent of the qualified electors is filed with the governing board and certified by the supervisor of elections.

If the qualified electors approve the election procedures described in s. 189.4051(2), F.S., the board must be increased to five members and elections must be held pursuant to that provision. After approval, the board must prepare maps of the district describing the "urban areas"[1] within the district. A process is provided in statute for landowners or qualified electors to contest the accuracy of the urban area maps. Upon adoption of the urban area maps by the board, the maps are used to determine the extent of urban area within the district and the number of governing board members to be elected by qualified electors and those elected on a one-acre/one-vote basis.

If the electors disapprove the election procedure, elections of board members continue as described by general law or enabling legislation of the district.

Community Development Districts

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments. Community Development Districts (CDDs) must be contained within the boundaries of a single county. CDDs consisting of 1,000 acres or more must be created by rule adopted by the Florida Land and Water Adjudicatory Commission granting a petition for the establishment of the CDD, whereas CDDs with less than 1,000 acres must be created pursuant to county ordinance.

Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges. Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located. As of November 2003, there were 210 active CDDs in Florida.

Section 190.012, F.S., specifies the types of infrastructure CDDs are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and waste water management, reclamation, and reuse; bridges or culverts; roads; street lights; parks and other outdoor recreational, cultural, and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal. CDDs are governed by an elected five-member board of supervisors, who possess the general managerial authority provided to other special districts in the state. This includes the authority to hire and fix the compensation of a general manager; the right

[1] Section 189.4051(1)(b), F.S., defines "urban area" as "a contiguous developed and inhabited urban area within a district with a minimum average resident population density of at least 1.5 persons per acre as defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas must be designated by the governing board of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the district."

to contract; to borrow money; to adopt administrative rules pursuant to ch. 120, F.S.; and the power of eminent domain.[2]

Election Procedures for Community Development Districts Generally

Section 190.006(3), F.S., provides for the transition of Community Development District (CDD) boards that are elected by landowners to boards elected by qualified electors of the districts. If a CDD wishes to exercise ad valorem taxing power, the district board must call an election at which the members of the board of supervisors will be elected by qualified electors. Each member must be elected by the qualified electors of the district for a term of 4 years, except that, at the first such election, three members are elected for a period of 4 years and two members for a period of 2 years. All elected board members must be qualified electors of the district.

Regardless of whether a district has proposed to levy ad valorem taxes, commencing 10 years after the initial appointment of members, the position of each member whose term has expired must be filled by a qualified elector of the district, elected by the qualified electors of the district. However, if, in the 10th year after initial appointment for districts exceeding 5,000 acres in area, there are not at least 500 qualified electors, members of the board continue to be elected by landowners.

If a district has less than 50 qualified electors when the District is created, after the 10th year and, once a district reaches 250 or 500 qualified electors, respectively, then the positions of two board members whose terms are expiring must be filled by qualified electors of the district, elected by the qualified electors of the district for 4-year terms. The remaining board member whose term is expiring must be elected for a 4-year term by the landowners and is not required to be a qualified elector. Thereafter, as terms expire, board members must be qualified electors elected by qualified electors of the district for a term of 4 years.

Once a district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district must be held at the general election in November.

EFFECT OF PROPOSED CHANGES

This bill creates the Viera Stewardship District (district), a “public body corporate and politic, an independent, limited, special purpose local government, an independent special district.” The general purpose of the district is to provide, through a special purpose governmental entity, certain capital infrastructure, facilities and services which benefit the residents of the district. The boundaries of the district encompass approximately 14,000 undeveloped contiguous acres in Brevard County.

According to the findings in the bill, “[w]hile chapter 190, F.S., provides an opportunity for community development services and facilities to be provided by the establishment of community development districts in a manner that furthers the public interest, given the vast nature of the lands covered by this act and the potentially long-term nature of its development, establishing multiple community development districts over these lands would result in an inefficient, duplicative, and needless proliferation of local special purpose government, contrary to the public interest and the Legislature's findings in chapter 190, Florida Statutes.”

The district is not authorized to exercise any comprehensive planning, zoning, or development permitting power; the establishment of the district is not be considered a development order; and all applicable planning and permitting laws, rules, regulations, and policies of Brevard County control the development of the land to be serviced by the district.

[2] *Community Development Districts*, The Florida Senate, Committee on Comprehensive Planning, Interim Project Report 2004-121, Nov. 2003.

The jurisdiction of the district, in the exercise of its general and special powers, and in the carrying out of its special purposes, is both within the external boundaries of the legal description of this district and extraterritorially when limited to, and as authorized expressly elsewhere in, the charter of the district as created in this act or applicable general law.

Referendum Requirements

The substantive provisions of the bill take effect upon approval by a majority vote of the owners of land within the district who are not exempt from ad valorem taxes or non-ad valorem assessments and who are present in person or by proxy at a landowners' meeting to be held within 90 days after the effective date of this act. Such landowners' meeting must be noticed as required for the initial landowners' meeting and may be combined with such meeting. At the time of the initial referendum, there is expected to be one landowner within the district, the Viera Company.

The provisions of this bill that authorize the levy of ad valorem taxation and issuance of general obligation bonds take effect only upon express approval by a majority vote of those qualified electors of the Viera Stewardship District voting in a referendum election held at such time as all members of the board are qualified electors who are elected by qualified electors of the district.

Modification of District Boundaries and Charter

The bill specifies that the charter of the district, as created in this bill, may only be amended by special act of the Legislature. The bill provides that the Legislature may not consider an amendment of the district boundaries or the general or special powers of the district unless it is accompanied by a resolution or official statement as provided for in s. 189.404(2)(e)4., F.S.

The board may ask the Legislature through its local legislative delegation in and for Brevard County to amend this act to contract, to expand or to contract, or to expand the boundaries of the district by amendment of this section.

The district remains in existence until:

- The district is terminated and dissolved pursuant to amendment to this act by the Legislature.
- The district has become inactive pursuant to s. 189.4044, F.S.

Provided, however, if, within 5 years after the effective date of this act establishing the district, the primary landowner has not received a development permit, as defined in ch. 380, F.S., on some part or all of the area covered by the district, then the district will be automatically dissolved and a judge of the circuit court must cause a statement to that effect to be filed in the public records.

The inclusion of any or all territory of the district within a municipality does not change, alter, or affect the boundary, territory, existence, or jurisdiction of the district.

Election of the District Board

a. Election of Board by Landowners

The district is governed by a Board of Supervisors (Board) consisting of 5 members. Board members must be residents of the state and citizens of the United States. Initial Board members are elected by landowners of the district voting at an election held within 90 days following the effective date of this bill. The landowners present at the meeting, in person or by proxy, constitute a quorum. At any landowners' meeting, 50 percent of the district acreage is not required to constitute a quorum, and each governing board member elected by landowners is to be elected by a majority of the acreage represented either by owner or proxy present and voting at said meeting. Each landowner is entitled to cast one vote per acre of land owned by him or her and located within the district for each person to be elected. A landowner may vote in person or by proxy in writing. A fraction of an acre is treated as 1 acre, entitling the landowner to one vote with respect thereto.

With respect to the elections of initial board members, the two candidates receiving the highest number of votes must be elected for a term expiring November 18, 2008, and the three candidates receiving the next largest number of votes are elected for a term expiring November 7, 2006, with the 4-year term of office for each successful candidate commencing upon election. The members of the first Board elected by landowners serve their respective terms; however, the next election of Board members must be held on the first Tuesday after the first Monday in November 2006. Thereafter, elections by landowners for the district must be conducted every 2 years on the first Tuesday after the first Monday in November.

The Board may not exercise the ad valorem taxing power authorized by this bill until such time as all members of the Board are qualified electors who are elected by qualified electors of the district.

Lastly, the bill provides that it is not a conflict of interest under ch. 112, F.S., for a Board member, the district manager, or another employee of the district to be a stockholder, officer, or employee of a landowner.

b. Election of Board by Qualified Electors

Regardless of whether the district has proposed to levy ad valorem taxes or issue general obligation bonds, board members must begin being elected by qualified electors of the district as the district becomes populated with qualified electors. The transition must occur such that the composition of the board, after the first general election following a trigger as set forth below, must be as follows:

(I) Five years following the creation of the district, one governing board member must be a person who was elected by the qualified electors and four governing board members must be persons who were elected by the landowners.
(II) Ten years following the creation of the district, two governing board members must be persons who were elected by the qualified electors and three governing board members must be persons elected by the landowners.
(III) When the district is populated by 60 percent of the projected total qualified electors, three governing board members must be persons who were elected by the qualified electors and two governing members must be persons who were elected by the landowners.
(IV) Three years following the trigger in sub-sub-subparagraph (III), four governing board members must be persons who were elected by the qualified electors and one governing board member must be a person who was elected by the landowners.
(V) Five years following the trigger in subparagraph (III), all five governing board members must be persons who were elected by the qualified electors.

The term "projected total qualified electors" means the product of:

(The total number of single-family and multi-family units approved within the district by a development order issued by Brevard County and in effect in the tenth year following creation of the district)

multiplied by

(The average number of persons residing within a household located within Brevard County based on the 2010 U.S. Census)

multiplied by

(The percentage of Brevard County's general population registered to vote as reported by the Brevard County Supervisor of Elections as of the general election occurring November 2014).

On or before June 1, 2016, the board must determine the number of projected qualified electors in the district as of the immediately preceding April 15. Additionally, on or before June 1, 2016, and each year thereafter until the trigger in subparagraph (III) is met, the board must determine the actual number of qualified electors in the district as of the immediately preceding April 15. The board must use and rely

upon the official records maintained by the supervisor of elections and property appraiser or tax collector in each county in making this determination. Such determination must be made at a properly noticed meeting of the board and become a part of the official minutes of the district.

Once the district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district must be held at the general election in November. The board must adopt a resolution if necessary to this requirement. The transition process described herein is intended to be in lieu of the process set forth in s.189.4051, F.S. If, during the term of office, a vacancy occurs, the remainder of the unexpired term must be filled as follows:

- If the vacancy arises with respect to a supervisor that was elected by landowners, the vacancy must be filled by a supervisor elected by the landowners; and
- If the vacancy arises with respect to a supervisor that was elected by the qualified electors of the district, the vacancy must be filled by a supervisor elected by the qualified electors of the district, in which case the district must be responsible for paying the expenses associated with any special election that is required to be conducted.

Elections of board members by qualified electors held pursuant to this subsection must be nonpartisan and must be conducted in the manner prescribed by law for holding general elections. Candidates seeking election to office by qualified electors must conduct their campaigns in accordance with the provisions of ch. 106, F.S., and file qualifying papers and qualify for individual seats in accordance with general law.

General Board Administration

Members of the board, regardless of how elected, are public officers, and, upon entering into office, must take and subscribe to the oath of office as prescribed by general law. Members of the board are subject to ethics and conflict of interest laws of the state that apply to all local public officers.

Any elected board member may be removed by the Governor for malfeasance, misfeasance, dishonesty, incompetency, or failure to perform the duties imposed upon him or her by this act, and any vacancies that may occur in such office for such reasons must be filled by the Governor as soon as practicable.

Each supervisor is entitled to receive for his or her services an amount not to exceed $200 per board meeting, not to exceed $4,800 per year per supervisor, or an amount established by the electors at a referendum. In addition, each supervisor must receive travel and per diem expenses as set forth in s. 112.061, F.S.

All meetings of the board must be open to the public and governed by the provisions of ch. 286, F.S. The record book of the district and all other district records must at reasonable times be opened to inspection in the same manner as state, county, and municipal records pursuant to ch. 119, F.S.

District Budget

On an annual basis, the district manager must prepare a proposed budget for the ensuing fiscal year to be submitted to the Board for approval. The Board must consider the proposed budget item by item and may either approve the budget as proposed by the district manager or modify the same in part or in whole. The Board must indicate approval of the budget by resolution, which must provide for a hearing on the budget as approved. At the time and place designated in the public notice of the hearing, the Board must hear all objections to the budget as proposed and may make such changes as the Board deems necessary. At the conclusion of the budget hearing, the Board must, by resolution, adopt the budget as finally approved by the Board.

At least 60 days prior to adoption, the Board must submit to the Brevard County Board of County Commissioners, for purposes of disclosure and information only, the proposed annual budget for the ensuing fiscal year, and the Board of County Commissioners may submit written comments to the

Board solely for the assistance and information of the Board of the district in adopting its annual district budget.

The Board must annually submit its district public facilities report or the most recent development of regional impact report to the Brevard County Board of County Commissioners. The Board of County Commissioners must use and rely on the district public facilities report in the preparation or revision of its comprehensive plan.

