

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1351 South Broward Drainage District, Broward County

SPONSOR(S): Jenne

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Duncan	Hoagland
2) Finance & Tax Committee	23 Y, 0 N	Flieger	Langston
3) Economic Affairs Committee	16 Y, 0 N	Duncan	Tinker

SUMMARY ANALYSIS

The South Broward Drainage District (District) is an independent special district created in 1967 with drainage and water control powers derived from ch. 298, F.S. The 7-member Board of Commissioners (Board) of the District is elected by landowners of the District. The District has jurisdiction over 46,600 acres (approximately 73 square miles) in southwest Broward County which includes 150 linear miles of fresh-water canals and 7,500 acres of lakes for stormwater storage. Included in the District's authority is the power to:

- Establish, construct, operate, and maintain a system of main and lateral canals, drains, ditches, levees, dikes, dams, sluices, locks, revetments, reservoirs, holding basins, floodways, pumping stations, siphons, culverts, and storm sewers, and to connect some or any of them to drain and reclaim the lands within the District.
- Construct or enlarge any and all bridges or culverts that may be needed in or out of the District, across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right-of-way, tract, grade, fill, or cut; to construct roadways over levees and embankments; to construct any and all of said works and improvements across, through, or over any public highway, railroad right-of-way, track, grade, fill, or cut in or out of the District; and to remove any fence, building, or other improvements, in or out of the District for purposes of drainage and reclamation.
- Assess and impose upon all of the lands in the District an annual drainage tax, administrative tax, and maintenance tax.
- To impose and foreclose special assessment liens.

This bill clarifies the District's authority to carry out water management activities and, in various provisions throughout the bill, replaces "reclamation" with "water management" or "water control" to provide consistency throughout the District's charter. In addition, the bill:

- Amends the definitions of the term "assessable improvements" and defines the term "drainage and water management facilities" rather than "drainage and reclamation facilities." The bill also defines the term "five-year certification plan."
- Revises the District's powers to incorporate its water management responsibilities and to reflect an Interlocal Agreement regarding water elevations between the District and the Town of Southwest Ranches.
- Amends the process for declaring a winner when an election of the Board results in a tie.
- Authorizes the Treasurer to prepare the District's proposed budget, rather than the Secretary.
- Removes the requirement for the engineer to carry out the administrative duties associated with the District's process for levying special assessments to permit the District's director to carry out these administrative functions.
- Includes the property appraiser as one of the entities to which the Board must certify information regarding special assessments levied.
- Additionally, the bill updates the District's administrative and operational provisions, removes obsolete language, and amends several sections to provide consistency throughout the District's charter.

The bill provides that nothing in this act supersedes ch. 99-468, L.O.F.; requires that a certified copy of the act be recorded in the Broward County Public Records by the District; and includes a severability clause.

The bill is effective upon becoming law.

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

STORAGE NAME: h1351f.EAC

DATE: 4/22/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The South Broward Drainage District (District), known as the Hollywood Reclamation District until 1986, was created by the Florida Legislature in 1927 out of a portion of the Napoleon B. Broward Drainage District.¹ with drainage and water control powers derived from ch. 298, F.S. The 7-member Board of Commissioners (Board) of the District is elected by landowners of the District. The District has jurisdiction over 46,600 acres (approximately 73 square miles) in southwest Broward County which includes 150 linear miles of fresh-water canals and 7,500 acres of lakes for stormwater storage.²

The District is authorized to:

