Finance & Tax Committee

Monday, April 17, 2006
3:00 PM – 4:00 PM
404 HOB

MEETING PACKET

Allan G. Bense
Speaker

Fred Brummer
Chair

The Florida House of Representatives

Fiscal Council

Finance & Tax Committee

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AGENDA

April 17, 2006
3:00 PM – 4:00 PM
404 HOB

I. Chairman's Remarks

II. **HB 357 CS** – Assessment of Obsolete Agricultural Equipment for Purposes of Ad Valorem Taxation - **Poppell**

III. **HB 507 CS** – Exemption from the Tax on Sales, Use and Other Transactions - **Kreegel**

IV. **HB 671 CS** – Florida Retirement System- **Davis. M.**

V. **HB 689** – Public School Construction Sales Tax Relief – **Glorioso**

VI. **HB 997 CS** – State Agency Law Enforcement Radio System - **Benson**

VII. **HB 1183** – Hernando County Special Election Validation - **Russell**

VIII. **HB 1297** – Town of Grant-Valkaria, Brevard County - **Poppell**

IX. **HB 1321 CS**– Entertainment Industry Economic Development – **Davis, D.**

222 Capitol Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 488-1601 Fax:

X. **HB 1413 CS** – Argyle Fire District, Walton County – **Brown**

XI. **HB 1483** – Grove Community District, Okeechobee County - **Attkisson**

XII. **HB 1559 CS** –Brevard County – **Poppell**

XIII. **HB 7131** – Redevelopment of Brownfields – **Environmental Regulation Committee**

XIV. Adjourn

CS/HB 357

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 357 CS Assessment of Obsolete Agricultural Equipment for Purposes of Ad Valorem Taxation
SPONSOR(S): Poppell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	10 Y, 0 N, w/CS	Kaiser	Reese
2) Finance & Tax Committee		Monroe KDSM	Diez-Arguelles
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill provides for agricultural equipment no longer used in agricultural production to be considered obsolete and therefore assessed at salvage value for ad valorem tax purposes. In addition, the taxpayer claiming the right of this assessment must state so in a return filed as provided by law. The property appraiser may require the taxpayer to produce additional information as necessary in order to establish the taxpayer's right to have the property classified as obsolete.

The 2005 Revenue Estimating Conference has estimated that the provisions of this bill will reduce local government revenue by $0.9 million in fiscal year 2007-2008, assuming current millage rates.
The effective date of this legislation is January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes - This bill will lower the property taxes paid by those private parties owning equipment which has its taxable value reduced under the provisions of this bill.

B. EFFECT OF PROPOSED CHANGES:

For ad valorem tax purposes, taxpayers owning agricultural equipment must file an annual return to report equipment owned as of January 1st of each year. The county property appraiser is required to assess the value of property at a just valuation, which has been held to mean 100% of fair market value. The Florida Department of Revenue adheres to life expectancy guidelines that establish a 10 year life for agricultural machinery and equipment, which results in agricultural equipment being assessed at salvage value after it is ten years old. Agricultural equipment that is less than ten years old but is not commonly used by the taxpayer for a variety of reasons is supposed to be assessed at fair market value rather than salvage value.

Currently, in s. 193.621, F.S., relating to pollution control devices, the law provides "*...facilities installed for the purpose of eliminating or reducing industrial air or water pollution shall be deemed to have value for purposes of assessment for ad valorem property taxes no greater than its market value as salvage.*" However, two circuit court cases[1] have found this law to be unconstitutional, while one[2] found it to be constitutional.

The bill provides for agricultural equipment no longer used in agricultural production to be considered obsolete and therefore assessed at salvage value for ad valorem tax purposes. In addition, the taxpayer claiming the right of this assessment must state so in a return filed as provided by law. The property appraiser may require the taxpayer to produce additional information as necessary in order to establish the taxpayer's right to have said property classified as obsolete.

C. SECTION DIRECTORY:

Section 1: Provides for obsolete agricultural equipment to be assessed at its salvage value for purposes of ad valorem tax; defines the term "agricultural equipment"; provides a procedure for a taxpayer to claim the right of assessment; and, authorizes the property appraiser to require information establishing a taxpayer's right to the classification.

Section 2: Provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[1] FPC v. Schultz, Citrus County, April 27, 1998 and Lake Cogen v. Havill, Lake County, February 3, 2004
[2] FP&L v. Putnam, St. Lucie Country, July 24, 1998

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The 2005 Revenue Estimating Conference has estimated that the provisions of this bill will reduce local government revenue by $0.9 million in fiscal year 2007-2008, assuming current millage rates. The effective date of this legislation is January 1, 2007.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will lower the property taxes paid by those private parties owning equipment which has its taxable value reduced under the provisions of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill will have a negative effect on the ability of local governments to raise revenue; however, because the amount of that impact is likely to be insignificant, this bill should be exempt from the mandates provision.

2. Other:

Section 4, Article VII of the Florida Constitution states that "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation..." The Florida Supreme Court has consistently held that all property is subject to ad valorem taxation unless it is constitutionally exempted, and that "just valuation" of property for ad valorem tax purposes is synonymous with 100% of "fair market value." Since the terms of this bill would establish a limitation on the market value of obsolete farm equipment, the issue of its constitutionality is evident.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Committee on Agriculture adopted an amendment to HB 357, which added the words "wherever purchased" to the definition of agricultural equipment.

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the assessment of obsolete agricultural equipment for purposes of ad valorem taxation; providing for obsolete agricultural equipment to be assessed at its value as salvage; defining the term "agricultural equipment"; providing a procedure for a taxpayer to claim the right of assessment under this section; authorizing the property appraiser to require information establishing a taxpayer's right to the classification; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Assessment of obsolete agricultural equipment.--

(1) For purposes of assessment for ad valorem property taxes, obsolete farm equipment shall be deemed to have a market value no greater than its market value for salvage. As used in this section, the term "agricultural equipment" means any

24 equipment that qualifies for the sales tax exemption provided in
25 s. 212.08(3), Florida Statutes, wherever purchased. Agricultural
26 equipment shall be considered obsolete for purposes of this
27 section if it is no longer commonly used by the taxpayer.
28 (2) Any taxpayer claiming the right of assessment for ad
29 valorem taxes under the provisions of this section shall so
30 state in a return filed as provided by law, giving a brief
31 description of the equipment and its use. The property appraiser
32 may require the taxpayer to produce any additional information
33 as necessary in order to establish the taxpayer's right to have
34 such property classified as obsolete under this section for
35 purposes of the assessment.
36 Section 2. This act shall take effect January 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **357 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Poppell offered the following:
3
4 **Amendment (with title amendments)**
5 Remove line(s) 20-35 and insert:
6
7 For purposes of ad valorem property taxation, agricultural
8 equipment which is located on property classified as
9 agricultural pursuant to s. 193.461, F.S., and which is no
10 longer usable for its intended purpose shall be deemed to have a
11 market value no greater than its value for salvage.
12
13
14 ========== T I T L E A M E N D M E N T ==========
15 Remove line(s) 8-13 and insert:
16 for agricultural equipment located on lands classified as
17 agricultural under s. 193.461 and no longer usable for its
18 intended purpose to be assessed at its value as salvage;
19 providing an

CS/HB 507

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 507 CS Exemptions from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Kreegel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	7 Y, 0 N, w/CS	Kaiser	Reese
2) Finance & Tax Committee		Noriega	Diez-Arguelles
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

This bill provides a sales tax exemption for purchases of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production. The bill also provides definitions for low-volume irrigation, microirrigation, and their related components.

The bill deletes two sales tax exemptions from s. 212.08(5)(a), F.S., which are addressed in other provisions of s. 212.08, F.S. These exemptions are for generators used on poultry farms, and for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.

The Revenue Estimating Conference estimates that the provisions of this bill will result in a negative fiscal impact of $2.9 million to state government and $0.7 million to local governments in FY 2006-07, and of $3.2 million to state government and $0.7 million to local governments in FY 2007-08.

The bill has an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides a sales tax exemption for the purchase of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.02, F.S., defines terms and phrases used in Chapter 212, F.S., Sales and Use Tax. There is currently no definition or specific exemption for the terms "low-volume irrigation" or "microirrigation."

Section 212.08(3), F.S., provides an exemption for "power farm equipment," including generators and power units used on a farm or in a forest in the agricultural production of crops or products.

Section 212.08(5), F.S., provides exemptions for different categories on account of use. Section 212.08(5)(a), F.S., provides exemptions for items in agricultural use, which include exemptions for generators used on poultry farms, and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.

Section 212.08(5)(e), F.S., provides an exemption for butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gas used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm. This exemption includes fuel used to operate heating equipment for a structure in which started pullets or broilers are raised.

Proposed Changes

The bill provides a sales tax exemption for the purchase of low-volume irrigation, or microirrigation equipment, or components that are used exclusively in agricultural production.

The bill defines low-volume irrigation or microirrigation as irrigation by means of frequent application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes.

Low-volume irrigation and microirrigation systems are designed to deliver water at a rate of 45 gallons per hour or less per exit point. The physical components necessary to transport water from the pump or pumping station to the crop through the low-volume irrigation or microirrigation system. System components include pumps, pumping stations, control stations, filtration equipment pressure regulators, piping, tubing, emitters, valves, fittings, gauges, sensors, sprinklers, and safety devices.

The bill deletes the exemption for generators used on poultry farms from s. 212.08(5)(a), F.S. Generators used on poultry farms remain exempt under the provisions of s. 212.08(3), F.S.

The bill also deletes the exemption for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised from s. 212.08(5)(a), F.S. Fuel used for such purposes remains exempt under the provisions of s. 212.08(5)(e), F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.02(33), F.S., by providing definitions.

Section 2. Amends s. 212.08(5)(a), F.S., by providing a new exemption, and by deleting exemptions found in other provisions of s. 212.08, F.S.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	(2.9m)	(3.2m)
State Trust	(Insignificant)	(Insignificant)
Total	(2.9m)	(3.2m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	(0.1m)	(0.1m)
Local Gov't. Half Cent	(0.3m)	(0.3m)
Local Option	(0.3m)	(0.3m)
Total Local Impact	(0.7m)	(0.7m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons purchasing low-volume irrigation, or microirrigation equipment, or their components for use in agricultural production will no longer be required to pay the applicable sales tax on these products.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue (DOR) will issue a Tax Information Publication (TIP) to inform affected equipment dealers regarding the exemption for low-volume or microirrigation equipment. The effective date of the proposed exemption is upon becoming law. However, DOR states that it needs additional time to issue the TIP to the affected equipment dealers, and suggests an effective date of July 1, 2006.

DOR also recommends inserting a comma on page 2, line 36, to separate "filtration equipment" from "pressure regulators."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Agriculture Committee adopted a strike-all amendment to the bill. The strike-all amendment provided a sales tax exemption on the purchase of low-volume irrigation, or microirrigation equipment, or components used in agricultural production.

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to exemptions from the tax on sales, use, and other transactions; amending s. 212.02, F.S.; defining the term "low-volume irrigation" or "microirrigation"; amending s. 212.08, F.S.; including in the exemption for items in agricultural use certain agricultural machinery or farm equipment used for low-volume irrigation or microirrigation; deleting certain exemptions relating to certain equipment and fuel used in breeding poultry; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (33) is added to section 212.02, Florida Statutes, to read:

212.02 Definitions.--The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

24 (33) "Low-volume irrigation" or "microirrigation" means
25 irrigation by means of frequent application of small quantities
26 of water directly on or below the soil surface, usually as
27 discrete drops, tiny streams, or miniature sprays through
28 emitters placed along the water delivery pipes. Low-volume
29 irrigation and microirrigation systems are designed to deliver
30 water at a rate of 45 gallons per hour or less per exit point.
31 The physical components required to apply water by low-volume
32 irrigation or microirrigation methods include all equipment and
33 system components necessary to transport water from the pump or
34 pumping station to the crop through the low-volume irrigation or
35 microirrigation system. System components include pumps, pumping
36 stations, control stations, filtration equipment pressure
37 regulators, piping, tubing, emitters, valves, fittings, gauges,
38 sensors, sprinklers, and safety devices.
39 Section 2. Paragraph (a) of subsection (5) of section
40 212.08, Florida Statutes, is amended to read:
41 212.08 Sales, rental, use, consumption, distribution, and
42 storage tax; specified exemptions.--The sale at retail, the
43 rental, the use, the consumption, the distribution, and the
44 storage to be used or consumed in this state of the following
45 are hereby specifically exempt from the tax imposed by this
46 chapter.
47 (5) EXEMPTIONS; ACCOUNT OF USE.--
48 (a) Items in agricultural use and certain nets.--There are
49 exempt from the tax imposed by this chapter nets designed and
50 used exclusively by commercial fisheries; disinfectants,
51 fertilizers, insecticides, pesticides, herbicides, fungicides,

52 and weed killers used for application on crops or groves,
53 including commercial nurseries and home vegetable gardens, used
54 in dairy barns or on poultry farms for the purpose of protecting
55 poultry or livestock, or used directly on poultry or livestock;
56 portable containers or movable receptacles in which portable
57 containers are placed, used for processing farm products; field
58 and garden seeds, including flower seeds; nursery stock,
59 seedlings, cuttings, or other propagative material purchased for
60 growing stock; seeds, seedlings, cuttings, and plants used to
61 produce food for human consumption; cloth, plastic, and other
62 similar materials used for shade, mulch, or protection from
63 frost or insects on a farm; and low-volume irrigation or
64 microirrigation equipment or components, as defined in s.
65 212.02(33), used in agricultural production ~~generators used on~~
66 ~~poultry farms; and liquefied petroleum gas or other fuel used to~~
67 ~~heat a structure in which started pullets or broilers are~~
68 ~~raised~~; however, such exemption shall not be allowed unless the
69 purchaser or lessee signs a certificate stating that the item to
70 be exempted is for the exclusive use designated herein. Also
71 exempt are cellophane wrappers, glue for tin and glass
72 (apiarists), mailing cases for honey, shipping cases, window
73 cartons, and baling wire and twine used for baling hay, when
74 used by a farmer to contain, produce, or process an agricultural
75 commodity.
76 Section 3. This act shall take effect upon becoming a law.

CS/HB 671

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 CS Florida Retirement System
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1936

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Finance & Tax Committee		Levin	Diez-Arguelles
3) Fiscal Council			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

This bill allows members of the Special Risk Class, or their employers, to upgrade service previously earned in the Regular Class for attendance at a certified training academy or other certified training facility, between July 1, 1978, and June 30, 1984, which was approved by the employer for certification as a law enforcement officer or correctional officer.

The bill makes legislative findings and declares an important state interest.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to impact state or local government revenues. The bill will have a fiscal impact on state and local government expenditures because it results in net additional unfunded liabilities of $1.7 million to the Florida Retirement System. Although this cost is not sufficient to cause an increase in employer contribution rates for the Special Risk Class of the Florida Retirement System, *it still may not satisfy the constitutional requirement to fund benefit increases for public retirement or pension systems.*

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill allows certain members of the Special Risk Class to upgrade specified prior academy or training service.

B. EFFECT OF PROPOSED CHANGES:

Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[1]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[2] The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.[3]

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.[4] Members of the FRS belong to one of five membership classes:

Regular Class[5]	570,888 members	88.00%
Special Risk Class[6]	68,466 members	10.59%
Special Risk Administrative Support Class[7]	80 members	0.01%
Senior Management Service Class[8]	6,823 members	1.10%
Elected Officers Class[9]	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.[10]

The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,[11] may need to retire at an earlier age with less service than other types of employees.[12] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[13] Members of the Special Risk Class who participate in the defined benefit program

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., *Fla. Div. of Ret. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[3] *Id.*
[4] *Id.*
[5] Fla. Stat. § 121.021(12) (2005).
[6] Fla. Stat. § 121.0515 (2005).
[7] Fla. Stat. § 121.0515(7) (2005).
[8] Fla. Stat. § 121.055 (2005).
[9] Fla. Stat. § 121.052 (2005).
[10] *See, e.g.,* Fla. Stat. 121.055(3)(a)1. (2005).
[11] Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).
[12] *Id.*
[13] Fla. Stat. § 121.021(29) (2005) (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

also earn a higher normal retirement benefit of three percent of the member's average final compensation.[14] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[15]

The only employees originally in the Special Risk Class, under the current statute, were law enforcement officers, correctional officers, and firefighters.[16] Starting in 1999, however, the Legislature started dramatically expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[17]
2000	Community-Based Correctional Probation Officers[18]
	Twenty-four types of employees of correctional or forensic facilities or institutions[19]
2001	Youth Custody Officers[20]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[21]

Another legislative trend has followed the dramatic expansion of the Special Risk Class: allowing members who have previous service in another class of the Florida Retirement System, usually the Regular Class, to purchase additional retirement credit to upgrade the previous service to Special Risk Class service. In 2001, the Legislature permitted emergency medical technicians and paramedics to purchase credit for upgraded service.[22] In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.[23]

Upgraded Service for Law Enforcement and Correctional Officers

This bill permits Special Risk Class members, or their employers, to upgrade the following creditable service previously earned in the Regular Class to Special Risk Class service:

> Attendance at a certified training academy or other certified training facility, between July 1, 1978, and June 30, 1984, which was approved by the employer for certification as a law enforcement officer or correctional officer.

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[14] Fla. Stat. § 121.091(1)(a)2.h. (2005) (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[15] Fla. Stat. 121.71(3) (2005) (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[16] Ch. 78-308, Laws of Fla.; codified as Fla. Stat. § 121.0515.
[17] Ch. 99-392, Laws of Fla., § 23.
[18] Ch. 2000-169, Laws of Fla. § 29.
[19] *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).
[20] Ch. 2001-125, Laws of Fla., § 43.
[21] Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). *See also* Int'l Ass'n for Identification at http://www.theiai.org/ (last visited Mar. 27, 2006).
[22] Ch. 2001-235, Laws of Fla., § 6.
[23] Ch. 2002-273, Laws of Fla., § 16.

The bill allows this academy/training service to be upgraded to the same percentage of the member's average final compensation as provided for by the normal retirement benefit for Special Risk Class members.[24] The bill requires the contributions for upgrading this academy/training service to be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent per year, compounded annually until the date of payment.

C. SECTION DIRECTORY:

Section 1: Amends section 121.0515, Florida Statutes, to permit the upgrade of certain prior service.

Section 2: Provides a statement of important state interest.

Section 3: Sets an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Members and employers are expected to pay $1.1 million of the costs of this upgraded service.[25]

2. Expenditures:

   As discussed further below, the cost paid by the affected members or their employers is not expected to be sufficient to cover the costs for this benefits enhancement.[26] As such, there may be a fiscal impact on state government expenditures through increased contribution rates for all state employers with Special Risk Class members.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   As discussed further below, the cost paid by the affected members or their employers is not expected to be sufficient to cover the costs for this benefits enhancement.[27] As such, there may be a fiscal impact on local government expenditures through increased contribution rates for all state employers with Special Risk Class members.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services noted the following fiscal impact for the bill:

> The member purchase price for the academy training service credit upgrade to be provided by the bill does not account for the entire cost of this retroactive increase in accrual values. Based

[24] Fla. HB 671 (2006) (referencing section 121.091(1)(a)2., Florida Statutes).
[25] Milliman, Inc., Actuarial Study (Apr. 5, 2005).
[26] Fla. Dep't of Mgmt. Serv., HB 671 (2006) Substantive Bill Analysis (revised Mar. 7, 2006) (on file with dep't).
[27] Fla. Dep't of Mgmt. Serv., HB 671 (2006) Substantive Bill Analysis (revised Mar. 7, 2006) (on file with dep't).

on a 2005 actuarial special study dated April 5, 2005, by Milliman Inc., Consulting Actuaries, *the cost was not sufficient to cause a 0.01 percent increase in the employer contribution rates* and the bill does not provide for the realization of $1.742 million in surplus actuarial assets or appropriate the funds into the FRS Trust Fund needed to offset the cost of this improvement as a one-time payment. Otherwise, the cost of this improvement will be funded through future Special Risk Class rate increases. To the extent that the number of members who actually purchase this service credit upgrade varies from the assumptions of the special study, those changes will be reflected in future valuations that determine the required contribution rate for the Special Risk Class.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

This bill is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The mandates provision appears to apply to this bill because it requires counties or municipalities to spend funds or to take an action requiring the expenditure of funds: however, both an exemption and an exception apply. The anticipated additional unfunded liabilities are $1.7 million, and the insignificant fiscal exemption applies. The bill also contains a statement of important state interest and the provisions of the bill apply to all persons similarly situated. State government, school boards, and all local governments, not just counties and municipalities, are required to pay the increased contribution rates. Thus, the similarly situated exception also applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house. [28]

2. Other:

Article X, Section 14

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide *any increase in benefits* to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.[29]
Although the net additional unfunded liabilities of $1.7 million are not sufficient to cause an increase in employer contribution rates for the Special Risk Class, *this bill may not satisfy the constitutional requirement to fund benefit increases for public retirement or pension systems.*

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[28] Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

[29] Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Burden of the Benefit

All employers who participate in the Florida Retirement System and who have Special Risk employees will be funding the benefit increase for qualifying past service, or any future shortfalls from these changes, even if their employees are not eligible for these benefits and even if they or their employees do not take advantage of these benefits.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted a "strike-everything" amendment and reported the bill favorably with committee substitute. The amendment removed provisions that expanded the accrual and qualifying service used to determine retirement credit for past service, but continued to permit certain members of the Special Risk Class to upgrade specified prior academy or training service.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.0515, F.S.; authorizing certain employees to purchase additional retirement credit to upgrade prior service to Special Risk Class service; providing for the calculation of contributions for such service upgrade; authorizing the employer to purchase such additional credit for the employee; providing a statement of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (9) of section 121.0515, Florida Statutes, to read:

121.0515 Special risk membership.--

(9) CREDIT FOR UPGRADED SERVICE.--

(c) Any member of the Special Risk Class who has earned creditable service in the Regular Class of the Florida Retirement System between July 1, 1978, and June 30, 1984, while

24 attending a certified training academy or other certified
25 training facility approved by the employer for certification as
26 a law enforcement officer or correctional officer, which service
27 is within the purview of the Special Risk Class, may purchase
28 such service to upgrade to Special Risk Class service, to the
29 extent of the percentages of the member's average final
30 compensation as provided in s. 121.091(1)(a)2. Contributions for
31 upgrading such service to Special Risk Class credit under this
32 paragraph shall be equal to the difference in the contributions
33 paid and the Special Risk Class contribution rate as a
34 percentage of gross salary in effect for the period being
35 claimed, plus interest thereon at the rate of 6.5 percent per
36 year, compounded annually until the date of payment. This
37 service credit may be purchased by the employer on behalf of the
38 member.
39 Section 2. The Legislature finds that a proper and
40 legitimate state purpose is served when employees and retirees
41 of the state and its political subdivisions, and the dependents,
42 survivors, and beneficiaries of such employees and retirees, are
43 extended the basic protections afforded by governmental
44 retirement systems. These persons must be provided benefits that
45 are fair and adequate and that are managed, administered, and
46 funded in an actuarially sound manner, as required by s. 14,
47 Art. X of the State Constitution, and part VII of chapter 112,
48 Florida Statutes. Therefore, the Legislature determines and
49 declares that this act fulfills an important state interest.
50 Section 3. This act shall take effect upon becoming a law.

HB 689

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Public School Construction Sales Tax Relief
SPONSOR(S): Glorioso
TIED BILLS: **IDEN./SIM. BILLS:** SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Noriega	Diez-Arguelles
2) PreK-12 Committee			
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

This bill provides a sales tax exemption for tangible personal property sold to a contractor directly employed by or acting as an agent of a governmental entity when the purchased property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions.

The bill also provides the conditions for the tax exemption that apply to governmental entities, contractors, and sellers. Among these conditions are duties relating to documentation and recordkeeping, the provision of certificates of exemption, and verification that the exempt property will be incorporated into a prekindergarten or elementary school. In addition, the bill provides for application of penalties.

The Revenue Estimating Conference has estimated that this bill will have a negative fiscal impact of $26.4 million to state government and $5.9 million to local governments in FY 2006-07, and of $26.1 million to state government and $5.9 million to local governments in FY 2007-08.

The bill has an effective date of upon becoming a law.

The bill may be a mandate requiring a two-thirds vote of the membership of each house to pass.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill provides a sales tax exemption for tangible personal property sold to a contractor directly employed by or acting as an agent of a governmental entity when the purchased property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 212, F.S., provides a 6 percent sales tax on all sales of tangible personal property, unless exempted by statute. When each article of tangible personal property in this state is either sold at retail, used or consumed, or rented or leased, it is taxed at a rate of 6 percent of the sales, use, or rental price.[1] Tangible personal property refers to personal property which may be weighed, measured, or touched or is in any manner perceptible to the senses.

Local governments are authorized to levy one or more types of Local Discretionary Sales Surtaxes, ranging from 0.5 percent to 1.0 percent each, with a maximum of 2.5 percent in some jurisdictions.[2] The local discretionary sales surtax applies to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions.[3] The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax on any sales amount above $5,000 on any item of tangible personal property is not subject to the surtax.

Section 212.08(6), F.S., provides an exemption for direct purchases of tangible personal property by governmental entities. However, the statute specifically provides that it does not extend to purchases by contractors of tangible personal property to be incorporated into public facilities under contracts with the governmental entities that own those facilities.

The lack of an exemption for contractor purchases leaves governmental entities with two main options regarding the purchase of materials for a public works project. The governmental entity can either directly purchase construction materials for a project contractor (thus taking advantage of the sales tax exemption for governmental entities), or the governmental entity can reimburse the contractor, in accordance with the terms of the contract, for the sales tax paid by the contractor during the project.[4] However, both of these options have disadvantages. If a governmental entity decides to purchase construction materials directly for a contractor, the contractor has to arrange to have the property picked up from the governmental entity, thus postponing the start date of the project. Moreover, if more supplies are needed during the project, the governmental entity, although not involved in the construction work, must purchase the additional supplies and coordinate delivery with the contractor. On the other hand, if the governmental entity chooses to reimburse a contractor for the sales tax paid

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[1] s. 212.05, F.S.
[2] s. 212.055, F.S.
[3] s. 212.054, F.S.
[4] In 2001, the Department of Revenue (DOR) estimated that local governments directly purchase approximately 49 percent of the materials for their public works projects (based on a limited survey conducted by the Florida League of Cities), that state government directly purchases approximately 50 percent of the materials for its public works projects (based on information from the Department of Management Services), and that the federal government does not directly purchase any of the materials for its public works projects (based on information from a federal purchasing expert).

by the contractor during the project, the governmental entity may be using funds for a sales tax payment that could be used for additional construction or other purposes.

Proposed Changes

The bill creates a sales tax exemption for tangible personal property sold to a contractor directly employed by or acting as an agent of a governmental entity when the purchased property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions.

The bill adds subsection (18) to s. 212.08, F.S., to provide a mechanism to permit public works contractors to claim the exemption on purchases made by the contractor for the construction of a public prekindergarten or elementary school. In addition, the bill amends s. 212.08(6), F.S., to provide that public works contractors are to pay tax on materials incorporated into the public facility, unless the conditions of s. 212.08(18), F.S., are met.

Applicability of the Tax Exemption
In order for the tax exemption to apply, all of the following conditions must be met:

- The government entity or political subdivision must hold a current consumer's certificate of exemption issued by the Department of Revenue (DOR);

- The tangible personal property purchased by the contractor must go into or become part of a public prekindergarten or elementary school owned by the governmental entity or political subdivision;

- The governmental entity or political subdivision must bear the economic burden of the cost of the tangible personal property, either through direct reimbursement of the cost to the contractor or by inclusion of the cost in the contractor's price for performance of the contract;

- The seller of the property must be presented with the following documents:
    - a copy of a current, valid Florida consumer's certificate of exemption held by the governmental entity or political subdivision;
    - a signed and dated statement by the governmental entity or political subdivision that identifies a specific public prekindergarten or elementary school project and names the contractors engaged to perform the work who have been authorized to make exempt purchases of materials for the project; and
    - a signed and dated statement by the purchasing contractor certifying that all purchases made by the contractor, and identified at the time of purchase as property that will go into or become part of the public prekindergarten or elementary school project specified in the statement, will be for incorporation into that public prekindergarten or elementary school;

- The records of the seller must include both a purchase order from the contractor that specifically identifies the tangible personal property being purchased, as well as other records that establish that the contractor charged the purchased property to an account for which only public prekindergarten or elementary school project purchases can be charged;

- The statements of the governmental entity or political subdivision and of the purchasing contractor must be dated and contain the following printed or typed declaration at the end of the statement and immediately above the signature of the public officer, employee, or contractor:

> "Under penalties of perjury as provided in s. 92.525, Florida Statutes, I declare that I have read the foregoing statement and that the facts stated in it are true."; and

- The seller must verify that a purchasing contractor is named in the statement from the governmental entity or political subdivision and that the project identified in the statement of the contractor is the same project identified in the statement of the government entity or political subdivision.

Record Maintenance
The seller must maintain the records described in the previous section for a period of time during which DOR may conduct an audit of the seller's books and records. A seller may provide DOR with evidence of any exempt status of sale during any protest period provided by statute.[5]

A contractor that claims an exemption must maintain records to establish that the materials purchased were actually incorporated into the public prekindergarten or elementary school project described in the contractor's statement. The contractor must accrue and remit use tax on any items purchased as exempt under s. 212.08(18), F.S., that are not incorporated into the public prekindergarten or elementary school project.

However, a purchase will not qualify for an exemption under s. 212.08(18), F.S., if a contractor makes the purchase before the date on which a governmental entity or political subdivision has issued a signed and dated statement authorizing that contractor to make exempt purchases for a specified public prekindergarten or elementary school project.

Penalties
Any person who fraudulently issues a written statement for use in claiming an exemption for materials that do not satisfy the requirements is subject to the penalties for fraud,[6] in addition to being liable for the payment of the tax due on such materials. This provision also applies to public officials or contractors.

The penalties for a fraudulent claim of exemption include payment of the tax plus a mandatory penalty of 200 percent of the tax and a fine and punishment as provided for a conviction of a felony of the third degree. Punishment includes a term of imprisonment not exceeding 5 years,[7] unless deemed a habitual offender,[8] and a fine not exceeding $5,000.[9] All statements by a governmental entity or a contractor must be made under penalty of perjury as provided by statute.[10]

C. SECTION DIRECTORY:

Section 1. Amends s. 212.08, F.S.; by creating a tax exemption for tangible personal property sold to a contractor employed directly by or acting as an agent of a governmental entity when such property will become part of a prekindergarten or elementary school; by providing certain conditions; by providing penalties for fraudulent activities.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[5] s. 213.21, F.S., Informal conferences; compromises – Protest provision.
[6] s. 212.085, F.S.
[7] s. 775.082, F.S.
[8] s. 775.084, F.S.
[9] s. 775.083, F.S.
[10] s. 92.525, F.S.

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-2007	2007-2008
General Revenue	(26.3m)	(26.0m)
Trust	(0.1m)	(0.1m)
Total	(26.4m)	(26.1m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-2007	2007-2008
Revenue Sharing	(0.9m)	(0.9m)
Local Gov't. Half Cent	(2.5m)	(2.5m)
Local Option	(2.5m)	(2.5m)
Total Local Impact	(5.9m)	(5.9m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill reduces the authority that cities and counties have to raise revenues in the aggregate through local option sales taxes. No exemption applies. Therefore, the bill may be a mandate requiring a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR suggests that the effective date of this bill be changed to January 1, 2007. According to the Department, an effective date of upon becoming a law does not give DOR any time to implement this law, particularly to create new forms and change internal processes. Because of these reasons, the Department believes that a January 1 effective date will allow DOR more time and effort to execute a more thorough and better-planned implementation of this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to public school construction sales tax
3 relief; amending s. 212.08, F.S.; providing an exemption
4 from the tax on sales, use, and other transactions for
5 tangible personal property sold to a contractor directly
6 employed by or as an agent of the United States Government
7 or state or local government when such property becomes
8 part of a prekindergarten or elementary school owned by
9 the governmental entity under specified conditions;
10 providing duties of governmental entities, contractors,
11 and sellers relating to documentation and recordkeeping;
12 providing for application of penalties; providing an
13 effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsection (6) of section 212.08, Florida
18 Statutes, is amended, and subsection (18) is added to that
19 section, to read:
20 212.08 Sales, rental, use, consumption, distribution, and
21 storage tax; specified exemptions.--The sale at retail, the
22 rental, the use, the consumption, the distribution, and the
23 storage to be used or consumed in this state of the following
24 are hereby specifically exempt from the tax imposed by this
25 chapter.
26 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are also
27 exempt from the tax imposed by this chapter sales made to the
28 United States Government, a state, or any county, municipality,

29 or political subdivision of a state when payment is made
30 directly to the dealer by the governmental entity. Unless the
31 conditions specified in subsection (18) are met, this exemption
32 shall not inure to any transaction otherwise taxable under this
33 chapter when payment is made by a government employee by any
34 means, including, but not limited to, cash, check, or credit
35 card when that employee is subsequently reimbursed by the
36 governmental entity. This exemption does not include sales of
37 tangible personal property made to contractors employed either
38 directly or as agents of any such government or political
39 subdivision thereof when such tangible personal property goes
40 into or becomes a part of public works owned by such government
41 or political subdivision. A determination whether a particular
42 transaction is properly characterized as an exempt sale to a
43 government entity or a taxable sale to a contractor shall be
44 based on the substance of the transaction rather than the form
45 in which the transaction is cast. The department shall adopt
46 rules that give special consideration to factors that govern the
47 status of the tangible personal property before its affixation
48 to real property. In developing these rules, assumption of the
49 risk of damage or loss is of paramount consideration in the
50 determination. This exemption does not include sales, rental,
51 use, consumption, or storage for use in any political
52 subdivision or municipality in this state of machines and
53 equipment and parts and accessories therefor used in the
54 generation, transmission, or distribution of electrical energy
55 by systems owned and operated by a political subdivision in this
56 state for transmission or distribution expansion. Likewise

57 exempt are charges for services rendered by radio and television
58 stations, including line charges, talent fees, or license fees
59 and charges for films, videotapes, and transcriptions used in
60 producing radio or television broadcasts. The exemption provided
61 in this subsection does not include sales, rental, use,
62 consumption, or storage for use in any political subdivision or
63 municipality in this state of machines and equipment and parts
64 and accessories therefor used in providing two-way
65 telecommunications services to the public for hire by the use of
66 a telecommunications facility, as defined in s. 364.02(15), and
67 for which a certificate is required under chapter 364, which
68 facility is owned and operated by any county, municipality, or
69 other political subdivision of the state. Any immunity of any
70 political subdivision of the state or other entity of local
71 government from taxation of the property used to provide
72 telecommunication services that is taxed as a result of this
73 section is hereby waived. However, the exemption provided in
74 this subsection includes transactions taxable under this chapter
75 which are for use by the operator of a public-use airport, as
76 defined in s. 332.004, in providing such telecommunications
77 services for the airport or its tenants, concessionaires, or
78 licensees, or which are for use by a public hospital for the
79 provision of such telecommunications services.
80 (18) EXEMPTIONS; PUBLIC PREKINDERGARTEN AND ELEMENTARY
81 SCHOOL CONSTRUCTION CONTRACTOR PURCHASES.--
82 (a) Sales of tangible personal property made to
83 contractors employed directly by or as agents of the United
84 States Government, a state, a county, a municipality, or a

85 political subdivision of a state for public prekindergarten or
86 elementary school construction are exempt if all of the
87 following conditions are met:
88 1. At the time of such sale, the governmental entity or
89 political subdivision holds a current consumer's certificate of
90 exemption from the department.
91 2. The tangible personal property purchased by the
92 contractor will go into or become part of a public
93 prekindergarten or elementary school owned by the governmental
94 entity or political subdivision. Tangible personal property
95 purchased and used by a contractor in the course of performing a
96 contract which does not become part of the public
97 prekindergarten or elementary school is not exempt under this
98 subsection.
99 3. The governmental entity or political subdivision bears
100 the economic burden of the cost of the tangible personal
101 property, through direct reimbursement of the cost to the
102 contractor under the contract or inclusion of the cost in the
103 contractor's price for performance of the contract.
104 4. The governmental entity or political subdivision,
105 general contractor, or a subcontractor presents to the seller
106 before or at the time of a purchase:
107 a. A copy of a current, valid Florida consumer's
108 certificate of exemption held by the governmental entity or
109 political subdivision.
110 b. A signed and dated statement of an officer or
111 authorized employee of the governmental entity or political
112 subdivision that identifies a specific public prekindergarten or

113 elementary school project and names the contractor or
114 contractors engaged to perform work on the identified project
115 who have been authorized to make exempt purchases of materials
116 for the project.
117 c. A signed and dated statement of the purchasing
118 contractor certifying that all purchases made by that contractor
119 and identified at the time of purchase as property that will go
120 into or become a part of the public prekindergarten or
121 elementary school project specified in the statement of the
122 governmental entity or political subdivision will be for
123 incorporation into that public prekindergarten or elementary
124 school.
125
126 A seller may rely on a single copy of the governmental entity's
127 or political subdivision's consumer's certificate of exemption
128 and a single signed and dated statement from the governmental
129 entity or political subdivision to make sales to any contractor
130 named on that statement if the other certification and
131 recordkeeping requirements of this subsection have also been
132 satisfied. A seller may rely on a single signed statement of a
133 purchasing contractor to make sales to that contractor for the
134 public prekindergarten or elementary school project specified in
135 that statement if the other certification and recordkeeping
136 requirements of this subsection have also been satisfied.
137 5. The records of the seller contain documentation for
138 each exempt purchase, as follows:
139 a. A purchase order from the contractor specifically
140 identifying, by description and quantity, the tangible personal

141 property being purchased for incorporation by the contractor
142 into a specifically named public prekindergarten or elementary
143 school project; or
144 b. Electronic or other records of the seller that
145 establish that the purchased tangible personal property,
146 identified by description and quantity, was charged by a
147 contractor who has provided a statement as described in
148 subparagraph 4. to an account to which only purchases for the
149 public prekindergarten or elementary school project specified in
150 that statement are charged.
151 6. The statements of the governmental entity or political
152 subdivision and of the purchasing contractor described in this
153 paragraph must be dated and contain the following printed or
154 typed declaration at the end of the statement and immediately
155 above the signature of the public officer, employee, or
156 contractor:
157
158 "Under penalties of perjury as provided in s. 92.525,
159 Florida Statutes, I declare that I have read the
160 foregoing statement and that the facts stated in it
161 are true."
162
163 7. The seller verifies that a purchasing contractor is
164 named in the statement from the governmental entity or political
165 subdivision and that the project identified in the statement of
166 the contractor is the same project as that identified in the
167 statement of the governmental entity or political subdivision
168 before the exemption is granted as to any purchase.