The district must take affirmative steps to provide for the full disclosure of information relating to the public financing and maintenance of improvements to real property undertaken by the district. Such information must be made available to all existing residents and all prospective residents of the district. The district must furnish each developer of a residential development within the district with sufficient copies of that information to provide each prospective initial purchaser of property in that development with a copy. Any developer of a residential property within the district, when required by law to provide a public offering statement, must include a copy of such information relating to the public financing and maintenance of improvements in the public offering statement. The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation must ensure that disclosures made by developers pursuant to ch. 498, F.S., meet the requirements of s. 190.009(1), F.S.

General Powers

This bill grants the district general powers consistent with those granted to community development districts under s. 190.011, F.S. The general powers of the district must be construed liberally in order to carry out effectively the specialized purpose of this bill.

- To sue and be sued in the name of the district; to acquire, by purchase, gift, devise, or otherwise, and to own and dispose of, real and personal property, or any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To apply for coverage of its employees under the Florida Retirement System in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the Florida Retirement System Trust Fund.
- To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts are subject to public bidding or competitive negotiation requirements as set forth in general law applicable to independent special districts.
- To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt and enforce rules and orders pursuant to the provisions of ch. 120, F.S., prescribing powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt and enforce administrative rules with respect to any of the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.
- To maintain an office at such place or places as the board of supervisors designates in Brevard County, and within the district when facilities are available.
- To hold, control, and acquire by donation, purchase, or condemnation, or dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act and to make use of such easements, dedications, or reservations for the purposes authorized by this act.
- To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities

or property of any nature for the use of the district to carry out the purposes authorized by this act.

- To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness as hereinafter provided; to levy such taxes and assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.
- To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of district activities and services and the maintenance of district facilities and to enforce their receipt and collection in the manner prescribed by resolution not inconsistent with law.
- To exercise within the district, or beyond the district with prior approval by vote of a resolution of the governing body of Brevard County if the taking will occur in an unincorporated area in that county, the right and power of eminent domain, pursuant to the provisions of chs. 73 and 74, F.S., over any property within the state, except municipal, county, state, and federal property, for the uses and purpose of the district relating solely to water, sewer, district roads, and water management and control, specifically including, without limitation, the power for the taking of easements for the drainage of the land of one person over and through the land of another.
- To cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.
- To assess and to impose upon lands in the district ad valorem taxes as provided by this act.
- If and when authorized by general law to determine, order, levy, impose, collect, and enforce maintenance taxes.
- To determine, order, levy, impose, collect, and enforce assessments pursuant to this act and ch. 170, F.S., as amended from time to time, pursuant to authority granted in s. 197.3631, F.S., or pursuant to other provisions of general law now or hereinafter enacted which provide or authorize a supplemental means to order, levy, impose, or collect special assessments. Such special assessments, in the discretion of the district, may be collected and enforced pursuant to the provisions of ss. 197.3632 and 197.3635, F.S., and chs. 170 and 173, F.S., or as provided by this act, or by other means authorized by general law now or hereinafter enacted.
- To exercise such special powers and other express powers as may be authorized and granted by this act in the charter of the district, including powers as provided in any interlocal agreement entered into pursuant to ch. 163, F.S., or which must be required or permitted to be undertaken by the district pursuant to any development order or development of regional impact, including any interlocal service agreement with Brevard County for proportionate, fair-share, or pipelining capital construction funding for any certain capital facilities or systems required of the developer pursuant to any applicable development order or agreement.
- To exercise all of the powers necessary, convenient, incidental, or proper in connection with any other powers or duties or the special purpose of the district authorized by this act.

Special Powers

The district has, and the board may exercise, the following special powers to implement its lawful and special purpose and to provide, pursuant to that purpose, systems, facilities, services, improvements, projects, works, and infrastructure, each of which constitutes a lawful public purpose when exercised pursuant to this charter, subject to, and not inconsistent with, the regulatory jurisdiction and permitting authority of all other applicable governmental bodies, agencies, and any special districts having authority with respect to any area included therein, and to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, finance, fund, and maintain improvements, systems, facilities, services, works, projects, and infrastructure. Any or all of the following special powers are granted by this act in order to implement the special purpose of the district:

- To provide water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges and to construct, acquire and operate any dam, work, appurtenant work, impoundment, or reservoir and any connecting, intercepting or outlet mains and pipes in, along or under any street, alley, highway or other public place or ways; including, but not limited to, acquiring, operating, maintaining, repairing and improving water

management and control facilities necessary for the collection, storage control, development, utilization and distribution of nonpotable waters for irrigation purposes.

- To provide water systems, sewer systems, and wastewater management, reclamation and reuse, or any combination thereof, and to construct and operate connecting intercepting or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any street, alley, highway, or other public place or ways, and to dispose of any effluent, residue, or other byproducts of such system or sewer system. The district may not purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a wastewater facility privatization contract for a wastewater facility, until the governing body of the district has held a public hearing on the purchase, sale, or wastewater facility privatization contract and made a determination that the purchase, sale, or wastewater facility privatization contract is in the public interest. In determining if the purchase, sale, or wastewater facility privatization contract is in the public interest, the district must consider, at a minimum, criteria specified by the bill.
- To provide bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of such works and improvements across, through, or over any public right-of way, highway, grade, fill, or cut.
- To provide public roads and related improvements equal to or exceeding the specifications of Brevard County, including, but not limited to transportation improvements necessary to comply with conditions of development approval applicable to lands within the district. This special power includes, but is not limited to, roads, parkways, interchanges, bridges, landscaping, hardscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, regulatory or informational signage, road striping, underground conduit, underground cable or fiber or wire installed to pursuant an agreement with or tariff of a retail provider of services, and all other related improvements and the elements of a functioning modern road system in general or as related to the conditions of development approval for the lands within the district, together with transportation improvements and facilities that are freestanding or that may be related to any innovative strategic intermodal system of transportation pursuant to applicable federal, state, and local law and ordinance.
- To provide buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage.
- To provide investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to the contamination.
- To provide conservation areas, mitigation areas, wilderness areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property, and to evaluate, acquire, enhance, manage, monitor and maintain conservation, mitigation, and preservation lands and wildlife habitat.
- Using its general and special powers as set forth in this act, to provide any other project within or without the boundaries of the district when the project is the subject of an agreement between the district and the Board of County Commissioners of Brevard County or with any other applicable public or private entity, or is approved or required by a development order pursuant to sections 380.06 or s. s 380.061, F.S., and is not inconsistent with the effective local comprehensive plan.
- To provide parks and facilities for indoor and outdoor recreational, cultural, and educational uses, provided, however, that in no event may the district finance or own a golf course.
- To provide fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
- To provide school buildings and related structures, which may be leased, sold, or donated to the school district, for use in the educational system when authorized by the district school board.
- To provide security, including, but not limited to, guardhouses, fences, and gates, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies; however, the district may not exercise any powers of a law enforcement agency but may contract with the appropriate local general-purpose government agencies for an increased

level of such services within the district boundaries. Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must he operated by the district or any other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.

- To provide control and elimination of mosquitoes and other arthropods of public health importance.
- To provide waste collection and disposal.
- To enter into impact fee credit agreements.
- To provide buildings and structures for district offices, maintenance facilities, meeting facilities, community centers, or any other project authorized or granted by this act.
- To establish and create, at noticed meetings, such governmental departments of the Board of Supervisors of the district, as well as committees, task forces, boards, or commissions, or other agencies under the supervision and control of the district, as from time to time the board may deem necessary or desirable in the performance of the acts or other things necessary to exercise the board's general or special powers to implement an innovative project to carry out the special purpose of the district as provided in this act and to delegate the exercise of its powers to such departments, boards, task forces, committees or other agencies and such administrative duties and other powers as the board may deem necessary or desirable but only if there is a set of expressed limitations for accountability, notice, and periodic written reporting to the board that must retain the powers of the board.

The enumeration of special powers herein may not be deemed exclusive or restrictive but must be deemed to incorporate powers express or implied necessary or incident to carrying out such enumerated special powers, including also the general powers provided by this special act charter to the district to implement its single purpose.

The district may exercise its powers to provide facilities for potable water, sewer, fire protection, mosquito control, waste collection and waste disposal services only if such facilities are to be dedicated to and operated by the county or a municipality already providing the service or if such county or municipality declines or is unable to provide the service at the time the service becomes necessary. The bill specifically provides that nothing:

- May prevent the district from dedicating transportation or other facilities to the county or a municipality;
- May be construed to authorize the district to provide or approve franchises for emergency medical ambulance services, which authority is reserved to Brevard County under ch. 71-556 F.S.;
- Is intended to authorize the imposition of impact fees based upon alleged police powers or regulatory powers of the district;
- Is intended to limit the power of the county or a city to provide such facilities and to require landowners to utilize such facilities as a condition to development of lands within the district; or
- Is intended to prohibit the district from providing additional services beyond those offered by the county or a municipality.

District Borrowing and Issuance of Bonds

The district is authorized to obtain loans in any amount and on such terms as the board approves at an interest rate not to exceed the maximum rate allowed by general law. The district is also authorized to issue bond anticipation notes, interim certificates, certificates of indebtedness, assessment bonds, revenue bonds, and refunding bonds.

The district may also issue general obligation bonds to finance or refinance capital projects or to refund outstanding bonds in an aggregate principal amount of bonds outstanding at any one time not in excess of 35 percent of the assessed value of the taxable property within the district as shown on the pertinent tax records at the time of the authorization of the general obligation bonds for which the full faith and credit of the district is pledged. Except for refunding bonds, no general obligation bonds may be issued unless the bonds are issued to finance or refinance a capital project and the issuance has been approved at an election held in accordance with the requirements for such election as prescribed by the State Constitution. Such elections must be called to be held in the district by the Board of County Commissioners of Brevard County upon the request of the board of the district. The expenses of calling and holding an election are at the expense of the district, and the district must reimburse the county for any expenses incurred in calling or holding such election.

The district may pledge its full faith and credit for the payment of the principal and interest on such general obligation bonds and for any reserve funds provided therefor and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all taxable property in the district, to the extent necessary for the payment thereof, without limitation as to rate or amount.

The power of the district to issue bonds may be determined, and any of the bonds of the district maturing over a period of more than 5 years must be validated and confirmed, by court decree, under the provisions of ch. 75, F.S., and laws supplementary thereto.

The state pledges to the holders of any bonds issued under this bill that it will not limit or alter the rights of the district to own, acquire, construct, reconstruct, improve, maintain, operate, or furnish the projects or to levy and collect the taxes, assessments, rentals, rates, fees, and other charges provided for herein and to fulfill the terms of any agreement made with the holders of such bonds or other obligations and that it will not in any way impair the rights or remedies of such holders.

A default on the bonds or obligations of a district does not constitute a debt or obligation of the state or any general-purpose local government or the state.

To the extent allowed by general law, all bonds issued by the district and interest paid thereon and all fees, charges, and other revenues derived by the district from the projects provided by this act are exempt from all taxes by the state or by any political subdivision, agency, or instrumentality thereof; however, any interest, income, or profits on debt obligations issued hereunder are not exempt from the tax imposed by ch. 220, F.S.

Taxes, Special Assessments, Fees, and Charges

Ad Valorem Taxation. When the entire Board is elected by qualified electors of the district, the Board is authorized to levy and assess an ad valorem tax on all the taxable property in the district to construct, operate, and maintain assessable improvements; to pay the principal of, and interest on, any general obligation bonds of the district; and to provide for any sinking or other funds established in connection with any such bonds. An ad valorem tax levied by the Board for operating purposes, exclusive of debt service on bonds, may not exceed 3 mills. The ad valorem tax is in addition to county and all other ad valorem taxes provided for by law. Ad valorem taxes must be assessed, levied, and collected in the same manner and at the same time as county taxes. The levy of ad valorem taxes must be approved by referendum as required by s. 9 of Art. VII of the State Constitution.

Benefit Special Assessments. The Board must determine, order, and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance assessable

improvements. These assessments may be due and collected during each year that county taxes are due and collected, in which case such annual installment and levy must be evidenced to and certified to the property appraiser by the board not later than August 31 of each year. Such assessment must be entered by the property appraiser on the county tax rolls and must be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds thereof must be paid to the district. However, the district may, in its discretion, use the method prescribed in either s. 197.3632, F.S., or ch. 173, F.S., as each may be amended from time to time, for collecting and enforcing these assessments. Each annual installment of benefit special assessments are a lien on the property against which assessed until paid and are enforceable in like manner as county taxes. The amount of the assessment for the exercise of the district's powers must be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land. The board may, if it determines it is in the best interests of the district, set forth in the proceedings initially levying such benefit special assessments or in subsequent proceedings a formula for the determination of an amount, which when paid by a taxpayer with respect to any tax parcel, constitutes a prepayment all future annual installments of benefit special assessments. Payment of that amount relieves and discharges the lien of such benefit special assessments and any subsequent annual installment on a taxable parcel. The board may provide further that upon delinquency in the payment of any annual installment of benefit special assessments, the prepayment amount of all future annual installments of benefit special assessments as determined in the preceding sentence are immediately due and payable together with such delinquent annual installment.

Non-ad valorem maintenance taxes. If and when authorized by general law, to maintain and to preserve the physical facilities and services constituting the works, improvements, or infrastructure provided by the district pursuant to this act, to repair and restore any one or more of them, when needed, and to defray the current expenses of the district, including any sum which may be required to pay state and county ad valorem taxes on any taxable lands which may have been purchased and which are held by the district under the provisions of this act, the Board of Supervisors may, upon the completion of said systems, facilities, services, works, improvements, or infrastructure, in whole or in part, as may be certified to the board by the engineer of the board, levy annually a non-ad valorem and nonmillage tax upon each tract or parcel of land within the district, to be known as a "maintenance tax." This non-ad valorem maintenance tax must be apportioned upon the basis of the net assessments of benefits assessed as accruing from the original construction and must be evidenced to and certified by the Board of Supervisors of the district not later than June 1 of each year to the property appraiser of Brevard County and must be extended by the property appraiser on the tax roll of the property appraiser, as certified by the property appraiser to the tax collector, and collected by the tax collector on the merged collection roll of the tax collector in the same manner and at the same time as county ad valorem taxes, and the proceeds must be paid to the district. This non-ad valorem maintenance tax is a lien until paid on the property against which assessed and enforceable in like manner and of the same dignity as county ad valorem taxes.

Maintenance special assessments. To maintain and preserve the facilities and projects of the district, the board may levy a maintenance special assessment. This assessment may be evidenced to and certified to the property appraiser by the Board of Supervisors not later than August 31 of each year and must be entered by the property appraiser on the county tax rolls and must be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds must be paid to the district. However, this subsection does not prohibit the district in its discretion from using the method prescribed in either ss. 197.363, 197.3631, or 197.3632, F.S., for collecting and enforcing these assessments. These maintenance special assessments are a lien on the property against which assessed until paid and are enforceable in like manner as county taxes. The amount of the maintenance special assessment for the exercise of the district's powers under this section must be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

Special Assessments. As an alternative method to the levy and imposition of special assessments pursuant to ch. 170, F.S., pursuant to the authority of s. 197.3631, F.S., or pursuant to other provisions of general law, now or hereafter enacted, which provide a supplemental means or authority to impose, levy, and collect special assessments as otherwise authorized under this act, the board may levy and impose special assessments to finance the exercise of any of its powers permitted under this act using specified uniform procedures.

At a noticed meeting, the board of supervisors of the district may consider and review an engineer's report on the costs of the systems, facilities, and services to be provided, a preliminary assessment methodology, and a preliminary roll based on acreage or platted lands, depending upon whether platting has occurred.

The assessment methodology must address and discuss and the board must consider whether the systems, facilities, and services being contemplated will result in special benefits peculiar to the property, different in kind and degree than general benefits, as a logical connection between the systems, facilities, and services themselves and the property, and whether the duty to pay the assessments by the property owners is apportioned in a manner that is fair and equitable and not in excess of the special benefit received. It must be fair and equitable to designate a fixed proportion of the annual debt service, together with interest thereon, on the aggregate principal amount of bonds issued to finance such systems, facilities, and services which give rise to unique, special, and peculiar benefits to property of the same or similar characteristics under the assessment methodology so long as such fixed proportion does not exceed the unique, special, and peculiar benefits enjoyed by such property from such systems, facilities, and services.

The engineer's cost report must identify the nature the proposed systems, facilities, and services, their location, a cost breakdown plus a total estimated cost, including cost of construction or reconstruction, labor, and materials, lands, property, rights, easements, franchises, or systems, facilities, and services to be acquired, cost of plans and specifications, surveys of estimates of costs and revenues, costs of engineering, legal, and other professional consultation services, and other expenses or costs necessary or incident to determining the feasibility or practicability of such construction, reconstruction, or acquisition, administrative expenses, relationship to the authority and power of the district in its charter, and such other expenses or costs as may be necessary or incident to the financing to be authorized by the Board of Supervisors.

The preliminary assessment roll to be prepared will be in accordance with the method of assessment provided for in the assessment methodology and as may be adopted by the Board of Supervisors; the assessment roll must be completed as promptly as possible and must show the acreage, lots, lands, or plats assessed and the amount of the fairly and reasonably apportioned assessment based on special and peculiar benefit to the property, lot, parcel, or acreage of land; and, if the assessment against each such lot, parcel, acreage, or portion of land is to be paid in installments, the number of annual installments in which the assessment is divided must be entered into and shown upon the assessment roll.

The Board of Supervisors of the district may determine and declare by an initial assessment resolution to levy and assess the assessments with respect to assessable improvements stating the nature of the systems, facilities, and services, improvements, projects, or infrastructure constituting such assessable improvements, the information in the engineer's cost report, the information in the assessment methodology as determined by the board at the noticed meeting and referencing and incorporating as part of the resolution the engineer's cost report, the preliminary assessment methodology, and the preliminary assessment roll as referenced exhibits to the resolution by reference. If the board determines to declare and levy the special assessments by the initial assessment resolution, the board must also adopt and declare a notice resolution which must provide and cause the initial assessment resolution to be published once a week for a period of 2 weeks in newspapers of general circulation published in Brevard County and said board must by the same resolution fix a time and place at which the owner or owners of the property to be assessed or any other persons interested therein may appear

before said board and be heard as to the propriety and advisability of making such improvements, as to the costs thereof, as to the manner of payment therefor, and as to the amount thereof to be assessed against each property so improved. Thirty days' notice in writing of such time and place must be given to such property owners. The notice must include the amount of the assessment and must be served by mailing a copy to each assessed property owner at his or her last known address, the names and addresses of such property owners to be obtained from the record of the property appraiser of the county political subdivision in which the land is located or from such other sources as the district manager or engineer deems reliable, and proof of such mailing must be made by the affidavit of the manager of the district or by the engineer, said proof to be filed with the district manager, provided that failure to mail said notice or notices must not invalidate any of the proceedings hereunder. It is provided further that the last publication must be at least 1 week prior to the date of the hearing on the final assessment resolution. Said notice must describe the general areas to be improved and advise all persons interested that the description of each property to be assessed and the amount to be assessed to each piece, parcel, lot, or acre of property may be ascertained at the office of the manager of the district. Such service by publication must be verified by the affidavit of the publisher and filed with the manager of the district. Moreover, the initial assessment resolution with its attached, referenced, and incorporated engineer's cost report, preliminary assessment methodology, and preliminary assessment roll, along with the notice resolution, must be available for public inspection at the office of the manager and the office of the engineer or any other office designated by the Board of Supervisors in the notice resolution. Notwithstanding the foregoing, the landowners of all of the property which is proposed to be assessed may give the district written notice of waiver of any notice and publication provided for in this subparagraph and such notice and publication is not required, provided, however, that any meeting of the Board of Supervisors to consider such resolution must be a publicly noticed meeting.

At the time and place named in the noticed resolution as provided for in subparagraph 2., the board of supervisors of the district must meet and hear testimony from affected property owners as to the propriety and advisability of making the systems, facilities, services, projects, works, improvements, or infrastructure and funding them with assessments referenced in the initial assessment resolution on the property. Following the testimony and questions from the members of the board or any professional advisors to the district of the preparers of the engineer's cost report, the assessment methodology, and the assessment roll, the board of supervisors must make a final decision on whether to levy and assess the particular assessments. Thereafter, the board of supervisors must meet as an equalizing board to hear and to consider any and all complaints as to the particular assessments and must adjust and equalize the assessments on the basis of justice and right.

When so equalized and approved by resolution or ordinance by the board of supervisors, to be called the final assessment resolution, a final assessment roll must be filed with the clerk of the board and such assessment must stand confirmed and remain legal, valid, and binding first liens on the property against which such assessments are made until paid, equal in dignity to the first liens of ad valorem taxation of county and municipal governments and school boards. However, upon completion of the systems, facilities, service, project, improvement, works, or infrastructure, the district must credit to each of the assessments the difference in the assessment as originally made, approved, levied, assessed, and confirmed and the proportionate part of the actual cost of the improvement to be paid by the particular special assessments as finally determined upon the completion of the improvement; but in no event may the final assessment exceed the amount of the special and peculiar benefits as apportioned fairly and reasonably to the property from the system, facility, or service being provided as originally assessed. Promptly after such confirmation, the assessment must be recorded by the clerk of the district in the minutes of the proceedings of the district, and the record of the lien in this set of minutes constitutes prima facie evidence of its validity. The board of supervisors, in its sole discretion, may, by resolution grant a discount equal to all or a part of the payee's proportionate share of the cost of the project consisting of bond financing cost, such as capitalized interest, funded reserves, and bond discounts included in the estimated cost of the project, upon payment in full of any assessments during such period prior to the time such financing costs are incurred as may be specified by the board of supervisors in such resolution.

District assessments may be made payable in installments over no more than 30 years from the date of the payment of the first installment thereof and may bear interest at fixed or variable rates.

Notwithstanding any provision of this act or ch. 170, F.S., that portion of s. 170.09, F.S., that provides that assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted by the governing authority is not applicable to any district assessments, whether imposed, levied, and collected pursuant to the provisions of this act or other provisions of general law, including, but not limited to ch. 170, F.S.

In addition, the district is authorized expressly in the exercise of its rulemaking power to adopt a rule or rules which provides or provide for notice, levy, imposition, equalization, and collection of assessments.

Fees, Rentals, and Charges. The district is authorized to prescribe, fix, establish, and collect rates, fees, rentals, or other charges, hereinafter sometimes referred to as "revenues," and to revise the same from time to time, for the systems, facilities, and services furnished by the district, within the limits of the district, including, but not limited to, recreational facilities, water management and control facilities, and water and sewer systems; to recover the costs of making connection with any district service, facility, or system; and to provide for reasonable penalties against any user or property for an such rates, fees, rentals, or other charges that are delinquent.

Rates, fees, rentals, or other charges for any of the facilities or services of the district may be fixed until after a public hearing at which all the users of the proposed facility or services or owners, tenants, or occupants served or to be served thereby and all other interested persons must have an opportunity to be heard concerning the proposed rates, fees, rentals, or other charges. Rates, fees, rentals, and other charges must be adopted under the administrative rulemaking authority of the district, but must not apply to district leases. Notice of such public hearing setting forth the proposed schedule or schedules of rates, fees, rentals, and other charges must have been published in a newspaper of general circulation in Brevard County at least once and at least 10 days prior to such public hearing. The rulemaking hearing may be adjourned from time to time. After such hearing, such schedule or schedules, either as initially proposed or as modified or amended, may be finally adopted. A copy of the schedule or schedules of such rates, fees, rentals, or charges as finally adopted must be kept on file in an office designated by the board and must be open at all reasonable times to public inspection. The rates, fees, rentals, or charges so fixed for any class of users or property served must be extended to cover any additional users or properties thereafter served which must fall in the same class, without the necessity of any notice or hearing.

Such rates, fees, rentals, and charges must be just and equitable and uniform for users of the same class, and when appropriate may be based or computed either upon the amount of service furnished, upon the average number of persons residing or working in or otherwise occupying the premises served, or upon any other factor affecting the use of the facilities furnished, or upon any combination of the foregoing factors, as may be determined by the board on an equitable basis.

The rates, fees, rentals, or other charges prescribed must be such as will produce revenues, together with any other assessments, taxes, revenues, or funds available or pledged for such purpose, at least sufficient to provide for the items hereinafter listed, but not necessarily in the order stated:

1. To provide for all expenses of operation and maintenance of such facility or service.
2. To pay when due all bonds and interest thereon for the payment of which such revenues are, or must have been, pledged or encumbered, including reserves for such purpose.
3. To provide for any other funds which may be required under the resolution or resolutions authorizing the issuance of bonds pursuant to this act.

The board has the power to enter into contracts for the use of the projects of the district and with respect to the services, systems, and facilities furnished or to be furnished by the district.

In the event that any rates, fees, rentals, charges, or delinquent penalties are not paid as and when due and are in default for 60 days or more, the unpaid balance thereof and all interest accrued thereon, together with reasonable attorney's fees and costs, may be recovered by the district in a civil action.

In the event the fees, rentals, or other charges for water and sewer services, or either of them, are not paid when due, the board has the power, under such reasonable rules and regulations as the board may adopt, to discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance and the restoration of such water and sewer services or both, are fully paid; and, for such purposes, the board may enter on any lands, waters, or premises of any person, firm, corporation, or body, public or private, within the district limits. Such delinquent fees, rentals, or other charges together with interest, penalties, and charges for the shutting off and discontinuance and the restoration of such services and facilities and reasonable attorney's fees and other expenses may be recovered by the district, which may also enforce payment of such delinquent fees, rentals, or other charges by any other lawful method of enforcement.

Enforcement of taxes

All taxes provided for in this act are delinquent and bear penalties on the amount of such taxes in the same manner as county taxes. The collection and enforcement of all taxes levied by the district must be at the same time and in like manner as county taxes, and the provisions of the laws of Florida relating to the sale of lands for unpaid and delinquent county taxes; the issuance, sale, and delivery of tax certificates for such unpaid and delinquent county taxes; the redemption thereof; the issuance to individuals of tax deeds based thereon; and all other procedures in connection therewith are applicable to the district to the same extent as if such statutory provisions were expressly set forth herein. All taxes are subject to the same discounts as county taxes.

Any lien in favor of the district arising under this act may be foreclosed by the district by foreclosure proceedings in the name of the district in a court of competent jurisdiction as provided by general law in like manner as is provided in ch. 173, F.S., and the provisions of that chapter are applicable to such proceedings with the same force and effect as if those provisions were expressly set forth in this act. Any act required or authorized to be done by or on behalf of a municipality in foreclosure proceedings under ch. 173, F.S., may be performed by such officer or agent of the district as the board of supervisors may designate. Such foreclosure proceedings may be brought at any time after the expiration of 1 year from the date any tax, or installment thereof, becomes delinquent; however, no lien may be foreclosed against any political subdivision or agency of the state. Other legal remedies remain available.

Competitive Bidding Requirements

No contract may be let by the board for any goods, supplies, or materials to be purchased when the amount thereof to be paid by the district exceeds the amount provided in s. 287.017, F.S., for category four, unless notice of bids are advertised once in a newspaper in general circulation in Brevard County. The board seeking to construct or improve a public building, structure, or other public works must comply with the bidding procedures of s. 255.20, F.S., and other applicable general law. In each case, the bid of the lowest responsive and responsible bidder must be accepted unless all bids are rejected because the bids are too high or the board determines it is in the best interests of the district to reject all bids. The board may require the bidders to furnish bond with a responsible surety to be approved by the board. Nothing in this section prevents the board from undertaking and performing the construction, operation, and maintenance of any project or facility authorized by this act by the employment of labor, material, and machinery.

The provisions of the Consultants' Competitive Negotiation Act, s. 287.055, F.S., apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services let by the board.

Contracts for maintenance services for any district facility or project are subject to competitive bidding requirements when the amount thereof to be paid by the district exceeds the amount provided in s.

287.017, F.S., for category four. The district must adopt rules, policies, or procedures establishing competitive bidding procedures for maintenance services. Contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts. Nothing herein precludes the use of requests for proposal instead of invitations to bid as determined by the district to be in its best interest.

District Property Declared Public Property
Any system, facility, service, works, improvement, project, or other infrastructure owned by the district, or funded by federal tax exempt bonding issued by the district, is public; and the district by rule may regulate and may impose reasonable charges or fees for the use thereof but not to the extent that such regulation or imposition of such charges or fees constitutes denial of reasonable access.

C. SECTION DIRECTORY:

Section 1. Provides short title of the Act.
Section 2. Provides legislative intent and definitions.
Section 3. Provides minimum charter requirements, creates the District, and provides for exclusive charter.
Section 4. Sets forth District boundaries.
Section 5. Provides for the District governing board and its administration.
Section 6. Provides for the general duties of the governing board; general and special powers of the District; bonds; ad valorem taxation; special assessments; non-ad valorem maintenance taxes; tax liens; fees, rentals, and charges; and other administrative provisions.
Section 7. Provides for severability.
Section 8. Provides that the bill takes effect upon becoming a law, except that the provisions regarding the levy of ad valorem taxes are not effective until approved at a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 20, 2006

WHERE? Florida Today, Brevard County, Florida

B. REFERENDUM(S) REQUIRED? Yes [x] No []

IF YES, WHEN? The substantive provisions of the bill take effect upon approval by a majority vote of the owners of land within the district who are not exempt from ad valorem taxes or non-ad valorem assessments and who are present in person or by proxy at a landowners' meeting to be held within 90 days after the effective date of this act. Such landowners' meeting must be noticed and may be combined with the initial landowners' meeting. However, the provisions of the bill that authorize the levy of ad valorem taxation and issuance of general obligation bonds take effect only upon express approval by a majority vote of those qualified electors of the Viera Stewardship District voting in a referendum election held at such time as all members of the board are qualified electors who are elected by qualified electors of the district.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

One-Acre, One-Vote Election Mechanism

It should be noted that the broad grants of power to the District *may* impact the permissibility of conducting elections on a "one-vote-per-acre" basis. In *State v. Frontier Acres Community Development District Pasco County, Florida*, 472 So.2d 455 (Fla.1985), the Florida Supreme Court upheld one-vote-per-acre voting for community development districts created under ch. 190, F.S., based on the decisions of the United States Supreme Court,[13] the narrow purpose of such districts, and the disproportionate effect district operations have on landowners:

> The powers exercised by these districts must comply with all applicable policies and regulations of statutes and ordinances enacted by popularly elected state and local governments. Moreover, the limited grant of these powers does not constitute sufficient general governmental power so as to invoke the demands of Reynolds. Rather, these districts' powers implement the single, narrow legislative purpose of ensuring that future growth in this State will be complemented by an adequate community infrastructure provided in a manner compatible with all state and local regulations.

Following this case, the 4th District Court of Appeal reached a similar conclusion with respect to water control districts which are governed by ch. 298, F.S., in *Stelzel v. South Indian River Water Control Dist.*, 486 So.2d 65 (Fla. 4th DCA 1986). In reaching its decision, the court evaluated the functions exercised by the water control district and found that the evidence established that the District does not exercise general governmental functions:

> While the record here contains evidence which tends to support appellants' claims that the District exercises municipal functions, it also demonstrates with equal clarity that each of the functions performed by the District directly relate either to its water control function or to its limited road maintenance authority.

These decisions, and the decisions of the United States Supreme Court, suggest a nexus between the nature and number of powers granted to a special district and whether voting may be conducted on a one-vote-per-acre basis. Thus, the more and varied powers a special district has, it seems more likely that one-vote-per acre voting would be unconstitutional, particularly if the district meets any of the following criteria upon which the courts have based their decisions:

- The district does not have to comply with all applicable policies and regulations of statutes and ordinances enacted by popularly elected state and local governments;
- The district has a grant of power that is not limited and which constitutes "sufficient general governmental power;"
- The district does not have a single, narrow legislative purpose; or
- The functions performed by the district do not directly relate to its single, narrow purpose.

B. RULE-MAKING AUTHORITY:

The bill authorizes the district to adopt and enforce rules and orders pursuant to ch. 120, F.S., the Florida Administrative Procedure Act, prescribing the duties, powers, and functions of the officers of the district, the conduct of the business of the district; the maintenance of records; and, the form of certificates evidencing tax liens and all other documents and records of the district.

The bill authorizes the district to provide security, including guardhouses, fences, and gates, electronic intrusion-detection systems, and patrol cars, which are authorized by proper governmental agencies; however, the district may not exercise any powers of a law enforcement agency. Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing

security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or any other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.

The district board may adopt and enforce appropriate rules following the procedures of ch. 120, F.S., in connection with the provision of one or more services through its systems and facilities. The district is authorized expressly in the exercise of its rulemaking power to adopt a rule or rules which provides or provide for notice, levy, imposition, equalization, and collection of special assessments.

The district must adopt rules, policies, or procedures establishing competitive bidding procedures for maintenance services. Contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts.

Lastly, the bill requires rates, fees, rentals, and other charges imposed by the district to be adopted under the administrative rulemaking authority of the district. In the event the fees, rentals, or other charges for water and sewer services, or either of them, are not paid when due, the board is authorized, under such reasonable rules and regulations as the board may adopt, to discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance and the restoration of such water and sewer services or both, are fully paid.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Possible Exemptions from General Law

The bill includes the following provisions, all of which appear to be exemptions from general law:

- The bill establishes a process to transition the governing board from one elected by landowners only to a board elected by qualified electors of the district. The bill specifically provides that "[t]he transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes." [Emphasis added.]

- Notwithstanding any provision of this bill or ch. 170, F.S., that portion of s. 170.09, F.S., that provides that assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted by the governing authority is not applicable to any District assessments, whether imposed, levied, and collected pursuant to the provisions of this bill or other provisions of Florida law, including, but not limited to ch. 170, F.S.

- The bill authorizes the District to provide security, including guardhouses, fences, and gates, electronic intrusion-detection systems, and patrol cares, which authorized by proper governmental agencies; however, the District may not exercise any powers of a law enforcement agency. Notwithstanding any provision of general law, the District may operate guardhouses for the limited purpose of providing security for the residents of the District and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the District or any other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.

- Notwithstanding any provisions of any other law to the contrary, all bonds issued under the provisions of this act shall constitute legal investments for savings banks, banks, trust companies, insurance companies, executors, administrators, trustees, guardians, and other fiduciaries and for any board, body, agency, instrumentality, county, municipality, or other political subdivision of the state and shall be and constitute security which may be deposited by

banks or trust companies as security for deposits of state, county, municipal, or other public funds or by insurance companies as required or voluntary statutory deposits.

Broad Powers of the District

The "specialized functions and related prescribed powers," which are a defining characteristic for a special district, are extremely broad for this particular District, including the power to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, hardscaping, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the District; observation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements; and provide buildings and structures for District offices, maintenance facilities, meeting facilities, town centers, or any other project authorized by this bill.

However, such broad powers, however, have been upheld by the courts as demonstrated by the leading case on this issue, *State v. Reedy Creek Imp. Dist.*, 216 So.2d 202 (Fla. 1968):

> So long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose. In the present case, the numerous and diverse powers granted to the District by the enabling act appear to be logically related and essential to the realization of the valid public purposes by the District. In reaching this conclusion, we reject the State's argument that the powers granted the District are commensurate in scope with those characteristic of a local municipal government rendering the enabling act a mere subterfuge to avoid the creation of a municipality.

Modification of District Boundaries/Binding Future Legislatures

The bill specifies that the charter of the district, as created in this bill, may only be amended by special act of the Legislature. The bill provides that the Legislature may not consider an amendment of the district boundaries or the special powers of the district unless it is accompanied by a resolution or official statement as provided for in s. 189.404(2)(e)4., F.S. Although this bill appears to prohibit future legislatures from amending district boundaries unless a resolution from the affected county is secured, this provision cannot "bind" future legislatures or limit the legislature's ability to amend the district's boundaries. Therefore, although this language may evidence intent of the parties, a future legislature that wishes to amend the boundaries of the district may do so without a resolution from an affected county.

Supremacy Clause

Section 3(4) of this bill includes a supremacy clause as follows:

> This special-purpose district is created as a public body corporate and politic, and local government authority and power is limited by its charter, this act, and subject to the provisions of other general laws, including chapter 189, Florida Statutes, except that an inconsistent provision in this act shall control and the district has jurisdiction to perform such acts and exercise such authorities, functions, and powers as shall be necessary, convenient, incidental, proper, or reasonable for the implementation of its limited, single, and specialized purpose regarding the sound planning, provision, acquisition, development, operation, maintenance, and related financing of those public systems, facilities, services, improvements, projects, and infrastructure works as authorized herein, including those necessary and incidental thereto.

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. If a bill includes a general supremacy clause, such as the one contained in this bill, the judiciary determines superiority between general and special law provisions, rather than the Legislature. In addition, general supremacy clauses do not inform interested persons or members of the Legislature of the specific laws containing potential conflicts. Unless the specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

Extraterritorial Services and Projects

Section 3(4) of the bill provides as follows:

> The jurisdiction of this district, in the exercise of its general and special powers, and in the carrying out of its special purposes, is both within the external boundaries of the legal description of this district and extraterritorially when limited to, and as authorized expressly elsewhere in, the charter of the district as created in this act or applicable general law.

Section 6(7) of the charter authorizes the district to, using its general and special powers, provide any project within or without the boundaries of the district when the project is the subject of an agreement between the district and the Brevard County Board of County Commissioners or with any other applicable public or private entity, or is approved or required by a development order and is not inconsistent with the effective local comprehensive plan.

The ability of the District to exercise its general and special powers *outside its boundaries* may raise questions regarding the levy of special assessments on property owners within the District if proceeds of the special assessments, fees, or non-ad valorem taxes are used to fund projects outside the District. The charter is unclear as to when and under what circumstances the District may exercise its powers extraterritorially or how assessments, taxes, and fees will be apportioned to fund projects outside District boundaries.

New Powers to Community Development Districts

Although the District is created pursuant to chapter 189, Florida Statutes, Section 3(2) of the bill attempts to give the District future powers that may be included in ch. 190, F.S., relating to Community Development Districts as follows:

> Any amendments to chapter 190, Florida Statutes, after January 1, 2006, granting additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter, sections 190.006-190.041, Florida Statutes, shall constitute a general power, special power, authority, or function of the Viera Stewardship District.

Therefore, if the Legislature amends ch. 190, F.S., to grant community development districts additional authority at any time in the future, that additional authority will be automatically granted to the District without further legislative review or enactment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.