- Establish, construct, operate, and maintain a system of main and lateral canals, drains, ditches, levees, dikes, dams, sluices, locks, revetments, reservoirs, holding basins, floodways, pumping stations, siphons, culverts, and storm sewers, and to connect some or any of them to drain and reclaim the lands within the District.
- Clean out, widen, or change the course and flow, alter, or deepen any canal, ditch, drain, river, water course, or natural stream to drain and reclaim the lands within the District.
- Construct or enlarge any and all bridges or culverts that may be needed in or out of the District, across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right-of-way, tract, grade, fill, or cut; to construct roadways over levees and embankments; to construct any and all of said works and improvements across, through, or over any public highway, railroad right-of-way, track, grade, fill, or cut in or out of the District; and to remove any fence, building, or other improvements, in or out of the District for purposes of drainage and reclamation.
- Hold, control, and acquire by donation, purchase, or condemnation, any easement, reservation, or dedication in or out of the District.
- Assess and impose upon all of the lands in the District an annual drainage tax, administrative tax, and maintenance tax.
- To impose and foreclose special assessment liens.
- To prohibit, regulate, and restrict by appropriate resolution all structures, materials, and things, whether solid, liquid, or gas, whether permanent or temporary in nature, which come upon, come into, connect to, or be a part of any of the main or lateral drains, ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations, and siphons which have been created or constructed.
- Construct, improve, and maintain roadways and roads necessary and convenient to provide access to and efficient development of areas made suitable and available for cultivation, settlement, urban subdivision, homesites and other beneficial developments as a result of the drainage operations of the District.
- To make use of any dedication to public use or platted reservations within the boundaries of the District.
- Exercise any and all other powers conferred upon drainage districts by ch. 298, F.S., including but not limited to, the power to acquire and construct drainage improvements, to issue bonds to the pay the cost of such improvements, and to levy and collect drainage taxes benefited by the improvements.

¹ South Broward Drainage District Charter, <http://www.sbddd.org/pdfs/SBDDCHARTER.pdf> (last visited April 8th, 2011)

² South Broward Drainage District, Overview, <http://www.sbddd.org/> (last visited March 22, 2011).

“Assessable improvements” includes, without limitation, any and all drainage and land reclamation works and facilities, sewer systems, storm sewers and drains, water systems, streets, roads, or other projects of the District local in nature and of special benefit to the premises or lands served by the District, and any and all modifications, improvements, and enlargements.

“Drainage and reclamation facilities” means canals, ditches, or other drainage facilities, reservoirs, dams, levees, sluiceways, dredging, holding basins, floodways, pumping stations, or any other works, structures, or facilities for the conservation, control, development, utilization, and disposal of water, and includes all real and personal property, rights, easements, and franchises relating to such drainage and reclamation facilities necessary for the acquisition, construction, operation, or maintenance of the District.

The Town of Southwest Ranches, Water Control Elevations, and Revisions to the District’s Charter

The Town of Southwest Ranches (Town) is concerned that the designated water control elevation within the part of the Town located within the boundaries of the District may be requested to be increased by permit application, regulatory requirement, state law, or some other means. In response to that concern, the District and the Town entered into a Memorandum of Agreement (MOA) with the South Florida Water Management District and the Florida Department of Agriculture and Consumer Services on June 16, 2010, to establish a pilot project to investigate revisions to the water management system operations and water quality improvements within the District’s S-9 and S-10 Basins. As part of the MOA, the Town and the District will install intermediate water control gates to allow the water control elevation within the Town limits to be lowered during the wet season to match the water elevation of the C-11 Canal.³

In 2010, the District’s Board adopted a resolution⁴ authorizing the District to enter into an interlocal agreement with the Town providing that the District would provide written notification to the Town of any potential increase or decrease in a designated water control elevation within the boundaries of the Town at least 30 days prior to the District’s request to the South Florida Water Management District. In addition, the Town would not oppose or object to the District’s proposed charter revisions requested for approval during the 2011 Legislative session.⁵

Effect of the Proposed Changes

This bill clarifies the District’s authority to carry out water management activities and, in various provisions throughout the bill, replaces “reclamation” with “water management,” “plan of reclamation” with “water control plan,” and replaces “reclaim” with “water management.” The bill also updates the District’s administrative and operational provisions, removes obsolete language, and amends several sections to provide consistency throughout the District’s charter.

Definitions

The bill amends the definition of “assessable improvements” to replace “reclamation water management works and facilities” with “water management works and facilities.”

The bill replaces the term “drainage and reclamation facilities” with “drainage and water management facilities.” The definition of “drainage and water management facilities” is defined to include water management areas and provides that the terms “drainage” and “water management” must be used interchangeably and further provides that the term means the “conservation, control, management, conveyance, flowage, storage, detention, retention, absorption, run-off, pumping, and discharge of

³ Interlocal Agreement between South Broward Drainage District and Town of Southwest Ranches relating to Water Control Elevations, documents hand delivered to House Community & Military Affairs Subcommittee staff, March 9, 2011.

⁴ Resolution No. 2010-18 adopted Dec. 16, 2010, South Broward Drainage District, documents hand delivered to House Community & Military Affairs Subcommittee staff, March 9, 2011.

⁵ *Id.*

water or stormwater and any purposes appurtenant, necessary, or incidental thereto. This definition shall in no way be deemed to expand or reduce the District's powers."

The bill defines the term "five-year certification program," which is the District's program that requires the District's 5-year surface water management operation and maintenance permit for drainage facilities to be renewed at the end of every 5 years by the permittee or landowner and requires the permitted surface water management and drainage system to be operational and in compliance with the District's rules, regulations, and criteria.

Election of the District's Board of Commissioners (When an Election Results in a Tie)

The District's governing body is composed of seven commissioners who are elected from seven single-member zones. The District's elections process provides that the candidate receiving the highest number of votes cast for commissioner for each respective zone at each respective election is declared elected to office. If the vote results in a tie, then the outcome must be determined by lot. The bill amends this procedure to provide that if the vote results in a tie, the outcome must be determined by drawing a card from a standard unopened sealed deck of 52 cards provided by the District's director. The candidate that draws the highest card will be declared elected to office.

Powers of the District

The bill replaces the term "reclaim" with "water management services" and replaces the term "reclamation" with "water management" relative to the District's power. The bill also amends this section to clarify the District's authority to construct or enlarge any bridges or culverts and to construct any works or improvements in or out of the District. The bill clarifies the District's power to assess and impose taxes by removing the list of specific taxes and using the term "annual assessment" instead.

The bill adds a provision relating to the District's power to prohibit, regulate, and restrict certain structures and materials providing that it may be necessary for the District to take appropriate action should it be required by another governmental agency with jurisdiction over the District. The South Florida Water Management District is an example of an agency with jurisdiction over the District.

In response to the Interlocal Agreement formed between the District and the Town of Southwest Ranches, this specific power is further amended to provide that the District's designated water control elevations must be maintained in accordance with the terms of the District's South Florida Water Management District permits and any agreements that may be entered into between the District, the South Florida Water Management District, and any other governmental entity. In addition, when reviewing all permit applications, the District must take into consideration the water control elevations in the design, construction, and maintenance of all drainage and water management facilities such that the design, construction, and maintenance within the District will not adversely impact the designated water control levels.

The bill includes dedicated easements with respect to the District's power to make use of any dedication to public use, platted, or reservations and provides that such power is applied within or without the District's boundaries.

The bill further amends the powers of the District to make them consistent with other sections of the charter.

Annual Budget

The bill requires the treasurer or the director, rather than the secretary or the director, to prepare the District's proposed budget.

Water Control Plan

All references to the “plan of reclamation” are replaced with “water control plan.” The bill clarifies that the water control plan pertains to water management facilities and water management works.

Assessing Land for Drainage and Water Management

Currently, the charter requires the secretary or the District’s director to prepare a list of all taxes levied, which becomes the District’s tax record, and to sign and certify this document. The bill includes the Board’s treasurer as one of those persons authorized to prepare the list of all taxes levied known as the District’s tax record, and to sign and certify the document. These provisions are also amended to provide consistency throughout the District’s charter.

Administrative Tax

The bill moves, but does not amend, the maintenance tax provisions currently in a separate section of the District’s charter to the administrative tax section. The bill also renames this section “Administrative, maintenance, and operations tax.”

Special Assessments

Currently, the District is authorized to levy special assessments to pay for the construction or reconstruction of assessable improvements. The engineer is required to manage several administrative aspects of this process. The bill removes the specific reference to the engineer to direct the District and/or the director to carry out these administrative functions. This change does not appear to impact the duties of the engineer⁶ as prescribed by law.

Currently, the Board is required to annually certify to the county revenue (tax) collector a list of all special assessments including a description and the names of, properties against which assessments have been levied, as well as the amounts due. The bill requires the Board to certify this information to both the county revenue collector and the county property appraiser. The bill also provides that all charges of the county revenue collector, the county property appraiser, or the District relating to the assessment issues pursuant to the charter are deemed costs of the operation and maintenance of any drainage improvements in connection with the special assessments levied. The costs, fees, and expenses must be mutually agreed upon between the Board, the county revenue collector, and the county property appraiser.

The bill also corrects cross-references and makes technical changes.

Maintenance of Projects

The bill revises this section to make it consistent with other provisions in the District’s charter and clarifies that the District has the power to construct, maintain, and operate its projects and drainage and water management facilities in, along, on, or under any dedications to the public, platted or dedicated rights-of-way, platted or dedicated reservations, streets, easements, water management areas, alleys, highways, or other public places or ways, and across any drain, ditch, canal, floodway, holding basin, excavation, railroad right-of-way, easement, reservation, or water management area, track, grade, fill, or cut within or without the District. The bill also renames the section “Maintenance and operation of projects and drainage and water management facilities.”

Enforcement and Penalties

The bill adds a new provision to this section which states, “a person may not willfully, or otherwise, obstruct any canal, drain, ditch, watercourse, or water management area or destroy any drainage

⁶ See ss. 298.16, 298.26, 298.301, F.S.

works constructed in or maintained by the District or obstruct or damage any easement, right-of-way, or other property dedicated to the District or the public or fail to comply with the District's 5-year certification program, rules, criteria, or regulations." The bill also renames the section, "Obstructions, damage, and destruction prohibited; enforcement; penalties."

The bill provides that nothing in this act supersedes ch. 99-468, L.O.F.; requires that a certified copy of the act be recorded in the Broward County Public Records by the District; and includes a severability clause.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

- Section 1: Amends subsections (1) and (10) of s.9, subsection (6) of s. 10, and ss. 13, 19, 21,22, 23, 41, and 42 of s. 2 of ch. 98-524, L.O.F., as amended by ch. 2004-459 and ch. 2007-308, L.O.F., and adds subsection (14) to s. 9; relating to definitions; the board of commissioners; powers; annual budget; water control plan and the adoption of the plan; assessing land; and the administrative tax.
- Section 2: Renumbers ss. 43-74 of s. 2 of ch. 98-524, L.O.F., as ss. 42-73, amends present s.45, subsection (1) of present s. 46, subsection (1) of present s. 49, present ss. 50, 52, 55, and 58, subsection (2) of present s. 59, and present ss. 64, 65, 68, 70, and 72, and adds subsection (4) to present s. 62; relating to special assessments; issuance of certificates of indebtedness based on assessments for assessable improvements; changing boundary lines; unit development; mandatory use of certain district facilities and services; maintenance of projects across rights-of-ways; fees; subdivision regulation; enforcement and penalties; Bailey Drainage District; Broward County responsible for operation and maintenance of certain roadways; South Broward Drainage District to have all power and authority and jurisdiction over certain lands.
- Section 3: Provides that nothing in the act supersedes ch. 99-468, L.O.F.
- Section 4: Requires a certified copy of the act to be recorded in the Broward County public records by the South Broward Drainage District.
- Section 5: Provides a severability clause.
- Section 6: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 20, 2011

WHERE? Sun-Sentinel published daily and distributed in Broward, Palm Beach, and Miami-Dade Counties, 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 [X] No []

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2011-12 or 2012-2013.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The tiebreaking provision for elections for commissioner is changed from “by lot”⁷ to “the drawing of a card from a standard unopened sealed deck of 52 cards provided by the district director. The candidate drawing the highest card shall be declared elected to such office.”

The use of a game of chance, including a deck of cards, to settle an election resulting in a tie is used in states such as Nebraska, Wisconsin, Arizona, and Nevada. As an alternative to a run-off election, which can be costly, in 2010, an Arizona judge used a shuffled deck of cards to determine the winner of a city council election.⁸ As recently as April 11, 2011, a Wisconsin town’s chairman race was determined by drawing the highest card from a deck of unopened cards. In this case, before the cards were drawn, the hierarchy of suits was determined and agreed upon, Jokers were removed, and the deck of cards was passed and shuffled by members of the election board.⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

⁷ “Lot” means “one of a set of objects, as straws or pebbles, drawn or thrown from a container to decide a question by choice or chance; or the casting or drawing of such objects as a method of deciding something: to choose a person by lot.”

<http://dictionary.reference.com/browse/lot> last visited April 12, 2011.

⁸ New York Times, *Election at a Draw, Arizona Town Cuts a Deck*, June 16, 2009, <http://www.nytimes.com/2009/06/17/us/17cavecreek.html> last visited April 12, 2011.

⁹ The Lakeland Times, *Schmidt wins in Winchester*, April 7, 2011, <http://www.lakelandtimes.com/main.asp?SectionID=9&SubSectionID=111&ArticleID=12978> last visited April 12, 2011.