

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 551 South Indian River Water Control District
SPONSOR(S): Domino
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veterans' Affairs</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill authorizes the Board of Supervisors of the South Indian River Water Control District to hold, control, acquire by donation or purchase real and personal property for recreational purposes for specified land within the District.

Negligible fiscal impacts are anticipated according to the Economic Impact Statement (EIS).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0551a.lgv.doc
DATE: March 20, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

This bill provides for authority to acquire real and personal property by donation or purchase for recreational purposes within a specified area of the South Indian River Water Control District (District). This bill will allow the District to qualify for grant funding for the acquisition and development of the recreational parcel. The District currently has authority to receive lands for recreational purposes. However, legal counsel representing the District comments that the amendment to the special act being sought through this bill is necessary to conform the special act with general law.

Chapter 298, F.S., also sets out 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. SECTION DIRECTORY:

Section 1. Section 12 of section 3 of chapter 2001-313, L.O.F., is amended to authorize the Board of Supervisors of the District to hold, control, acquire by donation or purchase, and maintain real and personal property for recreational purposes for land within the District lying East of Canal 18 of the South Florida Water Management District only, and to make it available for the use of the landowners.

Section 2. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 28, 2003 and January 12, 2003.

WHERE? The Palm Beach Post, West Palm Beach, Palm Beach County, Florida and the Scripps Treasure Coast Publishing Company, The Jupiter Courier, Jupiter, Palm Beach 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: Not Applicable.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The attorney, Mr. Terry Lewis, of Lewis, Longman, & Walker, for the district submitted the following on March 17, 2003:

Per your request, we have reviewed section 298.76, Florida Statutes, to determine its applicability to House Bill 551, which authorizes the South Indian River Water Control District (District) to acquire by donation or purchase real and personal property for recreational purposes. At this time, we do not believe that the section is applicable to the District's local bill.

The District was created in 1923 pursuant to Florida's Drainage Laws, now known as chapter 298, Florida Statutes. The District operated pursuant to its judicial decree until the 1980s when it came to the Legislature for additional authority. Section 298.22, Florida Statutes, grants general powers to those districts operating in accordance with chapter 298, Florida Statutes. Subsection (7) of this section grants the authority to acquire or condemn land as identified in the engineer's report and subsection (10) grants the authority to implement activities described in its water control plan. In addition to the general powers authorized by section 298.22, Florida Statutes, the District is also authorized to receive and maintain real and personal property for recreational purposes pursuant to section 12 of its charter.

If the broad authority granted to the District in section 298.22(7) and (10), Florida Statutes, is read together with section 12 of the District's charter, the District currently has the authority to buy and condemn land for recreational purposes and spend money to maintain such land. In effect, House Bill 551 conforms the District's charter to the authority granted to it in chapter 298, Florida Statutes.

The Supreme Court has stated that courts should presume that the legislature knows of existing statutes when passing laws and that the legislature does not intend to keep contradictory provisions in the statutes.¹ In addition, it must be presumed that the legislature would not allow one statute to repeal another statute without specifically stating so.² When statutes potentially conflict with one another, courts should adopt a construction that harmonizes and reconciles the conflicting statutes.³ Courts should endeavor to find a way to preserve the force and effect of both statutes and avoid conflict or contra dicta.⁴ When the plain meaning of section 298.22, Florida Statutes, and section 12 of the District's charter are analyzed, it is clear that the District

¹ *Woodgate Development Co. v. Hamilton Investment Trust*, 351 So. 2d 14, 16 (Fla. 1977).

² *Id.*

³ *Woodley Lane, Inc. v. Nolen*, 147 So. 2d 569, 571 (Fla. 2nd DCA 1962).

⁴ *Id.* See also *Tamiami Trail Tours v. City of Miami*, 31 So. 2d 468, 471 (Fla. 1947).

currently has the authority to acquire lands for recreational purposes. Because we believe that House Bill 551 conforms the District's charter to current authority and no additional authority is granted, it appears that the prohibition provided for in section 298.76, Florida Statutes, is not applicable.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Local Affairs recommended one amendment on March 20, 2003. The amendment corrects a technical error.