

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill expands the boundaries of a special district.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Indian Trail Improvement District

The Indian Trail Improvement District (formerly known as the Indian Trail Water Control District) is an independent special district in Palm Beach County. It was created in 1957 by special act¹ for the purpose of reclaiming the lands within its boundaries for water control and supply, and protecting the land from the effects of water by the construction and maintenance of canals, ditches, levees, dikes, pumping plants, and other works and improvements. All prior special acts relating to the district were codified by ch. 2002-330, L.O.F.

The boundaries of the district encompass over a 110 square mile area which includes 17,000 developed lots, and citrus grove and sugar cane production. Currently, the district serves over 40,000 residents and employs 65 full time employees. It is supervised by an elected, five-member board of supervisors who meet monthly to conduct district business. The district is supported by a non-ad valorem assessment based on each acre or fraction thereof.

The district is subject to the applicable 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 However, such a general law may be amended or repealed by like vote.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;

¹ Ch. 57-646, L.O.F.

- (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:

- (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 shall 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

HB 933 amends ch. 2002-330, L.O.F., to expand the territorial boundaries of the Indian Trail Improvement District. The bill adds a "Parcel A," "Parcel B" and "Parcel C." Parcel A and B consists of two lots which total 10.8 acres owned by W&W IX, LLC and LAKE WELLINGTON PROFESSIONAL CENTER, INC., as equal tenants in common. Parcel C consists of four platted lots owned by NORTHLAKE 20, LLC, which total 17.893 acres. These properties have all voluntarily consented to be included within the Indian Trail Improvement District.²

After the filing of the bill, the district's engineer opined that the land at issue currently is part of the Northern Palm Beach County Improvement District.³ If added into the Indian Trail Improvement District, the owners would be responsible for assessments on their property by both water control districts. These individuals have been informed of this fact, and have indicated their continued desire to be included within Indian Trail.⁴

It appears that this territorial expansion may be impacted by the s. 298.76, F.S., language that provides that there shall be no special law granting additional authority, powers, rights or privileges to any water control district formed pursuant to ch. 298, F.S. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES, for a discussion why this provision may be prohibited pursuant to the State Constitution, and whether a three-fifths majority vote will remedy this concern.

The bill also provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 2 of s. 3 of ch. 2002-330, L.O.F., to expand district boundaries.

Section 2: Provides an effective date.

² Confirmed via e-mail on March 10, 2008, by Rett Waldman as owner of W&W IX, LLC, and on March 11, 2007, by Susan L. Taylor, attorney representing Northlake 20 LLC.

³ March 14, 2008, telephone conversation with James L. Watt, Caldwell & Pacetti, LLP, representing the district.

⁴ March 17, 2008, e-mails from Rett Waldman and Susan L. Taylor.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 24, 2007

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?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, the expansion of the district's territorial boundaries will benefit district landowners by decreasing the facilities maintenance costs apportioned to each landowner.

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 expands the boundaries of the Indian Trail Improvement District, and consequently gives 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) appear to apply to this bill. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES, above, for a discussion of how the bill may fail to comply with s. 298.76, F.S.

D. STATEMENT OF THE SPONSOR

HB 933 is a bill adding three parcels owned by two separate owners to the district. This action is voluntary and subject to a referendum.

This bill makes no substantive change to the law.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES