

**STORAGE NAME:** h1115z.lgva.doc  
**DATE:** May 31, 2001

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
**CHAPTER #:** 2001-336, Laws of Florida

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
LOCAL GOVERNMENT & VETERANS AFFAIRS  
FINAL ANALYSIS – LOCAL LEGISLATION**

**BILL #:** HB 1115/1ST ENG  
**RELATING TO:** Brevard County/Melbourne-Tillman District  
**SPONSOR(S):** Representative Needelman  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 7 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

This bill codifies all prior special acts relating to the Melbourne-Tillman Water Control District in Brevard County into a single act and repeals all prior special acts relating to the District's charter.

This bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language. The bill also makes other changes that do not appear to alter the effect of existing law pertaining to the District.

The bill declares the District a dependent special district.

The bill amends the District's boundaries.

Decreased fiscal impacts are anticipated for fiscal years 2001-02 or 2002-03 according to the Economic Impact Statement.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

A Water Control District of South Brevard, a dependent special district, was created in 1986, chapter 86-418, Laws of Florida, for the purpose of constructing, reconstructing and repairing, maintaining, and operating a surface water management system. Chapter 94-424, Laws of Florida, renamed the district as the Melbourne-Tillman Water Control District.

**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 authorized by the 1997 Legislature when it amended chapter 189, Florida Statutes, to provide for codification of all special district charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. Section 189.429, Florida Statutes (1997), also required that no changes be made to a district's charter, as it existed on October 1, 1997. However, the 1998 Legislature amended section 189.429, Florida Statutes, to: (1) extend the codification deadline to December 1, 2004; (2) allow 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; (3) remove the prohibition of substantive amendments in a district's codification bill; and (4) remove the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline. 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.

**Status Statement Language**

Section 189.404(5), Florida Statutes, provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or

independent. When necessary, the status statement shall be amended to conform to the department's determination or declaratory statement regarding the status of the district.

### **Schedule of Submittals of Special Districts' Charters**

Special Districts with less than 2 special acts	1999 Legislative Session
Special Districts with 3 - 4 special acts	2000 Legislative Session
Special Districts with 5 - 7 special acts	2001 Legislative Session
Special Districts with 8 - 12 special acts	2002 Legislative Session
Special Districts with more than 12 special acts	2003 Legislative Session
Special Fire Control Districts	2004 Legislative Session

Since the enactment of sections 189.429 and 191.015, Florida Statutes, 89 special districts have codified their charters. A list of those special districts that have codified pursuant to sections 189.429 and 191.015, Florida Statutes, is available at the office of the Committee on Local Government and Veterans Affairs, Florida House of Representatives.

### **History of Water Control Districts**

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts – through circuit court decree – and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

### **Chapter 298, Florida Statutes**

Chapter 298, Florida Statutes, contains provisions governing the creation and operation of water control districts. Some of these provisions are briefly described below.

#### **Creation of Water Control Districts**

Section 298.01, Florida Statutes, restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of section 125.01, Florida Statutes (dependent water control districts). Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by chapter 298, Florida Statutes.

#### **Election of Board of Supervisors**

Upon the formation of a water control district, the circuit court where the majority of the land is located has jurisdiction within the boundaries of the district. Once a district is organized, notice of

the first landowners' meeting shall be given. The notice shall be published once a week for two consecutive weeks in a newspaper. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve 3-year rotating terms, with one supervisor elected each year at a required annual meeting. To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located, unless a district's special act provides otherwise. The Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting if acreage owned by the state is subject to assessment by the district.

### **One-Acre, One-Vote**

Section 298.11(2), Florida Statutes, provides that every acre of assessable land within a district represents one share, or vote. Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well. Landowners owning more than one acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowners' acreage has been aggregated for purposes of voting.

### **Role of the Circuit Courts**

Prior to July 1, 1980, when a water control district was formed, the circuit court of the county where the majority of the land is located had exclusive jurisdiction within the boundaries of the district. Circuit courts served several functions in the creation and governance of water control districts. After a board of supervisors adopted a plan of reclamation, it petitioned the circuit court to appoint three commissioners to appraise the lands that would be acquired to implement the plan of reclamation. A circuit court may have required the report on assessment of benefits and damages to be amended to include condemned lands needed to construct the district's works. In the event a circuit court determined that the value of land within the district had changed and additional conditions were met, the court was required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

### **Water Control Plans**

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan". The approval and implementation process has been removed from the purview of the circuit court.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider adoption of the plan or plan amendment. The board of supervisors shall publish notice of a public hearing once a week for 3 consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission of the county and any municipality in which the District is located.

At the public hearing on the proposed plan or plan amendment the board of supervisors will consider any objections to the plan and then shall determine whether or not to proceed with the plan. In the event the board proceeds forward, it will then direct the District Engineer to prepare a report in writing to the board of supervisors complete with maps and surveys. The report shall include a full and complete water control plan for draining and reclaiming the lands described in the petition. Further, the report must contain an estimate of the costs of carrying out the completing the water control plan and an estimate of the benefits derived from the water control plan.

A final hearing on approval of the water control plan and the engineer's report, is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the engineer's report with the secretary of the district.

Before final adoption of the engineer's report and water control plan or plan amendment under section 298.301, Florida Statutes, the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment is less than the benefits determined for the lands.

The board of supervisors must review the water control plan at least every 5 years following its adoption.

### **Revenue Sources**

The primary funding source for water control district activities is special assessments, which must be imposed on the property so that the burden on every parcel will bear a just proportion to that imposed on every other. In other words, the assessment of the particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. Special assessments may be determined legislatively or judicially.

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

### **Limitation on Special Acts**

Section 11(a)(21), Article 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, Florida Statutes, is an example of such 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 chapter 298, Florida Statutes. Section 298.76 Florida Statutes, 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 this chapter.

Section 298.76 Florida Statutes, 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, section 298.76, Florida Statutes, 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 chapter 298, Florida Statutes, at the time the district was created and organized.

C. EFFECT OF PROPOSED CHANGES:

This bill codifies all prior special acts relating to the Melbourne-Tillman Water Control District in Brevard County into a single act and repeals all prior special acts relating to the District's charter.

This bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language. The bill also makes other changes that do not appear to alter the effect of existing law pertaining to the District.

The bill declares the District a dependent special district.

The bill amends the District's boundaries to exclude certain lands.

The bill provides the District to encourage sections of the District land be available for public outdoor recreational purposes with limited liability pursuant to section 373.1395, F.S.

Decreased fiscal impacts are anticipated for fiscal years 2001-02 or 2002-03 according to the Economic Impact Statement.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Provides that this act is the codification required under section 189.429, Florida Statutes; states the Legislative intent for the act; preserves all district authority, including the authority to annually assess and levy against the taxable property in the district a tax not to exceed 0.2 mills on the dollar of assessed valuation.

**Section 2.** Amends, codifies, reenacts, and repeals special acts relating to the District's charter.

**Section 3.** Provides for the re-creation and reenactment of the charter for the District and the following provisions:

Section 1. Provides Legislative intent.

Section 2. Provides definitions.

Section 3. States the District is a dependent special district; states District purpose and the boundaries of the District.

Section 4. Provides for the composition of the seven member board of directors; provides for appointments of the board members; provides for term limits; states the board members are residents of the District.

Section 5. Provides the members of the board subscribe to an oath of office.

Section 6. Provides for the organization of the board; provides for compensation of board members.

Section 7. Provides for financial, minutes of all meetings, proceedings, and all corporate acts disclosure.

Section 8. Provides powers of the board to effect a surface water management system within the District boundaries.

Section 9. Provides for the District budget.

- Section 10. Provides for the appointment of professionals, experts, District manager, other agents and employees.
- Section 11. Provides for the appointment and duties of the treasurer of the District.
- Section 12. Provides for the removal of officers and employees.
- Section 13. States in the event the board of directors determines that the existing water management system of the District is inadequate to accomplish the purpose set forth in this act the board of directors has the power to make new plans.
- Section 14. Provides for procedure and requirements governing bond and other issuance.
- Section 15. Describes the methods for financing the district.
- Section 16. Describes the methods for collecting annual stormwater management user fees, assessments, and taxes.
- Section 17. Provides penalty for unpaid fees, assessments, and taxes that are delinquent.
- Section 18. Provides compensation for property appraisers and tax collectors; provides for characterization of services.
- Section 19. States fees, assessments, and taxes and costs a lien on land against the fees, assessments, and taxes levied.
- Section 20. Provides for delinquent fees, assessments, and taxes; provides for discounts.
- Section 21. Provides for acquisition of land for the purpose of rights-of-way and other purposes.
- Section 22. Provides for civil and criminal penalties for the obstruction of drainage canals, drains, ditch, or watercourse or surface water management facility.
- Section 23. Provides for modification, alteration, or improvement to the surface water management system.
- Section 24. Provides for expanded functions of the District.
- Section 25. Provides for the expansion or contraction of the boundaries of the District, by special act of the Legislature.
- Section 26. Declares the authority of this act is a dependent special district within the definition of section 200.001(8)(d), F.S., pursuant to ss. 190.049, 165.002 and 165.041, and 200.001(8)(d), F.S.; provides the millage of the District is included in the millage computation of Brevard County as provided by law.
- Section 27. Provides for suits against the District.
- Section 28. Provides all District property is exempt from levy and sale by virtue of an execution.
- Section 29. Provides for the rights and obligations to the District.
- Section 30. Provides for gender neutrality in all references.

Section 31. Provides for the District to encourage sections of the District land be available for public outdoor recreational purposes with limited liability pursuant to section 373.1395, F.S.

**Section 4.** Provides for the severability of any invalid provision.

**Section 5.** Provides that this act controls in the event of a conflict.

**Section 6.** Repeals chapters 86-418, 90-401, 91-341, 92-239, and 94-424, Laws of Florida.

**Section 7.** Provides effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? February 1, 2001

WHERE? Florida Today Newspaper in Melbourne, Brevard County, Florida

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

III. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The law firm, Spira, Beadle & McGarrell, P.A., representing the District submitted a boundary letter stating the following:

The reason for the deletion of District land contained in the legal description of the District is based upon the stormwater system permitted and installed on the property to be deleted, the stormwater discharges into a watershed other than one operated by the District. Based upon this information, the Board of Directors of the District authorized this deletion from the District boundaries to be included in this special legislation. The impetus for this amendment was based upon a determination by the District that this property does not impact the District.

According to the 2001 Economic Impact Statement revenues will decrease due to a deletion in the District boundaries.

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IV. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veterans Affairs adopted one amendment to the bill at its meeting on April 12, 2001. The amendment streamlines auditing provisions by eliminating unnecessary language. The House approved the amendment on April 24, 2001 and passed the bill as amended.

V. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Terri S. Boggis

Joan Highsmith-Smith

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:**

Prepared by:

Staff Director:

Terri S. Boggis

Joan Highsmith-Smith