HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1365 Tindall Hammock Irrigation and Soil Conservation District, Broward County
SPONSOR(S): Seiler
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs		Fudge	Kruse
2) Government Efficiency & Accountability Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Tindall Hammock Irrigation and Soil Conservation District is an independent special district in Broward County created in 1951. The district is responsible for regulating and controlling the flow of water into and out of the district. The district is governed by a board of supervisors consisting of Hamilton C. Forman, H. Collins Forman, Jr., and Charles R. Forman, who serve until successors are elected and qualified.

HB 1365 provides for election of supervisors in September 2008 and every other year thereafter. The bill also increases the competitive bidding threshold and authorizes alternative competitive bidding procedures including purchases from state term contracts. The bill revises bond criteria and provisions. HB 1365 also designates the district as an independent improvement district with the authority to own, acquire, construct, operate and improve water and sewer systems.

The district anticipates revenues of $9,260.57 for FY 2008-2009 from ad valorem taxation on the additional land.

The bill is effective upon becoming 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. The provisions of House Rule 5.5(b) appear to apply to this bill.

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 House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Tindall Hammock Irrigation and Soil Conservation District is an independent special district in Broward County created in 1951.[1] The district is responsible for regulating and controlling the flow of water into and out of the district. The district is governed by a board of supervisors consisting of Hamilton C. Forman, H. Collins Forma, Jr. and Charles R. Forman, who serve until successors are elected and qualified.

Effect of Proposed Changes

HB 1365 increases the size of the district to include property consisting of public right-of-way and commercial property which relies on the district's drainage facilities for stormwater drainage. The bill also provides for the election of District Supervisors in September 2008 and for an election every other year thereafter. The three persons at each election receiving the highest number of votes shall be declared elected.

The bill increases the competitive bidding threshold from $25,000 to $150,000[2] for construction and maintenance of any improvements or for goods, supplies and materials. The bill also provides alternative bidding procedures in the best interest of the district including competitive sealed proposals and emergency procurement. The bill authorizes the district to apply to the Department of Management Services to purchase commodities or contractual services from state term contracts. The bill would also require the board to comply with the Consultant's Competitive Negotiation Act.

The district's authority to incur obligations not exceeding 12 percent per year is increased to the maximum rate authorized by general law and allows the district to issue bonds for water and sewer systems. The aggregate amount of bonds is increased from $450,000 up to an amount to be determined by the board. The denomination of bonds issued by the district is increased from any multiple of $100 to any multiple of $1,000. The bill authorizes the chair or, in his absence, the vice chair to sign the bonds. The board is authorized to retain trustees, paying agents, bond registrars, or authentication agents in connection with the issuance of the bonds. The Supervisors will now hold the election to approve the bonds instead of the Board of County Commissioners of Broward County.

HB 1365 designates the district as an independent improvement district with the authority to own, acquire, construct, operate and improve water and sewer systems. The bill authorizes the district to establish methods of pretreatment for wastewater not amenable for treatment and prescribe penalties for any entity that refuses to pretreat such waste.[3]

C. SECTION DIRECTORY:

Section 1: Provides for addition of land to the district; authorizes the district to own, acquire, construct, operate and improve water and sewer systems; increases competitive bidding requirement threshold to $150,000; provides for alternative bidding procedures;

[1] Chs. 27428 (1951), and 98-523, L.O.F.

[2] *See* s. 287.017(1)(d), F.S., purchasing category four.

[3] This provision is similar to the authority granted to county wastewater systems under s. 153.62(12), F.S.

authorizes the district to request ability to purchase from state term contracts; provides for election of Supervisors in September 2008 and every other year thereafter; changes office of president to chair and creates office of vice chair; provides for calling of special meetings; increases maximum allowable interest on obligations of the district not to exceed the maximum rate authorized by general law; revises bond criteria and approval process; requires meeting place of the district to be in Broward County.

Section 2: Requires that the Special Act be recorded in the Broward County Public Records.

Section 3: Provides for severability.

Section 4: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 30, 2007.

WHERE? In the *Sun-Sentinel*, a daily newspaper published in Broward County, Florida.

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

IF YES, WHEN?

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

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

The district anticipates increased revenues of $9,260.57 for FY 2008-2009 from ad valorem taxation on the additional land.[4]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Three-fifths vote requirement

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 passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote"[5] 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. The bill provides additional authority by allowing the district to own, acquire, construct, operate and improve water and sewer systems.

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

[4] E-mail response from the Executive Director for the Broward County Legislative Delegation: The additional land is owned by the Forman Family and they do not object to the inclusion of this land in the district.

[5] The *Local Policies and Procedures Manual* indicates that this concern may be partially alleviated by House Rule 5.5(b).

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.[6]

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

Approval of Bonds

The bill anticipates issuing bonds upon the approval of the landowners who are qualified electors owning land in the district, which is consistent with s. 12, Art. VII, Fla. Const.[7] However, limiting the electorate in bond and millage elections to persons who are the owners of freeholds not wholly exempt from taxation has been found unconstitutional under the Equal Protection Clause of the United States Constitution when applied to residents of units of local government exercising general governmental power. *See Fair v. Fair,* 317 F.Supp. 859, 860 (D.C.Fla. 1970); *see also Tornillo v. Dade County School Board*, 458 F.2d 194 (U.S.C.A. 5th Cir. 1972) (finding unconstitutional s. 9, Art. VII, Fla. Const., limiting electorate in bond and millage elections to owners of freeholds not wholly exempt from taxation).

The Attorney General, however, has recognized a "distinction between general purpose units of local government and those units of local government with limited purpose and disproportionate effect on landowners therein." *See Op. Att'y Gen. Fla.* 86-9 (1986). In the opinion, the Attorney General examined the application of s. 9(b), Art. VII, Fla. Const.[8], to a downtown development authority. The Attorney General concluded that "as to limited purpose units of local government with disproportionate effect on landowners therein, only electors who are owners of freeholds therein not wholly exempt from taxation are eligible to vote in a referendum to approve a millage authorized by law." *Op. Att'y Gen. Fla.* 86-9 (1986).

In this case, the district anticipates issuing bonds, funded by either its current millage of 2.5 mills or a special assessment, to fund infrastructure improvements within the district. This activity appears to have a disproportionate affect on landowners within the district consistent with the rationale discussed by the Attorney General.

The district has received an opinion of bond counsel that supports use of an election procedure that seeks the approval of landowners who are qualified electors in the district.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a transition process for electing supervisors from a one acre/one vote basis to an election by qualified electors, which creates an exemption from general law.[9]

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

[6] Op. Att'y Gen. 83-27 (May 5, 1983), Op. Att'y Gen. 69-80 (August 28, 1969).

[7] S. 12, Art. VII, Fla. Const., the Florida Constitution requires bonds payable from ad valorem taxation to be approved by vote of the electors who are the owners of freeholds not wholly exempt from taxation.

[8] s. 9(b), Art. VII, Fla. Const. limits special district millage to an amount "authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation."

[9] In June 2007, the Governor vetoed CS/HB 1395, which dealt with the Coral Springs Improvement District's election procedures, compensation for board members, and a change in the finance authority (competitive bidding requirements) of the District. Among other reasons, the Governor vetoed the bill because it ignored current law requiring a referendum to transition from a board elected by one-acre/one-vote to one elected by registered voters. The Governor was also concerned with the increase in the competitive procurement threshold from $4,000 to $150,000 and stated that "[t]he need for a referendum is heightened when any change to a special district's practices could lead to increased financial costs through taxes or special assessments to landowners and those who reside within the district."

of the district. However, s. 189.4051(5), F.S., states that "[t]hose districts established as a single-purpose water control districts, and which continue to act as single-purpose water control districts, pursuant to chapter 298, pursuant to a special act, . . . shall be exempt from the provisions of this section."

The exemption in s. 189.4051(5), F.S., seems to recognize that broad grants of power 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 chapter 190, Florida Statutes, based upon decisions of the United States Supreme Court.[10] The focus of the case was on the narrow purpose of such districts, stating:

> 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.[11]

The court found that the Florida Legislature was reasonable in its conclusion that because of the disproportionate effect district operations have on landowners, that landowners, to the exclusion of other residents, should initially elect the board of supervisors.

Following this case, the 4th District Court of Appeal reached a similar conclusion with respect to water control districts which are governed by chapter 298, Florida Statutes, 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 did 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.[12]

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, the greater the possibility that one-vote-per acre voting could be found 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.

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[10] *See Ball v. James*, 451 U.S. 355 (1981) and *Salyer Land Co. v. Tulare Lake Basis Water Storage District*, 410 U.S. 719 (1973).

[11] *State v. Frontier Acres Community Development District Pasco County, Florida*, 472 So.2d 455, 457 (Fla.1985).

[12] *Stelzel v. South Indian River Water Control Dist.*, 486 So.2d 65, 67 (Fla. 4th DCA 1986).

The district is seeking additional authority, not contained within chapter 298, the acquisition and operation of a water or wastewater facility. Consequently, if the bill passes, the district would no longer be a single purpose district and would be subject to the provisions of s. 189.4051, F.S.

Section 189.4051, F.S., 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. The referendum shall be called if the district has a total population of at least 500 qualified electors and a petition has been signed by 10 percent of the qualified electors.[13] 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. If the electors disapprove of the election procedure, elections of board members continue as described by general law or enabling legislation of the district.

Additionally, the bill should clarify that the sale, purchase, or privatization of a water or wastewater utility will be in accordance with section 189.423, F.S. This section requires the governing body of the district to hold a public hearing on the purchase or sale of a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a wastewater facility privatization contract, and determine that the purchase, sale, or wastewater privatization contract is in the public interest by considering several factors identified in the section.

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

[13] s. 189.4051(2)(a), F.S.