

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1211

Shawano Water Control District, Palm Beach County

SPONSOR(S): Taylor

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u>9 Y, 0 N</u>	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>15 Y, 0 N</u>	<u>Nelson</u>	<u>Cooper</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill expands the territorial boundaries of the Shawano Water Control District, an independent special district in Palm Beach County, subject to a referendum of qualified electors.

The bill has an effective date of upon becoming law.

According to the Economic Impact Statement, the bill will not require funding for administration, implementation or enforcement.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill. See, III. COMMENTS, C. Drafting Issues or Other Comments.

Also, see, III. COMMENTS, A. CONSTITUTIONAL ISSUES, for a discussion of the provisions of the bill that may be prohibited pursuant to the State Constitution, and whether a three-fifths majority vote would remedy this concern.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

This bill expands the boundaries of a special district.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Shawano Water Control District

The Brown Drainage District was created in Palm Beach County pursuant to ch. 11864, L.O.F., (1927), and renamed the Shawano Drainage District in 1947 by ch. 24254, L.O.F. (1947). The district is authorized to levy various assessments, and charged \$24.25 per acre in 2007.¹

The Shawano Water Control District is an independent special district which is subject to the provisions of ch. 298, F.S., "Drainage and Water Control."

District Boundary Modification

Section 298.301, F.S., provides that when a water control district is created, or its authorities or boundaries amended, by special act, lands may be added to or deleted only through legislative modification of the special act.

Limitation on Special Acts

Section 11(a)(21), Art, III of the State Constitution, provides that no special law or general law of local application shall be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house. However, such a general law may be amended or repealed by like vote.

Section 298.76, F.S., is an example of such a general law passed by a three-fifths vote. The statute provides that there shall be no special law or general law of local application granting additional authority, powers, rights or privileges to any water control district formed pursuant to ch. 298, F. S. Section 298.76, F. S., does not prohibit special or local legislation that:

- (a) Amends an existing special act that provides for the levy of an annual maintenance tax of a district;
- (b) Extends the corporate life of a district;
- (c) Consolidates adjacent districts; or
- (d) Authorizes the construction or maintenance of roads for agricultural purposes as outlined in ch. 298, F.S.

Section 298.76 F. S., specifically authorizes special or local legislation:

¹ March 7, 2008, correspondence from James L. Watt, Caldwell & Pacetti, LLP, representing the district.

- (a) Changing the method of voting for a board of supervisors for any water control district;
- (b) Providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any water control district; and
- (c) Changing the governing authority or governing board of any water control district.

Finally, s. 298.76, F. S., provides that any special or local laws enacted by the Legislature pertaining to any water control district shall prevail as to that district and have the same force and effect as though it had been a part of ch. 298, F. S., at the time the district was created and organized.

Effect of Proposed Changes

This bill amends ch. 2002-382, L.O.F., the special act containing the charter of the Shawano Water Control District in Palm Beach County, to expand the territorial boundaries of the district. The total size of the area to be annexed is approximately 4760 acres owned by Okeelanta (2100 acres), the Sugar Cane Growers Cooperative of Florida (2200 acres) and Exotic Collectors Nursery, Inc. (460 acres). Each of the areas at issue has requested to be included in the Shawano Water Control District, and currently are not part of other such districts.²

The bill provides that the expansion of territorial boundaries of the district is dependent upon approval by a majority of landowners voting in a referendum conducted by the board of supervisors within 60 days after the effective date of the act. All landowners within the current district and proposed expanded district boundaries are entitled to vote in the referendum, which will be held on a one-acre, one-vote basis at the expense of the district.

The bill is effective upon becoming law, except for the expansion of district boundaries.

C. SECTION DIRECTORY:

Section 1: Amends ch. 2002-382, L.O.F., to expand the boundaries of the Shawano Water Control District.

Section 2: Provides for a referendum.

Section 3: Provides for an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 21, 2008

WHERE? *The Palm Beach Post*, a daily newspaper of general circulation published in Palm Beach County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Within 60 days of the effective date of the act.

² Confirmed via e-mail by Jose Alvarez, Senior V.P. of Operations and Planning for the Sugar Cane Growers Cooperative of Florida, on March 10, 2007, and by Daniel D. Ross, Vice President and Real Estate Counsel for Okeelanta Corporation, and Juan Mercado, President of Exotic Collectors Nursery, Inc., on March 13, 2008.

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

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

According to the Economic Impact Statement, the expansion of the district's territorial boundaries will provide for a more coordinated installation of public infrastructure for the subject parcels with other ongoing district projects.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 11(a)(21), Art. III of the State Constitution, provides that no special law or general law of local application be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house. Such a general law may be amended or repealed by like vote. Section 298.76, F.S., is an example of a general law passed by a three-fifths vote of the membership of each house. The statute provides that there shall be no special law or general law of local application granting additional authority, powers, rights or privileges to any water control district formed pursuant to ch. 298, F.S.

Section 1 of this bill potentially expands the boundaries of this district, consequently giving the district the ability to collect additional assessments. This action could be interpreted as granting additional rights to the district. Nonetheless, it is noted that s. 298.301, F.S., specifically requires legislative modification of certain district boundaries by special act.

The law is unsettled with respect to 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 Attorney Generals have issued conflicting opinions.

The most current opinion concludes that a general law passed by a three-fifths vote of the Legislature prohibiting special or local laws on a particular subject may be amended or repealed by a special act which has passed by a like vote of three-fifths of each house of the Legislature. The Attorney General advised that the constitutional provision does not expressly provide that amendment or repeal may only be accomplished in the same manner or by general law.

In 1969, the Attorney General was asked whether it was possible to pass special legislation providing compensation to county officers, although such compensation was prohibited by s. 145.16(2), F.S. (a general law passed by 3/5 vote). The Attorney General then advised that the general chapter law creating the prohibition, ch. 69-211, L.O.F., operated to "prohibit and prevent effectiveness of any special act on the specified subject thereafter until amendment or repeal of... Ch. 69-211."

When the 1983 opinion was issued it raised concerns with both House and Senate bill drafting offices. Senate Bill Drafting promptly expressed disagreement with the opinion in a memorandum of May 10, 1983. Specifically:

The Florida Constitution, and particularly Article III, limit the power of the Legislature, especially the power, by any vote, to pass a local bill that conflicts with a constitutional prohibition implemented by general law;

The plain and obvious meaning of the prohibition "must be construed as implying that the general law must be expressly amended or repealed by another general law enacted by like vote";

As was true in 1968 when the provision was added to the Florida Constitution, local bill history

reveals that most local bills pass unanimously; thus, no construction should be applied to a constitutional provision that would render it a nullity;

The constitutionally prescribed method for circumventing a general law is by amending or repealing the general law; therefore, a conflicting local law is impliedly prohibited by general rules of constitutional construction; and finally,

General laws enacted pursuant to s. 11(a)(21), Art. III of the State Constitution are given the same effect as constitutional prohibitions. The purpose of this section is to specify subject matters with respect to which uniformity throughout the state is required and to negate, with respect to local laws on these subjects, the statutory rule of construction that local acts may supersede conflicting general law.

Senate Bill Drafting concluded that, “[u]ntil a general law enacted pursuant to Art. III, section 11(a)(21) is expressly amended by another general law in the manner specified by the Constitution, the Legislature is without the power to pass, by any vote, a local bill which conflicts with the general law constitutional prohibition.”

In its manual entitled Drafting Local Legislation in Florida (1985), House Bill Drafting also took issue with the 1983 opinion and argued that the interpretation therein “negates the whole point of the constitutional provision.” As stated in the 1969 Attorney General Opinion, the chapter law containing the prohibition would have to be amended or repealed before contrary special legislation could be passed. According to House Bill Drafting, “[t]he plain meaning of Section 11(a)(21) of Article III is that the subject of the prohibition itself may be directly altered or removed by extraordinary vote of the Legislature, not that exceptions to it may be created and the prohibition disregarded by the quiet passage of single-county local bills.

Notwithstanding these expressions of disagreement with the 1983 Attorney General Opinion, the Legislature has continued to pass by more than three-fifths vote, special acts that are exceptions to matters added by general law to the prohibited subject list of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES, above, for a discussion of how the bill may fail to comply with ch. 298, F.S.

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES