

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1387  
SPONSOR(S): Poppell  
TIED BILLS:

St. Johns Water Control District, Indian River County

IDEN./SIM. BILLS:

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs		Fudge	Kruse
2) Environment & Natural Resources Council			
3)			
4)			
5)			

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SUMMARY ANALYSIS

This bill codifies the prior special act of the St. Johns Water Control District (District) into a single act, as required by s. 189.429, F.S. This bill creates the powers of the District, including ad valorem taxing authority, and the ability to establish and create other departments, committees, and boards, including a public relations committee. This bill also deletes specified provisions relating to the District board and officers and general and special powers of the District.

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

Also, there is a question as to whether this bill requires a three-fifths majority vote for passage by the Legislature. See section "III. Comments. A. Constitutional Issues."

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### **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.

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.

The District charter was last codified in ch. 2006-342, L.O.F.

##### **St. Johns Water Control District**

The St. Johns Water Control District (District) is an independent district located in Indian River County. The District was created in 1962 through circuit court decree and derives its statutory authority from ch. 298, F.S. The District imposes non ad-valorem assessments<sup>1</sup> and maintenance taxes and has the power to issue bonds.

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<sup>1</sup> s. 298.305(1), F.S.

## Effect of Proposed Changes

### St. Johns 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 deletes the following specified provisions relating to the District's authority:

- to assess maintenance taxes;<sup>2</sup>
- to enter into covenants and agreements with bond holders;
- to control the flow of surface waters;
- to prohibit the connection of any farm ditch with any of the canals, ditches, laterals, or waterways, constructed, or maintained by the District, including enforcement authority;<sup>3</sup>
- to issue permits allowing any access over, under, or across its land;

The bill provides for the District's powers and authority to be in accordance with chapter 298, F.S.

### Charter of District

This bill recreates and reenacts the District's charter as follows:

Section 1: Renames the District the "St. Johns Improvement District".

Section 2: Provides for boundaries of the District.<sup>4</sup>

Section 3: Declares the provisions of s. 298, F.S. to be applicable to the District.<sup>5</sup>

Section 4: Provides the powers of the District and requires compliance with the county comprehensive plan and land regulations. This includes the authority to establish and create such departments, committees, boards, or other agencies, including a public relations committee.

Section 5: Provides for powers and duties of the board.

Section 6: Provides compensation of the board.<sup>6</sup>

Section 7: Provides for meeting of landowners and election of supervisor.

Section 8: Provides for ad-valorem taxes subject to referendum approval, not in excess of 10 mills.<sup>7</sup> Provides for non-ad valorem assessments and liens.<sup>8</sup> Provides compensation of Property Appraiser and Tax Collector.<sup>9</sup>

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<sup>2</sup> See s. 298.54, F.S., authorizing a "maintenance tax".

<sup>3</sup> See s. 298.66, F.S., providing penalties for obstructing drainage canals.

<sup>4</sup> See ch. 2006-342, s. 1, L.O.F.

<sup>5</sup> See ch. 2006-342, s. 2, L.O.F.

<sup>6</sup> See ch. 2006-342, s. 15, L.O.F.

<sup>7</sup> Art. VII s. 9, Fla. Const. provides that ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years, shall not exceed 1.0 mills for water management purposes.

<sup>8</sup> See ch. 2006-342, ss. 3, 5, 6, L.O.F.

<sup>9</sup> See ch. 2006-342, s. 7, L.O.F.

Section 9: Provides that taxes and assessments become delinquent and bear penalties in the same manner as county taxes.<sup>10</sup>

Section 10: Provides for enforcement of taxes and assessments.<sup>11</sup>

Section 11: Provides bonding authority including the issuance of revenue bonds,<sup>12</sup> bond anticipation notes,<sup>13</sup> and assessment bonds.

Section 11(a)(21), Art. III of the State Constitution, provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district.<sup>14</sup> See section "III. Comments. A. Constitutional Issues." for further discussion.

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, and may not be construed to modify, amend, or alter existing obligations of the District.

Section 2: Codifies, reenacts, amends and repeals ch. 2006-342, L.O.F.

Section 3: Renames the District; recreates and reenacts the charter of the District.

Section 4: Repeals ch. 2006-342, L.O.F.

Section 5: Provides severability.

Section 6: Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 1, 2006.

WHERE? In the *Vero Beach Press Journal*, a daily newspaper published in Indian River County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

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<sup>10</sup> See ch. 2006-342, s. 6, L.O.F.

<sup>11</sup> See ch. 2006-342, s. 5, L.O.F.

<sup>12</sup> See ch. 2006-342, s. 9, L.O.F.

<sup>13</sup> See ch. 2006-342, s. 10(2), L.O.F.

<sup>14</sup> See s. 298.76, F.S., while prohibiting special law or general law of local application, does authorize certain special or local laws, such as those changing the governing authority or the governing board.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

Paragraph (21) of subsection 11(a) of Article III of the Florida Constitution prohibits special laws or general laws of local application pertaining to “any subject when prohibited by general law passes by a three-fifths vote of the membership of each house.”<sup>15</sup> Pursuant to this authority, s. 298.76, F.S., was adopted and prohibits any special law or general law of local application which grants additional authority powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S.

Section 8 seeks to grant ad valorem taxing authority to the board. Neither ch. 298, F.S., nor ch. 2006-342, L.O.F., the prior act codifying the District, appear to give the District ad-valorem taxing authority.

Section 11 provides the District with the authority to issue bonds “without limitation as to amount for the purpose of financing those systems and facilities provided for in Section 5.” However, s. 298.47, F.S., only allows the board to 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, F.S. Again, this appears to conflict with the requirements of s. 298.76, F.S.

The law is unsettled regarding whether the “like vote” requirement to amend or repeal a law on a subject that was added to the prohibited subject list means that the amendment or repeal may be made (1) by any general or special law passed by a three-fifths vote; or (2) only by amending or repealing the underlying general bill that created the prohibited special law by a three-fifths vote. There is no case law on the issue and Florida attorneys general have come down on both sides of the issue.<sup>16</sup>

This bill may or may not require a three-fifths vote to pass the Legislature.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Drafting Issues**

Section 11 provides the District with the authority to issue bonds “without limitation as to amount for the purpose of financing those systems and facilities provided for in Section 5.” However, section 5 only sets out the organization of the board; the correct reference may be to section 4, which sets out the powers of the District, which describes the facilities the District may construct.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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<sup>15</sup> The *Local Policies and Procedures Manual* indicates that this concern may be partially alleviated by House Rule 5.5(b).

<sup>16</sup> Op. Att’y Gen. 83-27 (May 5, 1983), Op. Att’y Gen. 69-80 (August 28, 1969).