169 (b)1. The seller shall maintain in its records the
170 certificate, statements, and other records described in
171 paragraph (a) to document the exempt status of any sale for the
172 period of time during which the department may conduct an audit
173 of the seller's books and records. A dealer may, through the
174 informal protest provided for in s. 213.21 and the rules of the
175 department, provide the department with evidence of the exempt
176 status of a sale. A consumer's certificate of exemption executed
177 by a governmental entity or political subdivision that was
178 registered with the department at the time of sale, a statement
179 of the governmental entity or political subdivision as described
180 in sub-subparagraph (a)4.b. that had been issued and signed
181 before or on the date of the sale for which exemption was
182 claimed, and a purchasing contractor's statement as described in
183 sub-subparagraph (a)4.c. from a contractor that could have
184 issued such statement at the time of the sale shall be accepted
185 by the department when submitted during the protest period but
186 may not be accepted in any proceeding under chapter 120 or any
187 circuit court action instituted under chapter 72. A purchase
188 does not qualify for exemption under this subsection if a
189 contractor made the purchase before the date on which a
190 governmental entity or political subdivision has issued a signed
191 and dated statement authorizing that contractor to make exempt
192 purchases for a specified public prekindergarten or elementary
193 school project.
194 2. A contractor that claims an exemption under this
195 subsection shall maintain records to establish that the
196 materials purchased were actually incorporated into the public

197 prekindergarten or elementary school project described in the
198 contractor's statement. The contractor shall accrue and remit
199 use tax on any items purchased as exempt under this subsection
200 that are not incorporated into the public prekindergarten or
201 elementary school project, unless such items are transferred to
202 the governmental entity or political subdivision or returned to
203 the seller for a credit to the contractor's account. The
204 contractor shall maintain records to document any such transfers
205 or returns.
206 3. Any person who fraudulently, for the purpose of evading
207 tax, issues a written statement for use in claiming an exemption
208 under this subsection for materials that do not satisfy the
209 requirements for such exemption, in addition to being liable for
210 the payment of the tax due on such materials, is subject to the
211 penalties provided in s. 212.085.
212 Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **689**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) offered the following:
3
4 **Amendment**
5 Remove line 212 and insert:
6
7 Section 2. This act shall take effect January 1, 2007.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 997 CS State Agency Law Enforcement Radio System
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	14 Y, 1 N, w/CS	Pugh	Miller
2) Finance & Tax Committee		Noriega	Diez-Arguelles
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

This bill proposes levying a $4 surcharge on all criminal traffic-related offenses listed in s. 318.17, F.S., and on all noncriminal moving traffic violations listed in chapter 316, F.S.

In 1988, the Legislature passed a bill creating a statewide radio communications system to serve law enforcement units of state agencies, and to serve local law enforcement agencies through mutual-aid agreements, pursuant to s. 282.195, F.S. The network is referred to as the Statewide Law Enforcement Radio System (SLERS). Created the same year was s. 320.0802, F.S., which imposed a $1 annual surcharge on initial and renewal registrations required for motor vehicles, for the purpose of financing a coordinated radio system for state law enforcement agencies.

The 800 megahertz (MHz) radio system serves more than 6,500 officers in 17 state law enforcement agencies or units. The radio system has purchased approximately 14,000 radios for patrol cars, boats, motorcycles, and aircraft. The system will be completed in May 2006.

Last year, the advisory Task Force on State Agency Law Enforcement Communications (the Task Force), developed a list of recommended enhancements to SLERS, including new transmission towers, additional communications base stations and consoles, and creating a backup network. The list was published as part of the Senate Transportation and Economic Development Appropriations Committee Interim Project Report #2006-149.[1] The enhancements were estimated to cost between $7 million and $9 million from FY 2006-07 to FY 2010-11. The Task Force neither included an ongoing system of radio replacements on the list of enhancements, which would have added an estimated $8.6 million annual cost, nor identified a specific funding source to pay for the enhancements, although Senate committee staff listed three funding options in its report.

The Revenue Estimating Conference has estimated that the $4 surcharge will generate an annual $8.7 million, beginning in FY 2007-08. The revenues from the surcharge will be deposited quarterly into the State Agency Law Enforcement Radio System Trust Fund to pay for the radio system. Because of the bill's effective date, the Revenue Estimating Conference estimates that the surcharge will generate $4.3 million in FY 2006-07.

The bill raises no apparent constitutional or other legal issues.

The bill provides an effective date of October 1, 2006.

[1] Report available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-149ta.pdf.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security: HB 997 CS increases the public resources devoted to public security. The additional revenues from the surcharge are intended to maintain and enhance the current law enforcement radio system, which has proven to be reliable during public emergencies.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1988, the Legislature created the State Technology Office (STO) and directed it to "acquire and implement a statewide radio communications system to serve law enforcement units of state agencies, and to serve local law enforcement agencies through mutual aid channels," pursuant to s. 282.195, F.S.

Created the same year was s. 320.0802, F.S., which imposed a $1 annual surcharge on initial and renewal registrations required for motor vehicles, for the purpose of financing a coordinated radio system for state law enforcement agencies. In FY 2005-2006, the surcharge raised about $18.5 million. The revenues from this surcharge are deposited into the State Agency Law Enforcement Radio System Trust Fund.

The STO is now known as the Florida Enterprise Information Technology Services (EITS) and is housed within the Department of Management Services (DMS), but a key mission remains the same: to complete the Statewide Law Enforcement Radio System (SLERS). Assisting EITS in developing the SLERS is the advisory Task Force on State Agency Law Enforcement Communications (the Task Force). EITS is the project manager for SLERS and the contract manager for the state's contract with M/A-COM, the company responsible for the day-to-day operations of the SLERS. M/A-COM's contract expires June 30, 2021. The contract is paid with the revenues generated by the current $1 surcharge on vehicle registrations and renewals.

The 800 MHz radio system serves more than 6,500 officers in 17 state law enforcement agencies or entities, and has purchased approximately 14,000 radios for patrol cars, boats, motorcycles, and aircraft. Developed in five phases regionally in Florida, SLERS will provide full coverage to state law enforcement officers by May 2006, according to EITS staff. SLERS is considered one of the best law enforcement communications systems in the nation.

In 2005, the law enforcement Task Force developed a list of recommended enhancements to SLERS, including new transmission towers, additional communications base stations and consoles, more training programs, and the creation of a backup network in Tallahassee. Not included among the enhancement proposals were discussions on how to systematically pay for replacing radios that break, wear out, or become obsolete because of improved technology. Typically, radio replacement is funded through the budgets of individual state agencies each year. Law enforcement radios generally have to be replaced every six to eight years.

The Task Force's list of enhancements was published as part of the Senate Transportation and Economic Development Appropriations Committee Interim Project Report #2006-149. The enhancements were estimated to cost between $7 million and $9 million from FY 2006-07 to FY 2010-11. No specific funding source was identified by the Task Force to pay for the enhancements, but the Senate report lists three options:

- Option 1 – Provide $6.6 million in General Revenue to supplement the $1 surcharge revenues in the trust fund in order to fund the SLERS enhancements;

- Option 2 -- Increase the current statutory fee to $1.10 specifically to fund the enhancements to SLERS; and
- Option 3 – Increase the current statutory fee by an additional 45 cents, effective in FY 2009-2010, to provide an annual revenue increase of $8.6 million to be used for radio replacement costs for state agencies.

Effect of Proposed Changes

HB 997 CS amends s. 318.18, F.S., to add a $4 surcharge on all criminal traffic-related offenses listed in s. 318.17, F.S., and all noncriminal moving violations listed in chapter 316, F.S. DUI, leaving the scene of an accident, and reckless driving are examples of criminal traffic offenses. Speeding, failure to pay tolls, and failure to yield are examples of noncriminal moving violations.

The revenues generated by the surcharge will be used to pay for the SLERS, which could include the system enhancements to the SLERS that were identified by the Task Force in 2005, and listed in the Florida Senate Interim Project Report #2006-149.

C. SECTION DIRECTORY:

Section 1. Amends s. 318.18, F.S., to levy an additional $4 surcharge for certain traffic violations. Provides for the use of funds. Names the trust fund that is the repository for the revenues.

Section 2. Creates s. 318.21(15), F.S., to specify that the $4 surcharge is to be distributed pursuant to s. 318.18(16), F.S.

Section 3. Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has estimated that the $4 surcharge will generate $8.7 million in recurring revenue, beginning in FY 2007-08. The revenues from the surcharge will be remitted to DOR and deposited quarterly into DMS' State Agency Law Enforcement Radio System Trust Fund.

   Because of the bill's effective date, the Revenue Estimating Conference has estimated that the surcharge will generate $4.3 million in FY 2006-07.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The funds generated by the surcharge appear to be sufficient to cover the costs of enhancements to the SLERS and to systematically purchase new radios, if the revenues are allowed to build up in the trust fund and carried forward each year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The agencies involved in implementing HB 997 CS have sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 28, 2006, meeting, the Transportation Committee adopted a strike-everything-after-the-enacting clause amendment to the original bill that changed the type and amount of the surcharge and halved the amount of estimated revenues. Rather than a $1 surcharge on most annual vehicle registrations, the strike-all amendment replaced that with a $4 surcharge on all criminal traffic offenses and all noncriminal moving violations. The strike-all amendment, offered by the bill's sponsor, also deleted the provisions limiting the use of the funds to SLERS enhancements only, and extended the bill's effective date from July 1, 2006, to October 1, 2006.

The committee adopted the strike-all amendment without objection, then voted 14-1 to report the bill as favorable with a CS.

CHAMBER ACTION

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1 The Transportation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the state agency law enforcement radio
7 system; amending s. 318.18, F.S.; revising penalty
8 provisions to provide for certain criminal penalties;
9 imposing a surcharge to be paid for specified traffic-
10 related criminal offenses and all moving traffic
11 violations; providing for distribution of the proceeds of
12 the surcharge to be used for the state agency law
13 enforcement radio system; amending s. 318.21, F.S.;
14 revising distribution provisions to provide for
15 distribution of the surcharge; providing an effective
16 date.
17
18 WHEREAS, during the 2004 and 2005 hurricane seasons, the
19 State of Florida experienced eight catastrophic storms within a
20 15-month period, and
21 WHEREAS, designed in 1988, the state agency law enforcement
22 radio system was able to serve law enforcement units of state

23 agencies and local law enforcement agencies through mutual aid
24 channels, and
25 WHEREAS, the state recognizes the importance of maintaining
26 a law enforcement radio system throughout the state to ensure
27 that first responders and law enforcement officers are able to
28 communicate, protect, and provide relief, and
29 WHEREAS, the state agency law enforcement radio system
30 performed as designed and was able to withstand and operate
31 effectively during all recent hurricanes, and
32 WHEREAS, recent legislative studies and agency reviews
33 indicate that the radio system should be strengthened to ensure
34 continued communication and protection by investment in the
35 infrastructure, and
36 WHEREAS, in 2005, the Joint Task Force on State Agency Law
37 Enforcement Communications conducted a review of the operations
38 and identified a number of enhancements to strengthen the system
39 for future events, and
40 WHEREAS, these permanent enhancements to the statewide
41 system should be funded by recurring funding sources, and
42 WHEREAS, all Floridians benefit from a law enforcement
43 radio system that allows constant communication throughout the
44 state during hurricane seasons, emergencies, and the normal
45 course of performing their duties, NOW, THEREFORE,
46
47 Be It Enacted by the Legislature of the State of Florida:
48
49 Section 1. Section 318.18, Florida Statutes, is amended to
50 read:

51 318.18 Amount of ~~civil~~ penalties.--The penalties required
52 for a noncriminal disposition pursuant to s. 318.14 or a
53 criminal offense listed in s. 318.17 are as follows:
54 (1) Fifteen dollars for:
55 (a) All infractions of pedestrian regulations.
56 (b) All infractions of s. 316.2065, unless otherwise
57 specified.
58 (c) Other violations of chapter 316 by persons 14 years of
59 age or under who are operating bicycles, regardless of the
60 noncriminal traffic infraction's classification.
61 (2) Thirty dollars for all nonmoving traffic violations
62 and:
63 (a) For all violations of s. 322.19.
64 (b) For all violations of ss. 320.0605, 320.07(1),
65 322.065, and 322.15(1). Any person who is cited for a violation
66 of s. 320.07(1) shall be charged a delinquent fee pursuant to s.
67 320.07(4).
68 1. If a person who is cited for a violation of s. 320.0605
69 or s. 320.07 can show proof of having a valid registration at
70 the time of arrest, the clerk of the court may dismiss the case
71 and may assess a dismissal fee of up to $7.50. A person who
72 finds it impossible or impractical to obtain a valid
73 registration certificate must submit an affidavit detailing the
74 reasons for the impossibility or impracticality. The reasons may
75 include, but are not limited to, the fact that the vehicle was
76 sold, stolen, or destroyed; that the state in which the vehicle
77 is registered does not issue a certificate of registration; or
78 that the vehicle is owned by another person.

79 2. If a person who is cited for a violation of s. 322.03,
80 s. 322.065, or s. 322.15 can show a driver's license issued to
81 him or her and valid at the time of arrest, the clerk of the
82 court may dismiss the case and may assess a dismissal fee of up
83 to $7.50.
84 3. If a person who is cited for a violation of s. 316.646
85 can show proof of security as required by s. 627.733, issued to
86 the person and valid at the time of arrest, the clerk of the
87 court may dismiss the case and may assess a dismissal fee of up
88 to $7.50. A person who finds it impossible or impractical to
89 obtain proof of security must submit an affidavit detailing the
90 reasons for the impracticality. The reasons may include, but are
91 not limited to, the fact that the vehicle has since been sold,
92 stolen, or destroyed; that the owner or registrant of the
93 vehicle is not required by s. 627.733 to maintain personal
94 injury protection insurance; or that the vehicle is owned by
95 another person.
96 (c) For all violations of ss. 316.2935 and 316.610.
97 However, for a violation of s. 316.2935 or s. 316.610, if the
98 person committing the violation corrects the defect and obtains
99 proof of such timely repair by an affidavit of compliance
100 executed by the law enforcement agency within 30 days from the
101 date upon which the traffic citation was issued, and pays $4 to
102 the law enforcement agency, thereby completing the affidavit of
103 compliance, then upon presentation of said affidavit by the
104 defendant to the clerk within the 30-day time period set forth
105 under s. 318.14(4), the fine must be reduced to $7.50, which the
106 clerk of the court shall retain.

107 (d) For all violations of s. 316.126(1)(b), unless
108 otherwise specified.
109 (3)(a) Except as otherwise provided in this section, $60
110 for all moving violations not requiring a mandatory appearance.
111 (b) For moving violations involving unlawful speed, the
112 fines are as follows:
113
114 For speed exceeding the limit by:.....Fine:
115 1-5 m.p.h.....Warning
116 6-9 m.p.h.....$ 25
117 10-14 m.p.h.....$100
118 15-19 m.p.h.....$125
119 20-29 m.p.h.....$150
120 30 m.p.h. and above.....$250
121 (c) Notwithstanding paragraph (b), a person cited for
122 exceeding the speed limit by up to 5 m.p.h. in a legally posted
123 school zone will be fined $50. A person exceeding the speed
124 limit in a school zone shall pay a fine double the amount listed
125 in paragraph (b).
126 (d) A person cited for exceeding the speed limit in a
127 posted construction zone shall pay a fine double the amount
128 listed in paragraph (b). The fine shall be doubled for
129 construction zone violations only if construction personnel are
130 present or operating equipment on the road or immediately
131 adjacent to the road under construction.
132 (e) If a violation of s. 316.1301 or s. 316.1303 results
133 in an injury to the pedestrian or damage to the property of the

134 pedestrian, an additional fine of up to $250 shall be paid. This
135 amount must be distributed pursuant to s. 318.21.
136 (f) A person cited for exceeding the speed limit within a
137 zone posted for any electronic or manual toll collection
138 facility shall pay a fine double the amount listed in paragraph
139 (b). However, no person cited for exceeding the speed limit in
140 any toll collection zone shall be subject to a doubled fine
141 unless the governmental entity or authority controlling the toll
142 collection zone first installs a traffic control device
143 providing warning that speeding fines are doubled. Any such
144 traffic control device must meet the requirements of the uniform
145 system of traffic control devices.
146 (4) The penalty imposed under s. 316.545 shall be
147 determined by the officer in accordance with the provisions of
148 ss. 316.535 and 316.545.
149 (5)(a) One hundred dollars for a violation of s.
150 316.172(1)(a), failure to stop for a school bus. If, at a
151 hearing, the alleged offender is found to have committed this
152 offense, the court shall impose a minimum civil penalty of $100.
153 In addition to this penalty, for a second or subsequent offense
154 within a period of 5 years, the department shall suspend the
155 driver's license of the person for not less than 90 days and not
156 more than 6 months.
157 (b) Two hundred dollars for a violation of s.
158 316.172(1)(b), passing a school bus on the side that children
159 enter and exit when the school bus displays a stop signal. If,
160 at a hearing, the alleged offender is found to have committed
161 this offense, the court shall impose a minimum civil penalty of

162 $200. In addition to this penalty, for a second or subsequent
163 offense within a period of 5 years, the department shall suspend
164 the driver's license of the person for not less than 180 days
165 and not more than 1 year.
166 (6) One hundred dollars or the fine amount designated by
167 county ordinance, plus court costs for illegally parking, under
168 s. 316.1955, in a parking space provided for people who have
169 disabilities. However, this fine will be waived if a person
170 provides to the law enforcement agency that issued the citation
171 for such a violation proof that the person committing the
172 violation has a valid parking permit or license plate issued
173 pursuant to s. 316.1958, s. 320.0842, s. 320.0843, s. 320.0845,
174 or s. 320.0848 or a signed affidavit that the owner of the
175 disabled parking permit or license plate was present at the time
176 the violation occurred, and that such a parking permit or
177 license plate was valid at the time the violation occurred. The
178 law enforcement officer, upon determining that all required
179 documentation has been submitted verifying that the required
180 parking permit or license plate was valid at the time of the
181 violation, must sign an affidavit of compliance. Upon provision
182 of the affidavit of compliance and payment of a dismissal fee of
183 up to $7.50 to the clerk of the circuit court, the clerk shall
184 dismiss the citation.
185 (7) One hundred dollars for a violation of s. 316.1001.
186 However, a person may elect to pay $30 to the clerk of the
187 court, in which case adjudication is withheld, and no points are
188 assessed under s. 322.27. Upon receipt of the fine, the clerk of
189 the court must retain $5 for administrative purposes and must

190 forward the $25 to the governmental entity that issued the
191 citation. Any funds received by a governmental entity for this
192 violation may be used for any lawful purpose related to the
193 operation or maintenance of a toll facility.
194 (8)(a) Any person who fails to comply with the court's
195 requirements or who fails to pay the civil penalties specified
196 in this section within the 30-day period provided for in s.
197 318.14 must pay an additional civil penalty of $12, $2.50 of
198 which must be remitted to the Department of Revenue for deposit
199 in the General Revenue Fund, and $9.50 of which must be remitted
200 to the Department of Revenue for deposit in the Highway Safety
201 Operating Trust Fund. The department shall contract with the
202 Florida Association of Court Clerks, Inc., to design, establish,
203 operate, upgrade, and maintain an automated statewide Uniform
204 Traffic Citation Accounting System to be operated by the clerks
205 of the court which shall include, but not be limited to, the
206 accounting for traffic infractions by type, a record of the
207 disposition of the citations, and an accounting system for the
208 fines assessed and the subsequent fine amounts paid to the
209 clerks of the court. On or before December 1, 2001, the clerks
210 of the court must provide the information required by this
211 chapter to be transmitted to the department by electronic
212 transmission pursuant to the contract.
213 (b) Any person who fails to comply with the court's
214 requirements as to civil penalties specified in this section due
215 to demonstrable financial hardship shall be authorized to
216 satisfy such civil penalties by public works or community
217 service. Each hour of such service shall be applied, at the rate

218 of the minimum wage, toward payment of the person's civil
219 penalties; provided, however, that if the person has a trade or
220 profession for which there is a community service need and
221 application, the rate for each hour of such service shall be the
222 average standard wage for such trade or profession. Any person
223 who fails to comply with the court's requirements as to such
224 civil penalties who does not demonstrate financial hardship may
225 also, at the discretion of the court, be authorized to satisfy
226 such civil penalties by public works or community service in the
227 same manner.
228 (c) If the noncriminal infraction has caused or resulted
229 in the death of another, the person who committed the infraction
230 may perform 120 community service hours under s. 316.027(4), in
231 addition to any other penalties.
232 (9) One hundred dollars for a violation of s. 316.1575.
233 (10) Twenty-five dollars for a violation of s. 316.2074.
234 (11)(a) In addition to the stated fine, court costs must
235 be paid in the following amounts and shall be deposited by the
236 clerk into the fine and forfeiture fund established pursuant to
237 s. 142.01:
238
239 For pedestrian infractions.....$ 3.
240 For nonmoving traffic infractions.....$ 16.
241 For moving traffic infractions.....$ 30.
242 (b) In addition to the court cost required under paragraph
243 (a), up to $3 for each infraction shall be collected and
244 distributed by the clerk in those counties that have been
245 authorized to establish a criminal justice selection center or a

246 criminal justice access and assessment center pursuant to the
247 following special acts of the Legislature:
248 1. Chapter 87-423, Laws of Florida, for Brevard County.
249 2. Chapter 89-521, Laws of Florida, for Bay County.
250 3. Chapter 94-444, Laws of Florida, for Alachua County.
251 4. Chapter 97-333, Laws of Florida, for Pinellas County.
252
253 Funds collected by the clerk pursuant to this paragraph shall be
254 distributed to the centers authorized by those special acts.
255 (c) In addition to the court cost required under paragraph
256 (a), a $2.50 court cost must be paid for each infraction to be
257 distributed by the clerk to the county to help pay for criminal
258 justice education and training programs pursuant to s. 938.15.
259 Funds from the distribution to the county not directed by the
260 county to fund these centers or programs shall be retained by
261 the clerk and used for funding the court-related services of the
262 clerk.
263 (d) In addition to the court cost required under paragraph
264 (a), a $3 court cost must be paid for each infraction to be
265 distributed as provided in s. 938.01 and a $2 court cost as
266 provided in s. 938.15 when assessed by a municipality or county.
267 (12) One hundred dollars for a violation of s. 316.520(1)
268 or (2). If, at a hearing, the alleged offender is found to have
269 committed this offense, the court shall impose a minimum civil
270 penalty of $100. For a second or subsequent adjudication within
271 a period of 5 years, the department shall suspend the driver's
272 license of the person for not less than 180 days and not more
273 than 1 year.

274 (13) In addition to any penalties imposed for noncriminal
275 traffic infractions pursuant to this chapter or imposed for
276 criminal violations listed in s. 318.17, a board of county
277 commissioners or any unit of local government which is
278 consolidated as provided by s. 9, Art. VIII of the State
279 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the
280 Constitution of 1968:
281 (a) May impose by ordinance a surcharge of up to $15 for
282 any infraction or violation to fund state court facilities. The
283 court shall not waive this surcharge. Up to 25 percent of the
284 revenue from such surcharge may be used to support local law
285 libraries provided that the county or unit of local government
286 provides a level of service equal to that provided prior to July
287 1, 2004, which shall include the continuation of library
288 facilities located in or near the county courthouse or annexes.
289 (b) That imposed increased fees or service charges by
290 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
291 purpose of securing payment of the principal and interest on
292 bonds issued by the county before July 1, 2003, to finance state
293 court facilities, may impose by ordinance a surcharge for any
294 infraction or violation for the exclusive purpose of securing
295 payment of the principal and interest on bonds issued by the
296 county before July 1, 2003, to fund state court facilities until
297 the date of stated maturity. The court shall not waive this
298 surcharge. Such surcharge may not exceed an amount per violation
299 calculated as the quotient of the maximum annual payment of the
300 principal and interest on the bonds as of July 1, 2003, divided
301 by the number of traffic citations for county fiscal year 2002-

302 2003 certified as paid by the clerk of the court of the county.
303 Such quotient shall be rounded up to the next highest dollar
304 amount. The bonds may be refunded only if savings will be
305 realized on payments of debt service and the refunding bonds are
306 scheduled to mature on the same date or before the bonds being
307 refunded.
308
309 A county may not impose both of the surcharges authorized under
310 paragraphs (a) and (b) concurrently. The clerk of court shall
311 report, no later than 30 days after the end of the quarter, the
312 amount of funds collected under this subsection during each
313 quarter of the fiscal year. The clerk shall submit the report,
314 in a format developed by the Office of State Courts
315 Administrator, to the chief judge of the circuit, the Governor,
316 the President of the Senate, and the Speaker of the House of
317 Representatives.
318 (14) In addition to any penalties imposed for noncriminal
319 traffic infractions under this chapter or imposed for criminal
320 violations listed in s. 318.17, any unit of local government
321 that is consolidated as provided by s. 9, Art. VIII of the State
322 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the
323 State Constitution of 1968, and that is granted the authority in
324 the State Constitution to exercise all the powers of a municipal
325 corporation, and any unit of local government operating under a
326 home rule charter adopted pursuant to ss. 10, 11, and 24, Art.
327 VIII of the State Constitution of 1885, as preserved by s. 6(e),
328 Art. VIII of the State Constitution of 1968, that is granted the
329 authority in the State Constitution to exercise all the powers

330 conferred now or hereafter by general law upon municipalities,
331 may impose by ordinance a surcharge of up to $15 for any
332 infraction or violation. Revenue from the surcharge shall be
333 transferred to such unit of local government for the purpose of
334 replacing fine revenue deposited into the clerk's fine and
335 forfeiture fund under s. 142.01. The court may not waive this
336 surcharge. Proceeds from the imposition of the surcharge
337 authorized in this subsection shall not be used for the purpose
338 of securing payment of the principal and interest on bonds. This
339 subsection, and any surcharge imposed pursuant to this
340 subsection, shall stand repealed September 30, 2007.
341 (15) One hundred twenty-five dollars for a violation of s.
342 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
343 stop at a traffic signal. Sixty dollars shall be distributed as
344 provided in s. 318.21, and the remaining $65 shall be remitted
345 to the Department of Revenue for deposit into the Administrative
346 Trust Fund of the Department of Health.
347 (16) In addition to any penalties imposed, a surcharge of
348 $4 must be paid for all criminal offenses listed in s. 318.17
349 and for all noncriminal moving traffic violations under chapter
350 316. Revenue from the surcharge shall be remitted to the
351 Department of Revenue and deposited quarterly into the State
352 Agency Law Enforcement Radio System Trust Fund of the Department
353 of Management Services for the state agency law enforcement
354 radio system, as described in s. 282.1095.
355 Section 2. Subsection (15) is added to section 318.21,
356 Florida Statutes, to read:

357 318.21 Disposition of civil penalties by county
358 courts.--All civil penalties received by a county court pursuant
359 to the provisions of this chapter shall be distributed and paid
360 monthly as follows:
361 (15) Notwithstanding subsections (1) and (2), the proceeds
362 from the surcharge imposed under to s. 318.18(16) shall be
363 distributed as provided in that subsection.
364 Section 3. This act shall take effect October 1, 2006.

HB 1183

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1183 Hernando County Special Election Validation
SPONSOR(S): Russell
TIED BILLS: IDEN./SIM. BILLS: SB 2838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

On March 9, 2004, voters in Hernando County approved, at a special election referendum, the levy of a half-cent local option discretionary surtax for purposes of constructing school facilities. Public notice prior to the referendum was not provided, however, in accordance with statutory requirements. The county began to collect the surtax after voters approved the levy, but the county has been unable to expend proceeds due to the inconsistency with statutory notice requirements.

This bill ratifies, validates, and confirms all acts and proceedings taken in connection with the special election held in Hernando County on March 9, 2004, including, but not limited to, any acts in connection with the notice of the election to authorize the levy of the one-half-cent local option sales tax on tangible personal property sold in Hernando County for the purpose of providing funds to finance the cost of new facilities consisting of new schools, equipment, and such improvements associated with such schools within the county. The bill also declares the special election valid and legal in all respects.

According to the Economic Impact Statement, this bill does not increase projected revenues of the half-cent local option sales tax approved by voters on March 9, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

School Capital Outlay Surtax Generally

Section 212.055(6), F.S., authorizes the school board in each county to levy, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent. The resolution must include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax; the statement must conform to the referendum requirements of s. 101.161, F.S., and must be placed on the ballot by the governing body of the county.

The resolution providing for the imposition of the surtax must describe a plan for use of the surtax proceeds for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 or more years, and any land acquisition, land improvement, design, and engineering costs related thereto. Additionally, the plan must include the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district. Surtax revenues may be used for the purpose of servicing bond indebtedness to finance projects authorized by general law, and any interest accrued thereto may be held in trust to finance such projects. Neither the proceeds of the surtax nor any interest accrued thereto may be used for operational expenses.

Any school board imposing the surtax must implement a freeze on noncapital local school property taxes, at the millage rate imposed in the year prior to the implementation of the surtax, for a period of at least 3 years from the date of imposition of the surtax. This provision does not apply to existing debt service or taxes authorized in the General Appropriations Act.

Special Election Notice Requirements

Section 100.342, F.S., provides that, in any special election or referendum not otherwise provided for, there must be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication must be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality, the notice must be posted in no less than five places within the territorial limits of the county, district, or municipality.

The Florida Supreme Court has recognized that "[s]pecial elections, and particularly those which might result in requiring the exercise of the power of taxation, must be conducted in substantial compliance with constitutional and statutory requirements." [1] Moreover, in contrast to a general election, the date of a special referendum is determined by a local governing body with the authority to call it, and "the voters cannot be expected to have or take notice thereof unless notice is given.

[1] Special Tax School District of Duval County v. State, 123 So.2d 316, 322 (Fla. 1960).

Accordingly, a requirement for publication...must be considered as mandatory and its performance essential to the validity of the election." [2] Additionally, as the statute requires notice as a prerequisite to the issuance of bonds, "such publication is not merely formal and directory; and the required publication cannot be dispensed with upon the theory that it does not appear that the electors were misled by the failure to make the publication for the statutory period." [3]

However, the notice requirements for a special referendum are procedural in nature and "after-the-fact validating legislation is perfectly proper to cure procedural defects." [4]

In fact, "[e]ven when the [Florida] Supreme Court has prepared an opinion holding an issue of bonds to be invalid...a special act passed as a curative statute pending the appeal has been controlling in sustaining the ultimate validity of the bonds." [5]

The complete failure to publish notice of a bond election may be cured with the passage of curative legislation. [6]

Hernando County School Board Levy of the Surtax

On November 4, 2003, the Hernando County School Board (district) adopted Resolution 04-004 ("Resolution") that ordered and provided for the holding of a referendum for the purpose of determining whether voters approve the levy of a one-half percent sales surtax in order to finance new schools in the district.

The Resolution directed the Superintendent of the district to place a notice of the referendum in a newspaper of general circulation published in the district at least 30 days prior to the referendum and at least four times, once in the fifth week and once a week thereafter for each consecutive week prior to the week in which the referendum is deemed held. The Resolution required the notice of referendum to be substantially in the same form provided in the Resolution.

Due to apparent miscommunications between the district and the county commission, the notices required by the Resolution were not provided prior to the referendum; however, according to the district, the surtax levy was discussed prior to the referendum in 71 newspaper articles prior to the referendum, during 17 meetings with various community groups, during 6 public hearings of the district; and in the sample ballot mailed to all voters in the county. At the referendum, 15,905 voters approved the referendum, while 12,945 disapproved, out of a total of 102,389 registered voters.

EFFECT OF PROPOSED CHANGES

The bill ratifies, validates, and confirms all acts and proceedings previously taken in connection with the special election held in Hernando County on March 9, 2004, including, but not limited to, any acts in connection with the notice of the election to authorize the levy of the one-half-cent local option sales tax on tangible personal property sold in Hernando County for the purpose of providing funds to finance the cost of new facilities consisting of new schools, equipment, and such improvements associated with schools within the county. The bill also declares the special election valid and legal in all respects.

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[2] State v. Shields, 140 So.2d 144, 147 (Fla. 1962).
[3] City of Miami v. Romfh, 63So. 440,442 (Fla. 1913).
[4] County of Palm Beach v. State, 342 So.2d 56,58 (Fla. 1976)(*citing*, Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967).
[5] Coon, 203 So.2d at 498 (*citing*, State v. Florida Inland Nav. Dist., 122 So. 249 (1929)
[6] County of Palm Beach v. State, 342 So.2d 56, 58 (Fla. 1976)(*citing*, Coon v. Board of Public Instruction, 203 So.2d 497 (Fla. 1967).

C. SECTION DIRECTORY:

Section 1. Validates, ratifies, and confirms all acts in connection with the levy of the local option sales tax, and declares the special election valid and legal.

Section 2. Provides for severability.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? March 10, 2006

WHERE? Hernando Times, Brooksville, Florida, Hernando 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 []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None

B. RULE-MAKING AUTHORITY: Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

In 2003, the Legislature enacted ch. 2003-390, L.O.F., to validate all acts and proceedings taken in connection with a special election held May, 2002 in Manatee County, Florida. The election authorized the levy of one half-cent local option sales tax in Manatee County for the purpose of providing funds for certain capital improvements and educational facilities within the school district. The bill provided a declaration that the special election was valid and legal and approve the issuance of sales tax revenue bonds.

The March 8, 2006, Department of Revenue bill analysis included the following statement:

> This bill states that the special election authorized a 0.5 percent levy of a local option sales tax on tangible personal property sold in Hernando County. Section 212.054(2)(a), F.S., provides that any surtax authorized in Section 212.055, F.S., shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, etc. Additionally, according to the resolution, the special election authorized the school capital outlay surtax and does not limit it to tangible personal property sold in Hernando

County. Therefore, on page 1, lines 19-20, insert "discretionary sales surtax," and strike "sales tax on tangible personal property sold."

This issue was not addressed in the Local Government Council.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to Hernando County special election
3 validation; validating all acts and proceedings had and
4 taken in connection with the special election held in the
5 county on March 9, 2004, to authorize the levy of the one-
6 half-cent local option sales tax in the county for the
7 purpose of providing funds to finance the cost of new
8 facilities consisting of new schools, equipment, and such
9 improvements associated with such schools within the
10 county; declaring such special election legal and valid;
11 providing severability; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. All acts and proceedings heretofore had and
16 taken in connection with the special election held in Hernando
17 County on March 9, 2004, including, but not limited to, any acts
18 in connection with the notice of such election to authorize the
19 levy of the one-half-cent local option sales tax on tangible
20 personal property sold in Hernando County for the purpose of
21 providing funds to finance the cost of new facilities consisting
22 of new schools, equipment, and such improvements associated with
23 such schools within the county, are hereby ratified, validated,
24 and confirmed and said special election is hereby declared to be
25 valid and legal in all respects.
26 Section 2. If any provision of this section or the
27 application thereof to any person or circumstance is held
28 invalid, the invalidity shall not affect other provisions or

29 applications of this act which can be given effect without the
30 invalid provisions or application, and to this end the
31 provisions of this section are declared severable.
32 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1183**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Russell offered the following:
3
4 **Amendment**
5 Remove line(s) 19-20 and insert:
6 levy of the discretionary sales surtax in accordance with s.
7 212.055(6) for the purpose of

000000

HB 1297

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1297 Town of Grant-Valkaria, Brevard County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N	Nelson	Hamby
2) Finance & Tax Committee		Monroe KDM	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1297 provides a charter for the Town of Grant-Valkaria in Brevard County. This charter provides for:

- the creation and establishment of the town, and the amendment of the charter;
- corporate boundaries, powers of the town, and a town council-administrator form of government;
- a town council and its powers and duties, compensation, membership and meetings;
- a mayor and vice mayor, their powers and duties, and the filling of vacancies;
- ordinances, and restrictions on the use of eminent domain;
- a town administrator and his or her powers and duties, appointment, qualifications, compensation, removal and absence;
- the establishment of departments, offices and agencies and their administration under the direction of the town administrator; a personnel system; and a town attorney;
- land use, development and environmental planning;
- accounting procedures; the fiscal year; an annual audit; availability of financial records; public deposits; requirements for purchase or sale of real property; an annual budget; the levy of taxes; a prohibition on the issuance of certain bonds or entering into certain types of contracts; emergency appropriations;
- town elections;
- appointment and removal of town administrative officers and employees;
- regulation of campaign financing;
- a long-range plan, and a five-year financial plan;
- emergency operations;
- transitional provisions, including an interim council, sources of revenue and continuity of services.

The bill provides that the act takes effect only upon its approval by a majority vote of qualified electors residing within the corporate limits of the proposed city.

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.

According to the Economic Impact Statement, the projected cost of funding the town government and municipal services of Grant-Valkaria will be $1,641,575 for FY 06-07 and $1,777,937 for FY 07-08. Anticipated sources of funding are projected to be $1,796,298 in FY 06-07 and $1,891,519 in FY 07-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

If incorporation of the proposed municipality is approved, it will create an additional local government entity.

B. EFFECT OF PROPOSED CHANGES:

Background/Municipal Incorporation

Constitutional Provisions

Section 2, Art. VII of the State Constitution provides that municipalities[1] may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The only specific constitutional requirement concerning municipal government is that its legislative body be elected.

Statutory Provisions

Florida law governing the formation and dissolution of municipal governments is found in ch. 165, F.S., the "Formation of Municipalities Act." The stated purpose of the Act is to provide standards, direction and procedures for the incorporation, merger and dissolution of municipalities so as to:

- allow orderly patterns of urban growth and land use;
- assure adequate quality and quantity of local public services;
- ensure financial integrity of municipalities;
- eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- promote equity in the financing of municipal services.

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met. [2]

Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. In addition, the new municipality must meet the following conditions in the area proposed for incorporation pursuant to s. 165.061(1), F.S.:

1. It must be compact, contiguous and amenable to separate municipal government.

[1] A municipality is a local government entity, located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term "municipality" can be used interchangeably with the terms "city," "town" and "village."

[2] An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

2. It must have a total population, as determined in the latest official state census, special census or estimate of population, of at least 1,500 persons in counties with a population of less than 75,000, and of at least 5,000 persons in counties with a population of more than 75,000.
3. It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
4. It must be a minimum distance of at least two miles from the boundaries of an existing municipality within the county or have an extraordinary natural boundary that requires separate municipal government.
5. It must have a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.
6. In accordance with s. 10, Art. I of the State Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

Feasibility Study

The feasibility study is a survey of the proposed area to be incorporated. The purpose of the study is to enable the Legislature to determine whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. The feasibility study must be completed and submitted to the Legislature at least 90[3] days prior to the first day of the regular legislative session during which the municipal charter would be enacted.

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

1. The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
2. The major reasons for proposing the boundary change.
3. The following characteristics of the area:
   - a list of the current land use designations applied to the subject area in the county comprehensive plan;
   - a list of the current county zoning designations applied to the subject area;
   - a general statement of present land use characteristics of the area;
   - a description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
4. A list of all public agencies, such as local governments, school districts and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
5. A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each service.
6. A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
7. The names and addresses of three officers or persons submitting the proposal.
8. Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:

[3] Section 165.041(1)(b), F.S.

- existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate; and
- a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance and budgets.

9. Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations and an explanation concerning methodologies used for such analysis.
10. Evaluation of the alternatives available to the area to address its policy concerns.
11. Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S.

Section 165,081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiori if the appeal is brought before the effective date of the incorporation.

Formation Activity In Florida

Municipal Incorporations and Mergers

From 1972 to the present, 25 municipalities have been incorporated, with 17 municipalities created by special act (Bonita Springs, DeBary, Deltona, Destin, Ft. Myers Beach, Islamorada, Jacob City, Lake Mary, Marathon, Marco Island, Midway, Palm Coast, Sanibel, Southwest Ranches, Wellington, West Park and Weston). During this time, one municipality was recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Pinecrest, Aventura, Sunny Isles Beach, Miami Lakes, Palmetto Bay, Doral and Cutler Bay were created under the charter provisions of Miami-Dade County's Charter. The following table indicates recent municipal incorporations by year, county and enabling law.

YEAR	MUNICIPALITY	COUNTY	ENABLING LAW
1973	LAKE MARY	Seminole County	ch. 73-522, L.0.F.
1974	SANIBEL	Lee County	ch. 74-606, L.O.F.
1983	JACOB CITY	Jackson County	ch. 83-434, L.O.F. ch. 84-456, L.O.F.
1984	DESTIN	Okaloosa County	ch. 84-422, L.O.F. ch. 85-471, L.O.F.
1986	MIDWAY	Gadsden County	ch. 86-471, L.O.F.
1991	KEY BISCAYNE	Miami-Dade County	by authority of the Miami-Dade County Charter
1993	DEBARY	Volusia County	ch. 93-351, L.O.F. ch. 93-363, L.O.F.
1995	AVENTURA	Miami-Dade County	by authority of the Miami-Dade County Charter
1995	PINECREST	Miami-Dade County	by authority of the Miami-Dade County Charter

1995	FT. MYERS BEACH	Lee County	ch. 95-494, L.O.F.
1995	DELTONA	Volusia County	ch. 95-498, L.O.F.
1995	WELLINGTON	Palm Beach County	ch. 95-496, L.O.F.
1996	WESTON	Broward County	ch. 96-472, L.O.F.
1997	ISLAMORADA	Monroe County	ch. 97-348, L.O.F.
1997	MARCO ISLAND	Collier County	ch. 97-367, L.O.F.
1997	SUNNY ISLES BEACH	Miami-Dade County	by authority of the Miami-Dade County Charter
1999	BONITA SPRINGS	Lee County	ch. 99-428, L.O.F.
1999	MARATHON	Monroe County	ch. 99-427, L.O.F.
1999	PALM COAST	Flagler County	ch. 99-448, L.O.F.
2000	SOUTHWEST RANCHES	Broward County	ch. 2000-475, L.O.F.
2000	MIAMI LAKES	Miami-Dade County	by authority of the Miami-Dade County Charter
2002	PALMETTO BAY	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	DORAL	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	MIAMI GARDENS	Miami-Dade County	by authority of the Miami-Dade County Charter
2004	WEST PARK	Broward	ch. 2004-454, L.O.F.
2005	CUTLER BAY	Miami-Dade County	by authority of the Miami-Dade County Charter

Failed Attempts at Municipal Incorporation

Over the years, a number of incorporation attempts have failed. Since 1980, Floridians have rejected the formation of municipal governments by voting down the incorporation efforts of:

- A city in the Halifax area of Volusia County (1985) (ch. 85-504, L.O.F.)
- The City of Fort Myers Beach (1982/1986) (chs. 82-295 and 86-413, L.O.F.)
- The City of Spring Hill (1986)

(ch. 86-463, L.O.F.)

- The City of Deltona Lakes (1987)
  (ch. 87-449, L.O.F.)

- The City of Deltona (1990)
  (ch. 90-410, L.O.F.)

- The City of Marco Island (1980/1982/1986/1990/1993)
  (chs. 80-541, 82-330, 86-434, 90-457 and 93-384, L.0.F.)

- The City of Port LaBelle (1994)
  (ch. 94-480, L.O.F.)

- The City of Destin (1995)
  (by authority of the Miami-Dade County Charter)

- The City of Ponte Vedra (1998)
  (ch. 98-534, L.O.F.)

- The Village of Key Largo (1999)
  (ch. 99-430, L.O.F.)

- The City of Southport (1999)
  (ch. 99-444, L.O.F.)

- The Village of the Lower Keys (2000)
  (ch. 2000-383, L.O.F.)

- The Village of Paradise Islands (2000)
  (ch. 2000-382, L.O.F.)

Municipal Mergers

A few previously existing cities have been incorporated through mergers with other cities. Examples include:

- In Brevard County, the merger of Eau Gallie with Melbourne (chs. 67-1156, 69-879 and 70-807, L.O.F.) and the merger of the Town of Whispering Hills Golf Estates with the City of Titusville (chs. 59-1991 and 63-2001, L.O.F.).
- In Pinellas County, the merger of Pass-A-Grille Beach with the City of St. Petersburg Beach (ch. 57-1814, L.O.F.).
- In Bay County, the merger of Longbeach Resort and Edgewater Gulf Beach with the City of Panama City Beach (chs.67-2174 and 70-874, L.O.F.).

Municipal Dissolutions

During the last several decades, numerous cities have been dissolved:

- Bithlo in Orange County by authority of the Secretary of State in January 1977;
- Bayview in Bay County by ch. 77-501, L.O.F.;
- Munson Island in Monroe County by ch. 81-438, L.O.F.;
- Painters Hill in Flagler County by ch. 81-453, L.O.F.;
- Hacienda Village in Broward County by ch. 84-420, L.O.F.;

- Pennsuco in Miami-Dade County under authority of the Miami-Dade County Charter;
- Golfview in Palm Beach County by ch. 97-329, L.O.F.; and
- North Key Largo by ch. 2003-318, L.O.F.

Town of Grant-Valkaria

The communities of Grant and Valkaria are located in the southeastern quadrant of Brevard County. Originally settled as fishing villages, Grant and Valkaria have been identifiable as independent communities since the late 19th century. The contiguous communities are bounded by the Town of Malabar on the north, the Indian River Lagoon on the east, the City of Palm Bay to the west, and the unincorporated community of Micco to the south.

In November of 2004, in response to growing concerns over encroaching development and annexations of large tracks of adjacent properties, groups of Grant and Valkaria residents began exploring the options available to preserve their community. Among the alternatives considered were petitioning for annexation to an adjoining municipality, establishing a "Preservation District," seeking designation as a special district, or investigating the possibility of municipal incorporation.[4]

A feasibility study on the creation of the town, as required by ch. 165, F.S., was submitted to the Florida House of Representatives on December 5, 2005. This study and the charter were reviewed by the Legislative Committee on Intergovernmental Relations, Office of Economic & Demographic Research, Department of Revenue and Department of Community Affairs.[5]

Effect of Proposed Changes

Proposed Charter

HB 1297 provides a proposed charter for the Town of Grant-Valkaria:

Section 1: Town of Grant-Valkaria; charter; creation; powers; construction; form of government; boundaries; intergovernmental relations.
(1) CHARTER; CREATION: Provides for the charter of the Town of Grant-Valkaria, and creates and establishes the town.
(2) POWERS OF THE TOWN: Provides that the town retain claim to all power and legal rights granted to municipalities under the Constitution and laws of the State of Florida.
(3) CONSTRUCTION: Provides for the liberal construction of the powers of the town.
(4) FORM OF GOVERNMENT: Provides that the town shall have a town council-administrator form of government.
(5) CORPORATE BOUNDARIES: Provides a legal description for the town.
(6) INTERGOVERNMENTAL RELATIONS: Provides that the town may participate by contract or otherwise with any governmental entity of the state, or any other state, in the performance of any activity that one or more of such entities has the authority to undertake.

Section 2: Town council; mayor; vice mayor; ordinances; eminent domain.
(1) TOWN COUNCIL: Provides that the town council shall consist of six council members and one mayor, for a total of seven members, all of whom are elected at large; provides that four or more members of the town council will constitute a majority, and five or more members of the town council will constitute a supermajority; provides that a majority of the town council shall constitute a quorum; provides that all powers of the town shall be vested in the elected town council, except as otherwise provided by law or the charter.
(2) MAYOR: Provides that the mayor shall preside at meetings of the town council, and be a regular voting member of the town council; provides that the mayor shall be recognized as the head of town

[4] See, the Grant/Valkaria Incorporation Feasibility Study as presented to the Brevard County Commission on November 2, 2005.
[5] These reviews are on file with the Local Government Council.

government for all ceremonial purposes, for purposes of military law, and for service of process and execution of town council authorized contracts, deeds and other documents.
(3) VICE MAYOR: Provides that the vice mayor shall act as mayor in the absence of the mayor; provides that the vice mayor shall be elected from among council members for a term of one year or until his or her successor is elected; provides that a council member shall not serve consecutive terms as vice mayor unless no other council member is willing to serve as vice mayor.
(4) VACANCIES: Provides that the office of a town council member will become vacant upon the incumbent's death, resignation or removal from office in any manner authorized by law or by forfeiture of his or her office; provides that a town council member shall forfeit his or her seat if he or she ceases to maintain a permanent residence in the town or otherwise ceases to be a qualified elector of the town; provides that any member of the town council shall be subject to forfeiture of his or her office if absent without good cause from any three consecutive regular meetings of the council or any four regular meetings of the council within any 12-month period; provides that the town council shall be the sole judge of the qualifications of its members.
(5) FILLING OF VACANCIES: Provides that a vacancy on the town council shall be filled by a majority vote of the remaining members of the town council, unless at the time of the vacancy there are fewer than six months remaining before the next regular election, in which case the town council shall have the discretion to leave the seat vacant until the election; provides that in the event that all the members of the town council are removed by death, disability, recall, forfeiture of office, resignation or any combination thereof, the Governor shall appoint an interim town council; provides that the interim town council shall call a special election within not fewer than 60 days or more than 90 days after such appointment; provides that if there are fewer than six months remaining in the unexpired terms, the interim town council appointed by the Governor shall serve out the unexpired terms.
(6) COMPENSATION; REIMBURSEMENT FOR EXPENSES: Provides that council members shall serve as town volunteers and not be compensated; provides that council members shall receive reimbursement for council-approved expenses in accordance with applicable law, or as may be otherwise provided by ordinance, for authorized travel and per diem expenses incurred in the performance of their official duties; provides that an ordinance establishing, increasing or decreasing reimbursement for expenses of the council members may be adopted at any time.
(7) INVESTIGATIONS: Provides that the town council may make investigations into the affairs of the town and the conduct of any town department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence.
(8) MEETINGS: Provides that the town council shall hold a minimum of 11 monthly meetings in each fiscal year at such times and places as the town council may prescribe by rule; provides that special meetings may be held on the call of the mayor or four or more members and, whenever feasible, upon no less than 24 hours' notice to each member; provides that except as otherwise provided by general law, all meetings shall be public; provides that the town council shall determine its own rules and order of business and procedure or use the latest edition of Robert's Rules of Order; provides that the town council shall provide for keeping a journal of its proceedings; provides that such journal shall be a public record except as otherwise provided by general law; provides that all town council votes shall be recorded in the journal; provides that no action of the town council, except as otherwise provided in the charter, shall be valid or binding unless adopted by a majority decision; provides that except as otherwise provided in the charter, all land use and quasi-judicial items shall require a supermajority decision.
(9) ORDINANCES: Provides that acts which accomplish the following (in addition to other acts required by law or by specific provision of the charter) must be ordinances:

- adopt or amend an administrative code or establish, alter, or abolish any town department, office or agency;
- regulate land use and development;
- levy taxes;
- grant, renew or extend a franchise;
- regulate the rate charged by a public utility for its services;
- authorize the borrowing of money;
- convey or lease, or authorize the conveyance or lease of, any lands of the town;

- provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- amend or repeal any ordinance previously adopted; or
- adopt, with or without amendment, ordinances proposed under the initiative power.

(10) EMINENT DOMAIN: Provides that the town council may not exercise its powers of eminent domain or condemnation to acquire property for private development purposes, regardless of the public good such eminent domain or condemnation might support.
(11) ORDINANCES IN GENERAL: Provides that every proposed ordinance shall be introduced in writing and in the form required for final adoption; provides that no ordinance shall contain more than one subject, which shall be clearly expressed in its title; provides for ordinances that repeal or amend an existing ordinance or part of the town code; provides that any member of the town council at any regular or special meeting of the town council may introduce an ordinance; provides other procedural rules for ordinances; provides that except as otherwise provided in the charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein; provides for the adoption and repeal of emergency ordinances; provides that the town council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance; provides that the town clerk shall authenticate by signing and recording in full in a properly indexed document kept for that purpose all ordinances and resolutions adopted by the town council; provides that within three years after adoption of the charter and at least every 10 years thereafter, the town council shall provide for the preparation of a general codification of all town ordinances and resolutions having the force and effect of law; provides for the publication and distribution of town ordinances.

Section 3: Town administrator.
(1) APPOINTMENT; QUALIFICATIONS; COMPENSATION: Provides that the town council, by majority vote, shall appoint a town administrator for an indefinite term and set his or her compensation; provides for qualifications and residency; provides that the town administrator is responsible to the town council.
(2) REMOVAL: Provides that the town council may request the resignation of the town administrator; provides that the town council may suspend and remove the town administrator.
(3) ABSENCE OR DISABILITY: Provides that to perform his or her duties during a temporary absence or disability, the town administrator may designate, by letter filed with the town clerk, an interim town administrator: provides in the event of failure or inability of the town administrator to make such designation, or should the person so designated by the town administrator be unsatisfactory to the town council, that the town council may by resolution appoint an interim town administrator.
(4) POWERS AND DUTIES: Provides that the town administrator shall be the chief executive officer of the town; provides that the town administrator shall:

- hire or fill existing positions, suspend or remove town employees, and may serve as town clerk;
- direct and supervise the administration of all departments and offices, but not town boards or agencies, except as otherwise directed by the town council or provided by the charter;
- attend all town council meetings;
- ensure that all laws, provisions of the charter, and acts of the town council, subject to enforcement by the town administrator or by officers subject to the town administrator's direction and supervision, are faithfully executed;
- prepare and submit the annual budget and capital program to the town council and implement the final budget approved by the town council to achieve the goals of the town;
- submit to the town council, and make available to the public, a complete report on the financial and administrative activities of the town as of the end of each fiscal year;
- prepare such other reports as the town council may require concerning the operations of town departments, offices, boards and agencies;
- keep the town council fully advised as to the financial condition and current and future needs of the town;

- assist the town council in developing long-term goals for the town and strategies to implement these goals;
- make recommendations to the town council concerning the affairs of the town and facilitate the work of the town council in developing policy;
- provide staff support services for the mayor and council members;
- encourage and provide staff support for regional and intergovernmental cooperation;
- promote partnerships among the town council, staff and citizens in developing public policy and building a sense of community; and
- perform all such other duties as are specified in the charter or that may be required by the town council.

(5) BOND: Provides that the town administrator and, where applicable, an interim town administrator shall furnish a security bond to be approved by the town council, in such amount as the town council may specify, such bond to be conditioned on the faithful performance of his or her duties; provides that the premium of the bond shall be paid by the town.

Section 4: Departments, offices, and agencies; town attorney; land use.
(1) CREATION OF DEPARTMENTS, OFFICES, AND AGENCIES: Provides that the town council may establish town departments, offices and agencies and prescribe their functions.
(2) DIRECTION BY TOWN ADMINISTRATOR: Provides that all departments, offices and agencies under the direction and supervision of the town administrator shall be administered by an officer appointed by and subject to the direction and supervision of the town administrator; provides that with the consent of the town council, the town administrator may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.
(3) PERSONNEL SYSTEM: Provides that all appointments and promotions of town officers and employees shall be made primarily on the basis of merit or other evidence of competence; provides that consistent with all applicable federal and state laws, the town council shall provide by ordinance for the establishment, regulation and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the town's departments, offices and agencies.
(4) TOWN ATTORNEY: Provides that the town council shall appoint the town attorney by an affirmative vote of a majority of the town council; provides that the town council shall establish a contract term for the town attorney that includes scheduled reviews; provides that the town attorney shall report to the town council to serve as chief legal adviser to the town council, the town administrator, and all town departments, offices and agencies; provides that compensation and benefits of the town attorney shall be set by the town council; provides that the town attorney shall be a member in good standing of The Florida Bar; provides that the town council may remove the town attorney at any time by an affirmative vote of a majority of the town council; provides that the town attorney shall take office immediately on appointment, and that the terms and conditions of his or her appointment shall be reduced to a written contract; provides that the town council shall have the authority to engage such additional legal counsel as it deems advisable and necessary.
(5) LAND USE, DEVELOPMENT AND ENVIRONMENTAL PLANNING: Provides that, consistent with all applicable federal and state laws with respect to land use, development and environmental planning, the town council shall:

- designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance or in section 9;
- adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan;
- determine to what extent the comprehensive plan and zoning and other land use ordinances must be consistent with regional plans; and
- adopt development regulations, to be specified by ordinance, to implement the plan.

Provides that the designated agency, the town administrator and the town council shall seek to act in cooperation with other jurisdictions and organizations in their region to promote integrated approaches to regional issues.

Section 5: Finances.
(1) ACCOUNTING PROCEDURES: Provides that the town administrator shall prescribe and require, except as may be prescribed and required by law, the use of plain and uniform systems of keeping books of accounts by all town departments, officers or employees who are charged with the receipt or disbursements of any of the funds of the town or who may be authorized to purchase materials and supplies or to employ labor for the town.
(2) FISCAL YEAR: Provides that the fiscal year of the town shall begin with the first day of October in each year and end on the last day of September of the following year, as set forth in s.166.241, F.S.
(3) ANNUAL AUDIT: Provides that the town council shall retain a certified public accountant to be the independent auditor of accounts of the town; provides that it shall be the duty of the auditor to audit the accounts of the town and all its officers whose duty involves the collection, custody and payment of moneys to or by the town; provides that the auditor shall, on or before April 15 of each year, make and deliver a detailed report of any and all accounts, records and books from the previous fiscal year examined and audited by him or her.
(4) PUBLIC FINANCIAL RECORDS: Provides that the town administrator shall regularly make available as public records at a suitable location all major revenues and expenditures of the town for a given fiscal year; provides that this information shall be made available, at a minimum, quarterly.
(5) PUBLIC DEPOSITS: Provides that all public deposits shall be made in qualified public depositories and secured as provided by state law.
(6) PURCHASE, SALE, AND LEASE OF REAL PROPERTY: Provides that all purchases or sales of real property by the town or leases of town-owned property are subject to public notice and hearing before action is taken by the town council; provides that such action shall require a supermajority vote of the town council; provides that the public notice shall be of the same extent and nature as that required by general law for rezoning.
(7) ANNUAL BUDGET: Provides for submission of annual budget; provides that on or before July 15 of each year, the town administrator shall submit a budget in accordance with state law; provides that the town council shall adopt a budget for the ensuing fiscal year by resolution on or before September 30 of each year; provides that the town council shall not authorize or allow to be authorized a budget that exceeds the reasonably expected revenue for the ensuing fiscal year; provides that if at any time during the fiscal year it appears probable to the town administrator that the revenues available will be insufficient to meet the amount appropriated in the budget, the town administrator shall report to the town council without delay; provides that the town council shall then take action to prevent or minimize any deficit and for that purpose may, by resolution, reduce one or more appropriations; provides that the town administrator shall have full authority to transfer unencumbered funds between different programs within a department, office or agency; provides that the town administrator shall not have the authority to transfer funds between departments, offices or agencies; provides that the town council may, by resolution, transfer or otherwise allocate or reallocate part or all of any unencumbered balance within a department, office or agency to any other department, office or agency; provides that copies of the budget as adopted shall be public record and shall be made available to the public at a suitable location in the town.
(8) TAXATION AND REVENUE: Provides that all property, real or personal, in the town not expressly exempt by state law shall be subject to taxation by the town within the limits set forth by the State Constitution and general law; provides that the town council shall have the right to raise, by taxation on the taxable property within the corporate limits of the town and on licenses, such amounts as may be necessary to carry on the government of the town, within the limits set forth by the State Constitution and general law; provides that the town council shall have the right to levy such additional taxes, within the limits set forth by the State Constitution and general law, as may be necessary to pay the interest on, and to provide a sinking fund for the ultimate redemption of, the outstanding bonds of the town as may from time to time be issued in accordance with law and to pay any lawful judgment that the town may be compelled to satisfy; provides that unless authorized by the electors of the town at a duly held referendum election, the town council shall not authorize or allow to be authorized the issuance of revenue bonds or enter into lease-purchase contracts or any other unfunded multiyear contracts for the purchase of real property or the construction of capital improvements the repayment of which extends beyond the end of any fiscal year.

(9) EMERGENCY APPROPRIATIONS: Provides that to address a public emergency affecting life, health, property or the public peace, the town council may make emergency appropriations; provides that such appropriations may be made by emergency ordinance in accordance with the provisions of section 2; provides that to the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the town council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as long-term debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

Section 6: Town elections.
(1) CONDUCT OF ELECTIONS: Provides that the provisions of the general election laws of the state shall apply to all elections held under the charter; provides that the town council may, by ordinance, make all regulations it considers needful or desirable, not inconsistent with the charter, for the conduct of municipal elections and for the prevention of fraud therein; provides that nothing in the charter shall preclude the town council from authorizing the administration of town elections by the county supervisor of elections; provides that regular town elections shall be held every two years beginning on November 7, 2006, coincident with county, state and national elections; provides that poll workers and clerks of elections, if required, shall be appointed by the Brevard County Supervisor of Elections; provides for special elections; provides that any person who is a resident of the town, is qualified as an elector of the state, and is registered to vote in the manner prescribed by law shall be an elector of the town; provides for nonpartisan elections.
(2) COMMENCEMENT OF TERMS: Provides that the term of office of any elected official shall commence two weeks after the election.
(3) OATH OF OFFICE: Provides for an oath of office.
(4) METHOD OF ELECTING COUNCIL MEMBERS: Provides that the ballot for the general election shall contain the names of all qualified candidates for council members and the number of seats up for election; provides that the ballot shall instruct electors to cast one vote for each open council seat; provides that the candidates who receive the largest number of votes shall be the duly elected council members and shall be designated as holding a specific council seat number; provides that council seat numbers shall be assigned such that the lowest seat number available is given to the candidate who receives the largest number of votes.
(5) METHOD OF ELECTING THE MAYOR: Provides that if the mayor's term is expiring, the ballot for the general election shall contain the names of all qualified candidates for mayor and shall instruct electors to cast one vote for mayor; provides that the candidate for mayor receiving the largest number of votes shall be the duly elected mayor.
(6) TIE VOTES: Provides that in the event of a tie for the office of council member or mayor, the winner shall be determined by lot.
(7) CANDIDATE FORUMS: Provides that the town shall sponsor and budget for a minimum of three candidate forums; provides that each candidate for mayor or council seat shall participate in a minimum of two candidate forums.
(8) QUALIFYING OF CANDIDATES FOR OFFICE OF COUNCIL MEMBER OR MAYOR: Provides that only electors of the town who have resided in the town for the two years preceding the date of filing for candidacy shall be eligible to hold the office of council member or mayor; provides that candidates for council member or mayor shall qualify for election by the filing of a written notice of candidacy with the clerk of the town at such time and in such manner as may be prescribed by ordinance, plus payment of any fees required by general law as a qualifying fee; provides that the candidate shall submit a qualifying statement, as prescribed by ordinance, with the signatures of at least one percent of the total number of electors at the last general election, and pay any required filing fee; provides for a qualifying period of not be less than 45 days and not more than 60 days prior to the election.
(9) INITIATIVE, CITIZEN REFERENDUM, AND RECALL: Provides that the electors of the town shall have power to propose ordinances to the town council; provides that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, or salaries of town employees; provides that if the town council fails to adopt the proposed ordinance or a modification thereof, the electors shall have the power to adopt or reject it at a town election; provides

that the electors of the town shall have the power to require reconsideration by the town council of any adopted ordinance; provides that the electors of the town shall have the power to remove from office any elected official of the town in accordance with general law.
(10) INITIATIVE AND REFERENDUM PROCEEDINGS: Provides that any five electors may commence initiative or referendum proceedings by filing with the town clerk an affidavit stating that they will constitute the petitioners' committee, stating that they will be responsible for circulating the petition and filing it in proper form, stating their names and addresses, specifying the address to which all notices to the petitioners' committee are to be sent, and setting out in full the proposed initiative ordinance or the proposed amendment or repeal action relating to an existing ordinance.
(11) RESULTS OF INITIATIVE OR REFERENDUM: Provides that if a majority of the electors voting in a referendum on a proposed initiative ordinance votes in favor of such ordinance, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by the town council; provides that if a majority of the electors voting in a referendum on a request to repeal an existing ordinance votes in favor of repeal, the ordinance shall be considered repealed upon certification of the election results.

Section 7: General provisions.
(1) CONDUCT OF OFFICIALS IN OFFICE: Provides that all town council members, town officials and town employees shall be subject to the code of ethics for public officers and employees set forth in part III of ch.112, F.S., as required by law; provides that the use of public office for private gain is prohibited and for the town council to implement this prohibition by ordinance.
(2) PROHIBITIONS: Provides that except where authorized by law, neither the mayor nor any council member shall hold any other elected public office during the term for which the mayor or council member is elected; provides that no elected town official shall hold any appointive town office or town employment while in office; provides that no former elected town official shall hold any compensated appointive town office or town employment until 12 months after the expiration of his or her term.
(3) APPOINTMENTS AND REMOVALS: Provides that neither the council members nor the mayor shall in any manner control or demand the appointment or removal of any town administrative officer or employee whom the town administrator or any subordinate of the town administrator is empowered to appoint.
(4) INTERFERENCE WITH ADMINISTRATION: Provides that except for the purpose of inquiries and investigations, the town council and its members shall deal with the town officers and employees who are subject to the direction of the town administrator solely through the town administrator, and neither the town council nor its members shall give orders to any such officer or employee either publicly or privately.
(5) CAMPAIGN FINANCE: Provides that the town council shall adopt ordinances to protect the ability of citizens to be informed of financing used in campaigns for local office; provide that the town council may adopt ordinances that limit contributions, time limits on fundraising, and public financing.
(6) LONG-RANGE PLAN: Provides that the town council shall meet to discuss long-range goals and objectives that, when achieved, will sustain town operations and continued quality of life for inhabitants of the town.
(7) FIVE-YEAR FINANCIAL PLAN: Provides that in accordance with the five-year goals and objectives established in the long-range plan by the town council, the town council shall prepare a five-year financial plan.
(8) EMERGENCY OPERATIONS: Provides that the town council shall establish an emergency preparedness plan, and review it annually.
9) DISSOLUTION: Provides that the charter of the town may not be revoked except in accordance with the dissolution procedures of ch. 165, F. S.

Section 8: Charter amendment.
(1) PROCEDURE TO AMEND THE CHARTER: Provides that the town council may, by ordinance, propose amendments to the charter; provides that upon approval of the initiating ordinance by majority of the town council, the proposed amendment shall be placed on the ballot at the next regularly scheduled election, unless the amendment calls for placement on the ballot at a special election;

provides that the electors of the town may propose amendments to the charter by petition signed by 20 percent of the registered electors as of the last general election.
(2) CHARTER REVIEW: Provides that the charter shall be reviewed no later than three years from the date the town was established; provides that after the initial review, the charter be reviewed no more than once every 10 years.
(3) RESULTS OF ELECTION: Provides that if a majority of the electors voting on the proposed amendment passes the item, it shall be considered adopted upon certification of the election results; provides that the town council shall have the amendment incorporated into the charter and file the revised charter with the Department of State.

Section 9: Land use, zoning, and development.
(1) RURAL CHARACTER OF TOWN: Provides for maintaining the existing rural character of the town.
(2) LAND USE, ZONING AND DEVELOPMENT REQUIREMENTS: Provides that in order to preserve and promote the existing rural elements, it is incumbent upon all future development to:

- continue the use of private wells as sources of potable water and the use of private septic recycling;
- promote and preserve public lands and parks for community enjoyment;
- protect and promote the wildlife and the wildlife habitat that coexist within the town; and
- preserve the natural view and existing scenic highway designation of U.S. Highway 1 through careful management of development along and within these natural assets.

Provides that the land development regulations and ordinances of the town shall uphold and enforce the goals and overall spirit of this section; provides that all zoning in effect at the time of incorporation shall remain unchanged after incorporation (i.e., "grandfathered in"); provides that all present county zoning classifications and land use designation terminology shall continue in effect until the town is established and the town's long-range comprehensive plan and future land use map are completed and adopted; provides that a new long-range comprehensive plan and future land use map shall be completed and adopted within one year after incorporation.
(3) PROPOSED CHANGE; PRIOR NOTICE; VOTE REQUIRED: Provides that prior to voting on a proposed increase in development intensity, including, but not limited to, density levels, building heights and traffic impacts, the town council shall notify all property owners inside the town whose property is within 1,500 feet of the proposed change; provides that an affirmative vote of six or more members of the town council shall be required to enact any such proposed change.

Section 10: Transition.
(1) CREATION AND ESTABLISHMENT OF THE TOWN: Provide for the purpose of the assessment and collection of ad valorem taxes, the town is hereby created and established effective when approved by the electors at the August 1, 2006, special election and filed with the Secretary of State in the manner prescribed by law; provides that as a first act of home rule and to ensure community participation, residents will have the opportunity to select their town name.
(2) TEMPORAL NATURE OF TRANSITION SECTIONS OF CHARTER: Provides that each of the following subsections of this section shall automatically, and without further vote or act of the electors of the town, become ineffective and no longer a part of the charter at such time as the implementation of such subsection has been accomplished.
(3) FIRST TRANSITION PERIOD; CHARTER ACCEPTANCE TO FIRST ELECTION: Provides that since upon approval of the charter a governmental unit equivalent to the town does not exist to provide people with positions accredited to effect a transition, an interim council committed to the charter and the transition to town government shall be identified and authorized; provides that based on prior commitment to and involvement in the incorporation process, the Grant-Valkaria Preservation Committee-Steering Committee is recognized as the appropriate body to select a five member interim council; provides that such positions shall be voluntary and receive no compensation; provides that powers of the interim council shall include:

- preparing and adopting temporary regulations that are applicable only to the first town council election and designed to ensure its proper conduct, to prevent fraud, and to provide for recount of ballots in cases of doubt or fraud;
- providing a method for certification of candidates for the first town council election;

- scheduling the three community candidate forums as described in section 6 in preparation for the first town council election;
- coordinating with the Brevard County Supervisor of Elections with regard to the first town council election and to effect the timely receipt by the interim council of the official certification results for the town council election;
- scheduling the first town council meeting;
- enacting emergency ordinances as may be warranted to protect public safety;
- identifying and managing funds;
- filing applicable forms and requests for revenue sharing and other funding sources; and
- disbursing funds for the purpose of conducting town business to include the funding of the first election of the town council.

Provides that until otherwise modified or replaced by the charter or the council, all codes, ordinances and resolutions of Brevard County in effect on the day of adoption of the charter shall, to the extent applicable to the town, remain in force and effect as municipal codes, ordinances and resolutions of the town; provides that until otherwise determined by the council, said codes, ordinances and resolutions shall be applied, interpreted and implemented by the town in a manner consistent with established policies of Brevard County on the date of the adoption of the charter.

(4) FIRST ELECTION; TERMS OF COUNCIL MEMBERS AND MAYOR: Provides that for the first election, only electors who have resided within the proposed town boundaries for the two years preceding the date of the first election shall be eligible to hold the office of council member or mayor; provides that at the first election under the charter, all six council members and the mayor shall be elected; provides that the three council candidates receiving the greatest number of votes shall be duly elected council members and shall be designated as holding seats 1, 3 and 5, respectively; provides that the three council candidates receiving the next greatest number of votes shall be duly elected council members and shall be designated as holding seats 2, 4 and 6, respectively; provides that the candidate for mayor receiving the greatest number of votes shall be the duly elected mayor; provides that notwithstanding the date of the first election, the terms of the mayor and council seats 1, 3 and 5 shall end two weeks after the general election in 2010, and the terms of council seats 2, 4 and 6 shall end two weeks after the general election in 2008; provides that division of council seats into four-year and two-year terms is required in order to allow staggered terms of office.

(5) INITIAL EXPENSES: Provides that the initial expenses of the town council, including the expense of recruiting a town administrator, shall be paid by the town on vouchers signed by the mayor; provides that the town council, in order to provide moneys for the expenses and support of the town, shall have the power to borrow money, if necessary, for the operation of town government until such time as a budget is adopted and revenues accrue in accordance with the provisions of the charter; provides that the amount borrowed shall be in accordance with and shall not exceed the projected revenues of the incorporation feasibility study for the town for fiscal year 2006-2007.

(6) TRANSITIONAL ORDINANCES AND RESOLUTIONS: Provides that the town council shall adopt ordinances and resolutions required to effect the transition; provides that ordinances adopted within 60 days after the first regular council meeting may be passed as emergency ordinances.

(7) REVENUE SOURCE TRANSITION: Provides that until otherwise modified by the council, all municipal taxes and fees imposed within the town boundaries by the county as the municipal government for unincorporated Brevard County, which taxes and fees are in effect on the date of adoption of the charter, shall continue at the same rate and on the same conditions as if those taxes and fees had been adopted and assessed by the town.

(8) TRANSITION CONTINUITY OF SERVICES: Provides that to ensure that there is no discontinuity in the provision, level or quality of municipal service delivery to the proposed town, and until such time as the town may enter into interlocal agreements with Brevard County regarding the provision of municipal services, all municipal services currently provided by Brevard County will continue to be provided by Brevard County at the service levels existing at the time of municipal incorporation; provides that all federal, state, grant and other funding sources existing prior to the time the town is incorporated shall continue to be applied in the manner and at the level anticipated and projected by the Brevard County budget prior to the incorporation of the town; provides that the future cost and level of municipal service delivery provided to the town by Brevard County beyond fiscal year 2006-2007

shall be negotiated and determined through interlocal agreement between the town and appropriate representatives of Brevard County.
(9) STATE-SHARED REVENUES: Provides that the town shall be entitled to participate in all shared revenue programs of the state, effective immediately on the date of incorporation; provides that the provisions of s. 218.23, F.S., shall be waived for the purpose of eligibility to receive revenue-sharing funds from the date of incorporation through the end of state fiscal year 2005-2006; provides that the provisions of s. 218.26(3), F.S., shall be waived for state fiscal year 2005-2006, and the apportionment factors for the municipalities and counties shall be recalculated pursuant to s. 218.245, F.S.; provides that the initial population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research as of the effective date of the charter; provides that should the Bureau be unable to provide an appropriate population estimate, the initial population for calculating eligibility for shared revenues shall be established at the level of 3,907 as projected in the incorporation feasibility study.
(10) GAS TAX REVENUES: Provides that notwithstanding the requirements of s. 336.025, F.S., to the contrary, the town shall be entitled to receive local option gas tax revenues beginning the first day of the month following the charter referendum; provides that these revenues shall be distributed to the town as a fully eligible incorporated municipality of Brevard County in accordance with the distribution formula initially established and adopted on October 18, 1988, as part of the "Brevard County Local Option Gasoline Tax Revenue Distribution, Interlocal Agreement" and as amended by the Board of County Commissioners of Brevard County through Ordinance No. 99-40 as ratified on October 12, 1999, extending the Local Option Gas Tax Interlocal Agreement through August 31, 2021.
(11) SHARED REVENUES: Provides that Brevard County shall distribute to the town, from taxes, franchise fees, and ad valorem taxes, revenues collected within the municipal boundaries of the town; provides that this calculation shall be based upon a population projection of 3,907 residents for the town as estimated for the feasibility study in anticipation of the year 2008 census.

Section 11: Severability. Provides that if any section or part of a section of the charter is held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of the charter nor the context in which such section or partial section so held invalid may appear, except to the extent that an entire section or a partial section may be inseparably connected in meaning and effect with the section or partial section to which such holding shall directly apply.

Section 12: Provides that the act shall only take effect upon approval by a majority vote of those qualified electors of the area voting in a referendum to be called by the Brevard County Supervisor of Elections on or before August 1, 2006, except for this section, which takes effect upon becoming a law.

Charter Review

Provisions within the Charter meet the statutory requirement for proposed charters in regards to prescribing the form of government and clearly defining the responsibilities for legislative and executive functions in accordance with s. 165.061(1)(e), F.S. As noted in the following comments, certain provisions may conflict with general law while other provisions may simply require clarification.[6]

Section 1(6): This subsection authorizes Grant-Valkaria to enter into contracts or agreements with other governmental agencies. Such authority is provided in s. 163.01, F.S., "The Interlocal Cooperation Act of 1969." As such, this subsection is redundant and could be deleted.

Section 2(1)(a): Subsection (a) calls for a six-member council, and one mayor, to be elected at-large. An at-large election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act, depending upon the area's demographics.[7]

[6] Selected comments are based on the Legislative Committee on Intergovernmental Relations' analysis.
[7] A summary of the relevant sections of the Act is provided at the end of this analysis.

Section 2(1)(b): Subsection (b) authorizes the council to establish procedures to compel attendance at meetings of absent members in a manner and subject to penalties prescribed by rules adopted by the council. This provision is vague and may be inconsistent with provisions in subsection 2(4) regarding vacancies, forfeiture of office and excused absences. In addition, the term "compel" requires clarification to ensure the action does not conflict with civil and criminal law.

Section 2(3): This subsection establishes the position of the vice mayor and sets the term at one year, "unless no other council member is willing to serve as vice mayor." This phrase is vague and should be deleted. Alternatively, term limits could be removed and the vice mayor would serve at the pleasure of the council.

Section 2(8): Subsection (a) provides for regular monthly council meetings. A provision providing for advance public notice should be included.

Section 2(8): Subsection (c) provides that all land use and quasi-judicial items be approved by a supermajority, defined as five or more members, decision of the council. Such a provision may be overly restrictive and could result in a situation where a minority imposes its will over the majority.

Section 2(11): Subsection (d) authorizes the adoption of emergency ordinances by majority vote. It may be appropriate to clarify, pursuant to s. 166.041(3)(b), F.S., that emergency ordinances require a two-thirds vote by the commission, and that zoning ordinances cannot be enacted as emergency ordinances.

Section 2(11): Subsection (h) provides that ordinances and other documents be made available to the public "at reasonable prices" as fixed by the council. It may be appropriate to include the phrase "in accordance with or provided by general law."

Section 3(1): This subsection provides for the appointment of a town administrator and notes that the administrator is "continuously responsible to the town council, the elected representatives of the people." It may be appropriate to further clarify that the administrator is responsible to the council, as the governing body, and avoid confusion that the administrator may be responsible to individual council members.

Section 3(3): This subsection provides for the appointment of an interim town administrator during the temporary absence or disability of the town administrator. The term disability should be defined or deleted.

Section 3(4): This subsection provides for the powers and duties of the town administrator. It may be appropriate to clarify how the administrator's responsibilities differ from those duties of the mayor provided for in Section 2(2).

Section 3(4): Subsections (k) and (m) require the administrator to "provide staff support services to mayor and council members" and "promote partnerships…," respectively. These provisions are overly vague and require clarification or deletion.

Section 4(3): Subsection (a) calls for a personnel system under which all personnel appointments and promotions are made "primarily" on the basis of merit and competency. It may be appropriate to either define or delete the qualifier "primarily" in order to avoid misinterpretation.

Section 5(7): Subsection (c)3 authorizes the transfer or reallocation of unencumbered funds. It may be appropriate to include a provision that such transfers should be in accordance with general law.

Sections 6(8) and 10(4): These subsections include a two-year residency requirement for council member and mayoral candidates. Such a provision may be vulnerable to legal challenge.

Section 6(10): Subsection (a) provides that five electors may commence initiative or referendum proceedings and have the proposal placed on the agenda of the next council meeting. It may be appropriate to increase the number of electors required to have a proposal placed before the council. This subsection also allows the proposal to be submitted to referendum by petition if the council fails to consider or act for reasons that "fail to satisfy" its sponsors. Such a phrase is vague and should be clarified.

Section 7(8): This section provides for an emergency preparedness plan. It may be appropriate to require that the plan be prepared in accordance with general law and in cooperation and coordination with such plans established by Brevard County government.

Section 8(1): Subsection (b) calls for a charter amendment to be placed on a ballot at the next regularly scheduled "ballot" or at a special "ballot." It may be appropriate to replace this term with the term "elections."

Section 8(2): This subsection provides for the establishment of a charter review commission. It may be appropriate to clarify that a sitting council member is ineligible to serve on the commission.

Section 9(1): This subsection defines the term "rural" as it pertains to land use zoning and development. Subsection (a) includes the terms "low development intensity" and "abundance" of agricultural lands as elements of "rural." These terms are vague and should be defined or otherwise clarified. Similarly, subsection (d) includes the terms "predominant and viable wildlife..." which requires clarification.

Section 9(2): Subsection (a) includes the requirement to continue the use of private septic recycling as a condition of future development in order to protect the rural elements of the town. The Study reported that the community will pursue eco-friendly industries in order to utilize its existing natural resources as a basis for its future economy. This requirement may restrict the type of development necessary to promote nature-based tourism. For example, certain tourist related facilities such as restaurants, hotels and hostels are not permitted to operate on septic systems.

Section 9(3): This subsection requires an affirmative vote of six or more members for the approval of certain types of developments. Such a voting requirement is greater than a supermajority (five or more votes) and as such may be overly restrictive. In addition, the types of development and development impacts are vague and require clarification.

Section 10(3): Subsection (b) provides for an interim council to be selected by the "Grant-Valkaria Preservation Committee Steering Committee." It may be appropriate to prohibit a member of the Steering Committee from serving as a member on the interim council.

Section 10(3): Subsection (e) provides for the election of council members. It is unclear what election responsibilities reside with the interim council and what responsibilities are assumed by the Brevard County Office of the Supervisor of Elections.

Section 10(9): This subsection authorizes Grant-Valkaria to participate in all shared revenue programs of the state. This should be revised to limit participation to all programs appropriate to municipalities. This subsection also waives state revenue sharing eligibility requirements in s. 218.23, F.S., until FY 2005-06. This waiver should be limited to only those eligibility requirements pertaining to financial reporting and audits and extend the waiver until FY 2008-09

Section 10: This section should include a provision honoring existing solid-waste contracts within the boundaries of Grant-Valkaria for a period of five years or the remainder of the contract term, whichever is less, in accordance with s. 165.061(1)(f), F.S., and provided for in the Study.

Feasibility Study

With regard to the requirements and standards for municipal incorporation provided by s. 165.061(1), F.S., the reviewers concluded that:[8]

The area proposed for the Town of Grant-Valkaria is contiguous and compact. According to the information provided by the Brevard County Department of Planning and Zoning and as reported in the Study (pages 1-4 and 13-14), the area being considered for incorporation is compact and contiguous as required by s. 165.061(1)(a), F.S.

The proposed Town of Grant –Valkaria does not meet the minimum population requirement for incorporation (5,000 persons). Section 165.061(1), F.S., establishes population requirements for the incorporation of new municipalities. In counties with a population of 75,000 or less, the municipality must have at least 1,500 persons and in larger counties, the municipality must have at least 5,000 persons. The latest official population estimate for Brevard County placed its population at 531,970 (official 4/1/2005 estimate from Bureau of Economic and Business Research, University of Florida) so a new municipality would be required to have a minimum population of 5,000. The feasibility study indicated that the area proposed for incorporation has a population of 3,907. The Office of Economic and Demographic Research analysis of census data for the blocks contained within the proposed boundaries of the Town of Grant-Valkaria indicated a 2000 population of about 3,300. Assuming that this area has grown since the 2000 Census at the same rate of growth as the entire unincorporated portion of Brevard County would suggest that the area now has approximately 3,700 persons.

The proposed Town of Grant-Valkaria does not meet the required density of 1.5 persons per acre. A population density requirement of 1.5 persons per acre is specified by s. 165.061(1)(c), F.S. According to the feasibility study, the area being proposed for incorporation encompasses 16,626 acres implying a population density of .23 persons per acre. Alternatively, the statute provides that the area have extraordinary conditions requiring the establishment of a municipal incorporation with less existing density. The Study (pages 1-9 and 17-18) suggests that the following circumstances: 1) extensive designation of Environmental Endangered Lands and government owned conservation properties reduce the area available for residential use to less than 9,000 acres in Grant-Valkaria; and 2) its historical character as a rural residential and fishing hamlet, serve to meet this statutory condition. The Study provides additional information substantiating the historic identity of the community. In addition, the Study notes that the resident population will soon increase as a result of current residential developments totaling 800 homes within Grant-Valkaria's boundaries.

The proposed Town of Grant-Valkaria does not meet the minimum distance requirement. Pursuant to s. 165.061(1)(d), F.S., an area proposed for incorporation must be at least two miles from the boundaries of an existing municipality in the county or have an extraordinary natural boundary which requires separate municipal government. As noted in the feasibility study, the area proposed for incorporation is bordered by the town of Malabar on the north and the town of Palm Bay on the west. The study also notes that Grant-Valkaria is an identifiable cohesive community, with qualities, characteristics and attributes that differentiate its lands and residents from adjacent municipalities. While these characteristics may serve as reasons for pursuing incorporation, it is unclear how they might be considered as an extraordinary natural boundary, which requires a separate municipal government.

With regard to whether the Feasibility Study itself contained the required elements of such a study:

- **The Study (pages 1-3) meets the requirement that it provide the general location for the proposed municipality.** The Study (page 4) includes maps of the area proposed for incorporation, and as such, meets this requirement. (s. 165.041(b)1., F.S.)

[8] These responses are based on the review of Ruskin feasibility study reviews by the Office of Economic and Demographic Research and the Legislative Committee on Intergovernmental Relations.

- **The Study (pages 1-9) meets the requirement that it provide reasons for pursuing incorporation.** The Study provides that two major reasons for incorporation are to ensure the preservation of the historical characteristics as a rural fishing community from overdevelopment and to assume control over its future land uses. The Study proposes, however, that Brevard County government would continue providing many essential services. Thus, it is unclear how the Grant-Valkaria would preserve the environmental and historic character of their community if Brevard County government retains authority for these quality of life functions. (s. 165.041(b)2., F.S.)

- **The Study meets the requirement that it include a list of current land use designations applied to the area as currently contained in the county comprehensive plan.** (s. 165.041(b)3.a., F.S.)

- **The Study meets the requirement that it include a list of current zoning designations.** (s. 165.041(b)3.b., F.S.)

- **The Study meets the requirement that it include a general statement of present land use characteristics of the area.** (s. 165.041(b)3.c., F.S.)

- **The Study appears to meet the requirement to describe proposed development.** (s. 165.041(b)3.d., F.S.)

- **The Study appears to identify all local public agencies with boundaries lying within the territory proposed for incorporation.** (s. 165.041(b)4., F.S.)

- **The Study appears to identify all current public service providers for the services identified in s. 165.041(1)(b)5., F.S., and cost estimates for each of those services.**

- **The Study appears to meet the requirement that it identify proposed services (pages 29-32) and estimated costs for these services.** However, costs associated with each of the majority of basic services, which are currently provided by Brevard County government through existing municipal service taxing units (MSTUs), are reported as millage rates. Upon incorporation, Grant-Valkaria will cease to participate in these MSTUs and instead, enter into an interlocal agreement with Brevard County for provision of those services in an amount equal to that generated at these millage rates. It should be noted that total estimates for these "municipal" services are presented in the FY 2006-07 budget as $1,405,250 (page 49), although the amount generated by total millage is estimated at $1,488,774 for FY 2006-07 (page 48). The Study includes a letter of agreement, signed December 6, 2005, by the Brevard County Administrator, which provides that the county is willing to enter into contract to provide services to Grant-Valkaria were it to incorporate. (s. 165.041(b)6., F.S.)

- **The Study meets the requirement that it include the name and address of three persons submitting the proposal.** (s. 165.041(b)., F.S.)

- **The Study appears to meet the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:** The Study addresses basic tax bases and revenue sources available to a municipality and provides revenue estimates for some of them. Other revenue sources available to municipalities, however, are not identified. These and other revenue sources included in the Study require some clarification. **The Study does include a five-year operational plan and budget.** The revenue totals include funds projected from sources for which the proposed municipality may not be eligible to receive as noted above.

- **The Study appears to address the requirement that it provide data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations.** Concerns regarding methodology used in the analysis and estimated revenues are addressed elsewhere in this analysis. (s. 165.041(b)9., F.S.) (s. 165.041(b)8., F.S.)

- **The Study meets the requirement for evaluating alternatives available to the area regarding the policy concerns.** (s. 165.041(b)10., F.S.)

- Pursuant to s. 165.061(1)(f), F.S., the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation for five years or the remainder of the contract term, whichever is less. The Study (page 29) meets this criterion.

Review of the Financial Elements of the Proposed Incorporation

- **Revenue Sharing:** Section 10(11) of proposed charter provides that the town shall be entitled to participate in all state shared revenue programs effective on the date of incorporation. That date is determined in Section 10(1)(a) to be the day the referendum results are filed with the Secretary of State, presumably soon after 8/1/06. Section 218.21(3), F.S., requires in order to be eligible for revenue sharing, a municipality "must have held an election for its legislative body pursuant to law and established such a legislative body, which meets pursuant to law." The Charter provides in Section 10(3)(b) that the Grant-Valkaria Steering Committee will "identify" five electors as the interim town council. No date certain is stated for the election of the town council. Thus, revenue sharing cannot occur until after that election. **It is recommended that the charter language be amended to state a date certain for the election of the town council. It is further recommended that the charter language be amended to state that the initial date for revenue sharing participation be the first day of a month occurring after the first meeting of the council.**

  Section 10(11) provides that the provisions of ss. 218.23 and 218.26(3), F.S., be waived through the end of the state fiscal year 2005-2006. Since the charter provides that Grant-Valkaria will be incorporated soon after 8/1/06, the town will not complete its first full local fiscal year (10/1/06-9/30/07) until after the end of the state fiscal year 2007-2008, ending June 30, 2008. **It is recommended that the waiver of ss. 218.23 and 218.26(3), F.S., in the charter be extended through the state fiscal year 2007-2008.**[9]

- **Gas Tax Revenues:** Section 336.025(4)(b), F.S., provides that newly incorporated municipalities will not receive fuel tax distributions until the beginning of the first full local fiscal year following incorporation, which in the instance of Grant-Valkaria would be 10/1/07. Section 10(10) of the charter provides for a waiver of s. 336.025, F.S. regarding the entitlement to receive local option gas tax revenue.

  Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities are to be in accord with the default lane-mile formula unless provided otherwise by the local law providing for the incorporation. Section 10(10) of the charter provides that the

[9] The Legislative Committee on Intergovernmental Relations has noted that in order to be eligible to participate in State Shared Revenue programs, a municipality is required to meet certain criteria. These requirements include, among others, certain financial and audit reports and a minimum local taxing effort equal to the amount that would be generated by three mills of ad valorem property taxes. The Study presents the 2005 taxable value of property within Grant-Valkaria at $338,569,800. Based on this projected taxable value, the three-mill equivalency for Grant-Valkaria is equal to approximately $1,015,709. The Study budget meets this requirement using revenues currently generated through five MSTUs which collectively generate an estimated $1,567,130 in ad valorem tax revenue. SSR estimates provided in the Study (pages 34, 35 and 48) are less than those estimates calculated by the Office of Research and Analysis, Florida Department of Revenue. The Study provides no estimate for Grant-Valkaria's Municipal Revenue Sharing distribution, but does estimate its One-Half Cent Sales Tax distribution at $233,036. The Office of Research and Analysis estimated Grant-Valkaria's FY 2005-06 Municipal Revenue Sharing and One-Half Cent Sales Tax distributions at $75,236 and $232,761, respectively. The Office of Research and Analysis' estimated revenue from these two programs is approximately $74,000 more than that proposed in the Study.

distribution be in accord with the October 18, 1998 "Brevard County Local Option Gasoline Tax Revenue Distribution, Interlocal Agreement" as amended. It appears that even with the incorporation of Grant-Valkaria, the existing interlocal will continue to represent the agreement of the majority of the incorporated population of Brevard County. Thus, the distribution as set forth in that current interlocal will determine the distribution to Grant-Valkaria.

- **Local Communications Services Tax (CST)**

  The draft charter does not address the CST. The feasibility study on page 48 includes the CST as revenue, but there is no explanation of the source of this tax—whether it is a share of the CST currently imposed by Brevard County or whether it is a CST imposed by Grant-Valkaria or some combination. Pursuant to s. 202.21, F.S., local communications services taxes imposed under s. 202.19, F.S., are effective with respect to taxable services dated on or after January 1. A municipality adopting, changing or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date. Thus, if Grant-Valkaria meets the September 1 deadline in 2006 or 2007, then participation in this revenue source could commence January 1, 2007, or January 1, 2008, respectively.**The charter language also could be amended to provide for a sharing of the CST imposed by Brevard County within the boundaries of Grant-Valkaria, beginning with the date of incorporation, April 1, 2007, through December 31 of some future year. The proportion could be based on the population of Grant-Valkaria compared to unincorporated population of Brevard County before the incorporation of Grant Valkaria.**

- **Discretionary Sales Surtax:** Currently, Brevard County does not impose a discretionary sales surtax.

  The Legislative Committee on Intergovernmental Relations has noted that several major revenue sources available to municipalities are not identified or discussed in the Study. These include the following: 1) pursuant to s. 166.231(1), F.S., municipalities are authorized to levy, by ordinance, a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas, manufactured gas and water service; and 2) Grant-Valkaria is authorized to impose impact fees to offset costs associated with new infrastructure that will be needed to service current and proposed new developments. Furthermore, occupational license fees are not identified or discussed as source of revenues in the Study. However, the Study does note that only revenues sources sufficient to demonstrate feasibility are provided in the five-year budget.

- **Comparison with "Similarly Sized" Municipalities:** The Legislative Committee on Intergovernmental Relations compared the revenue and expenditure estimates for the proposed municipality of Grant-Valkaria with "similarly sized" municipalities in Florida. The 10 comparison municipalities are similar to Grant-Valkaria's population of 3,907 residents, and are presented below. All comparison municipalities reported FY 2002-03 total expenditures greater than those projected for Grant-Valkaria. The estimated expenditures projected for Grant-Valkaria ($1,641,575) are approximately one-third of the "average" reported expenditures for the 10 comparison municipalities ($5,459,610). Two additional issues should be noted in this comparison. First, the projected expenditures for Grant-Valkaria do not include expenditures associated with costs for services that Brevard County may continue to provide to the residents of Grant-Valkaria under the current county tax structure. If included, such costs would increase the proposed expenditures and somewhat reduce the expenditure differential between Grant-Valkaria and the comparison municipalities. The second issue regarding the proposed expenditures is that the fiscal data for the 10 comparison municipalities reflects total reported revenues and expenditures for FY 2002-03, while the fiscal estimates for Grant-Valkaria are those projected for FY 2006-07. It can be assumed that total expenditures and revenues for

these 10 municipalities will have increased during this time period, and as a result, increased the gap between their "average" reported expenditures and those projected for Grant-Valkaria.

Comparison of Total Revenues and Expenditures for 10 Municipalities with Populations Similar to the Population Estimate for the Proposed Municipality of Grant-Valkaria[10]

Municipality	2003 Pop. Est.[11]	Revenues	Expenditures
Grant-Valkaria	3,907	$1,796,298	$1,641,575
Mascotte	3,469	$2,845,059	$2,903,845
Belleview	3,612	$3,455,758	$3,520,443
Newberry	3,757	$6,003,054	$5,526,577
Wildwood	3,948	$7,422,792	$8,827,097
Chattahoochee	3,966	$5,267,155	$5,631,029
Lake Alfred	3,981	$4,318,627	$4,782,587
Highland Beach	3,994	$8,818,450	$8,167,232
Mary Esther	4,078	$4,022,239	$4,234,558
South Bay	4,087	$3,412,227	$4,504,393
Bellaire	4,100	$6,812,457	$6,498,340
AVERAGE	**3,899**	**$5,237,781**	**$5,459,610**

[10] FY 2002-2003 reported revenues and expenditures by the 10 comparison municipalities and projected 2006 revenue and expenditure estimate for Grant-Valkaria contained within the Grant-Valkaria Incorporation Feasibility Study.

[11] 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for Grant-Valkaria for calendar year 2005 contained within the Grant-Valkaria Incorporation Feasibility Study.

Sources: Florida LCIR using fiscal data submitted by municipalities to the Department of Financial Services; Florida Estimates of Population 2003, Bureau of Economic and Business Research, University of Florida, 2004; information contained within the Grant-Valkaria Incorporation Feasibility Study.

- **Distribution of SSR and Impacts on Existing Local Governments:** The LCIR also analyzed the amount of SSR monies that Grant-Valkaria would have received in FY 2005-06 and the impact on SSR distributions to Brevard County government and municipalities for that year. While the statutory requirements for a feasibility study do not include identifying fiscal impacts to neighboring units of local government, such information is useful for a local government as it plans for the next budget cycle. A newly created municipality will impact the amount of funds that existing municipalities receive in the two major SSR programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing (MRS). The county government within which the new municipality is formed will realize fiscal impacts in two SSR programs: Local Government Half-Cent Sales Tax and County Revenue Sharing. The Office of Research and Analysis, Department of Revenue, prepared SSR estimates for the proposed Town of Grant-Valkaria and estimates on the impact from such incorporation to SSR distribution to other units of local government within Brevard County. As noted, if Grant-Valkaria had incorporated in 2005, Brevard County government would have realized a reduction in FY 2005-06 SSR distributions totaling an estimated $216,527. The extent to which revenue reductions are offset by reductions in services is not known. Municipalities within the county would realize estimated SSR reductions ranging from a low of $162 (Melbourne Village) to a high of $20,729 (Palm Bay).

C. SECTION DIRECTORY:

Section 1: Creates the Town of Grant-Valkaria; provides for a charter, powers, form of government, boundaries and intergovernmental relations.

Section 2: Provides for town council, mayor, vice mayor, ordinances and eminent domain.

Section 3: Provides for town administrator.

Section 4: Provides for departments, offices, agencies, a town attorney and land use.

Section 5: Provides for finances.

Section 6: Provides for town elections.

Section 7: Provides general provisions.

Section 8: Provides for charter amendments.

Section 9: Provides for land use, zoning and development.

Section 10: Provides for transition.

Section 11: Provides for severability.

Section 12: Provides for a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? November 17, 2005.

WHERE? *Florida Today*, a daily newspaper published in Brevard County, Florida.

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

IF YES, WHEN? On or before August 1, 2006.

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

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

According to the Economic Impact Statement, the projected cost of funding the town government and municipal services of Grant-Valkaria will be $1,641,575 for FY 06-07 and $1,777,937 for FY 07-08. Anticipated sources of funding are projected to be $1,796,298 in FY 06-07 and $1,891,519 in FY 07-08.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Department of Community Affairs

Based on Brevard County's Comprehensive Plan, the subject area for incorporation consists of a variety of land use classifications, including residential use, commercial use, industrial use, parks and recreational uses, agriculture use, public-quasi public uses (i.e., governmental, institutional and educational), as well as a rights-of-way, and transportation, communication and utilities. There are some existing vacant lands within the proposed jurisdictional boundaries. Much of the public-quasi public and single-family residential land uses are dispersed throughout the area.

Pursuant to ch.163, F.S., a new incorporated community is required to prepare a comprehensive plan within three years of incorporation. Until the new city adopts its own comprehensive plan, the land use designations and applicable goals, objectives and policies adopted by Brevard County for the area would apply. Once the city adopts its comprehensive plan, it is possible that the city may proceed with future annexations south of the proposed area. Approximate cost of a new comprehensive plan for a city of this size is $100,000. Pursuant to s. 163.3202(1), F.S., within one year of an adopted comprehensive plan, a new municipality must adopt land development regulations. Approximate cost of new land development regulations for a city of this size is $200,000. In addition, new cities typically become responsible for providing and maintaining certain types of infrastructure and services.

Department of Revenue

In their analysis, the Department of Revenue provided the following comments:

Revenue Sharing

Section 10(11) of the proposed charter provides that Grant-Valkaria shall be entitled to participate in all state shared revenue programs effective on the date of incorporation. That date is determined in Section 10(1)(a) to be the day the referendum results are filed with the Secretary of State, presumably soon after 8/1/06. Section 10(3)(e)9. of the proposed charter references shared revenues and states that the first day of the month following the charter referendum is the first day of legal status of the town as a newly incorporated municipality, which would be 9/1/06 if the referendum is held on 8/1/06, but may be earlier if the referendum is held at an earlier date.

In addition, s. 218.2193), F.S. requires that, to be eligible for revenue sharing, a municipality "must have held an election for its legislative body pursuant to law and established such a legislative body, which meets pursuant to law." The Charter provides in Section 10(3)(b) that the Grant-Valkaria Steering Committee will "identify" five electors as the interim town council. Section 10(3)(c) provides that the interim town council will be dissolved at the beginning of the term of the elected town council. Section 10(3)(e)5. provides that he powers of the interim council include scheduling the first town council meeting; it does not specify if this meeting is to be held by the interim council or the elected council. Section 2(8)(a) of the proposed charter provides that the council is to hold a minimum of 11 monthly meetings in each fiscal year. Section 5(2) provides that the fiscal year of the proposed town begins with the first day of October and ends with the last day of September. However, no date certain is stated for the election of the town council; Section 6(2) provides that the term of an elected town official begins two weeks after the election. In accordance with s. 218.21(3), F.S. revenue sharing cannot occur until after that election and first meeting of the town council.

It is recommended that the charter language be amended to state a date certain for the election of the town council. It is further recommended that the charter language be amended to state that the initial date for revenue sharing participation will be the first day of a month occurring after the first meeting of the elected council, so that shared revenues do not need to be recalculated to include Grant-Valkaria for a partial month.

Section 10(11) provides that the provisions of ss. 218.23 and 218.26(3), F.S., shall be waived through the end of the state fiscal year 2005-2006, which is June 30, 2006. Since the charter provides that Grant-Valkaria will be incorporated soon after 8/1/06, the town will not complete its first full local fiscal year (10/1/06-9/30/07) until after the end of the state fiscal year 2007-2008 ending June 30, 2008.

We recommend that the waiver of ss. 218.23 and 218.26(3), F.S., in the charter be extended through the state fiscal year 2007-2008.

The uncertainty concerting the incorporation date also affects distribution of revenues collected by Brevard County; the draft charter does no address the CST (Communications Services Tax). The feasibility study on page 48 includes CST as revenue, but there is no explanation of the source of the tax – whether it is a share of the CST currently imposed by Brevard County of whether it is a CST imposed by Grant-Valkaria or some combination. Pursuant to s. 202.21 F.S., local communication services tax imposed under s. 202.19, are effective with respect to taxable services dated on or after January 1. A municipality adopting, changing, or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date. Thus, if Grant-Valkaria meets the September 1 deadline in 2006 or 2007, then participation in this revenue source could commence January 1, 2007 or January 1, 2008, respectively.

The charter language could also be amended to provide for a sharing of the CST imposed by Brevard County within the boundaries of Grant-Valakria, beginning with the date of incorporation through December 31, of some future year. The proportion could be based on the population of Grant-Valkaria compared to (the) unincorporated population of Brevard County before the incorporation of Grant-Valkaria.

Exemptions to General Law

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.

The bill may create exemptions to the following general laws:

- s. 165.061(1)(b), F.S., regarding minimum population requirements;
- s. 165.061(1)(c), F.S., regarding density requirements;
- s. 165.061(1)(d), F.S., regarding minimum distance requirements;
- ss. 218.23 and 218.26(3), F.S., regarding state revenue sharing eligibility requirements; and
- s. 336.025, F.S., regarding the entitlement to receive local option gas tax revenue.

Summary of the Voting Rights Act of 1965

The Voting Rights Act of 1965 protects every American against racial discrimination in voting. This law also protects the voting rights of many people who have limited English skills. It stands for the principle that everyone's vote is equal, and that neither race nor language should shut anyone out of the political process. The Voting Rights Act is located in the United States Code at 42 U.S.C. 1973 to 1973aa-6.

The Voting Rights Act is not limited to discrimination that excludes minority voters from the polls. Section 2 of the Act (42 U.S.C. 1973) makes it illegal for any state or local government to use election processes that are not equally open to minority voters, or that give minority voters less opportunity than other voters to participate in the political process and elect representatives of their choice to public office. In particular, Section 2 makes it illegal for state and local governments to "dilute" the votes of racial minority groups, that is, to have an election system that makes minority voters' votes less effective than those of other voters. One of many forms of minority vote dilution is the drawing of district lines that divide minority communities in such a way as to prevent them from putting enough votes together to elect representatives of their choice to public office. **Depending on the circumstances, dilution also can result from at-large voting for governmental bodies**. When coupled with a long-standing pattern of racial discrimination in the community, these and other election schemes can deny minority voters a fair chance to elect their preferred candidates.

Additionally, Section 5 of the Voting Rights Act (42 U.S.C. 1973c) requires state and local governments in certain parts of the country to get federal approval (known as "preclearance") before implementing any changes they want to make in their voting procedures; anything from moving a polling place to changing district lines in the county. Under Section 5, a covered state, county or local government entity must demonstrate to federal authorities that the voting change in question (1) does not have a racially discriminatory purpose; and (2) will not make minority voters worse off than they were prior to the change (i.e., the change will not be "retrogressive"). Section 5 applies to all or parts of the following states: Alabama, Alaska, Arizona, California, **Florida,** Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia.

Anyone aggrieved by minority vote dilution can bring a federal lawsuit. If the court decides that the effect of an election system, in combination with all the local circumstances, is to make minority votes less effective than white votes, it can order a change in the election system. For example, courts have ordered states and localities to adopt districting plans to replace at-large voting, or to redraw their election district lines in a way that gives minority voters the same opportunity as other voters to elect representatives of their choice.

This information was obtained from the U.S. Department of Justice's website at http://www.usdoj.gov/crt/voting/misc/faq.htm#faq02. (03/24/06).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to Town of Grant-Valkaria, Brevard County;
3 creating the Town of Grant-Valkaria; providing a charter
4 for the town; providing powers of the town; providing for
5 liberal construction; providing for a town council-
6 administrator form of government; providing corporate
7 boundaries; providing that the town may contract with
8 other governmental entities; providing for a town council
9 and its powers and duties, compensation, and membership;
10 providing for a mayor and vice mayor and their powers and
11 duties; providing for filling of vacancies; providing for
12 meetings of the town council; providing for ordinances;
13 restricting the use of eminent domain; providing for a
14 town administrator and his or her powers and duties,
15 appointment, qualifications, and compensation; requiring
16 the town administrator to furnish a security bond;
17 providing for removal or absence of the town
18 administrator; providing that the town may establish
19 departments, offices, and agencies and providing for
20 administration of those under the direction and
21 supervision of the town administrator; providing for a
22 personnel system; providing for a town attorney; providing
23 for land use, development, and environmental planning;
24 providing for accounting procedures; specifying the fiscal
25 year of the town; requiring an annual audit; providing for
26 availability of financial records of the town; providing
27 for public deposits; providing requirements for purchase
28 or sale of real property by the town; providing for an

29 annual budget; authorizing the levy of certain taxes
30 within the town; prohibiting the issuance of certain bonds
31 or entering into certain types of contracts unless
32 approved by referendum; providing for emergency
33 appropriations; providing for town elections; providing
34 for conduct of officials in office; providing for
35 appointments and removals of town administrative officers
36 and employees; providing that the town council shall deal
37 with the town administrator and not officers and employees
38 of the administrator; providing for regulation of campaign
39 financing; requiring a long-range plan and a 5-year
40 financial plan; providing for emergency operations;
41 providing for dissolution; providing for charter amendment
42 and review; providing for regulation of land use, zoning,
43 and development; providing for transition, including an
44 interim council, continuity and sources of revenues, and
45 continuity of services; providing severability; requiring
46 a referendum; providing an effective date.
47
48 WHEREAS, we, the people of the Town of Grant-Valkaria,
49 under the Constitution and laws of the State of Florida, in
50 order to secure the local benefits of self-government, preserve
51 our history, protect our future, maintain a rural quality of
52 life, and foster responsible, community-controlled growth, have
53 ratified this charter by referendum, and
54 WHEREAS, this charter secures the benefits of home rule and
55 affirms the value of representative democracy, strong community

56 leadership, citizen participation, and regional cooperation,
57 NOW, THEREFORE,
58
59 Be It Enacted by the Legislature of the State of Florida:
60
61 Section 1. Town of Grant-Valkaria; charter; creation;
62 powers; construction; form of government; boundaries;
63 intergovernmental relations.--
64 (1) CHARTER; CREATION.--This act, together with any
65 amendments thereto, may be known as the "Charter of the Town of
66 Grant-Valkaria," and the Town of Grant-Valkaria ("town") is
67 hereby created and established.
68 (2) POWERS OF THE TOWN.--The town shall retain claim to
69 all power and legal rights granted to municipalities under the
70 Constitution and laws of the State of Florida as fully and
71 completely as though they were specifically enumerated in this
72 charter.
73 (3) CONSTRUCTION.--The power of the town, under this
74 charter, shall be construed liberally in favor of the town. The
75 specific mention of particular powers in this charter shall not
76 be construed as limiting in any way the general power granted in
77 this section.
78 (4) FORM OF GOVERNMENT.--The town shall have a town
79 council-administrator form of government, as defined in sections
80 2 and 3.
81 (5) CORPORATE BOUNDARIES.--
82

83 That area lying mostly North of Senne Road, East of
84 Babcock Road, South of the City limits of Malabar, and
85 West of the centerline of the Indian River Channel.
86 Bounded on the North by the North lines of Sections
87 15, 14 and 13 of Township 29S, Range 37E, and Sections
88 18 and 17, Township 29S, Range 38E, Brevard County,
89 Florida, and its easterly projection to the centerline
90 of the Indian River channel.
91 Bounded on the East by a line beginning at the
92 centerline of the Indian River Channel and the
93 Easterly projection of the North line of Section 17,
94 Township 29 South, Range 38 East; thence Southerly
95 along said centerline of the Indian River Channel to
96 the Westerly projection of the South line of the North
97 220 feet of GL-4 Section 10, Township 29 South, Range
98 38 East; thence Easterly 3,150 Feet along said
99 Westerly projection of the South line of the North 220
100 feet of GL-4; thence due South to the Easterly
101 projection of the North line of GL-2 of Section 34,
102 Township 29 South, Range 38 East; thence Westerly
103 along said Easterly projection of the North line of
104 GL-2 to the centerline of the Indian River Channel;
105 thence Southerly along said centerline of the Indian
106 River Channel to the intersection of the Easterly
107 projection of the South line of Section 3, Township 30
108 South, Range 38 East.
109 Bounded on the South by a line beginning at the
110 intersection of the centerline of the Indian River

111 channel and the Easterly projection of the South line
112 of Section 3, Township 30 South, Range 38 East; thence
113 Westerly along said South line and its Westerly
114 projection to the East line of Tax Parcel 250, lying
115 in Section 1, Township 30 South, Range 37 East, as
116 recorded in Official Records Book (ORB) 4258, Page 968
117 of the Public Records of Brevard County, Florida;
118 thence northerly along said East line to the North
119 line of said Section 1; thence westerly along said
120 North line and its westerly projection to the East
121 line of the SW 1/4 of Section 34, Township 29 South,
122 Range 37 East; thence northerly along the East line of
123 the SW 1/4 of said Section 34 to the South line of Tax
124 Parcel 762 as recorded in Official Records Book 4895,
125 Page 625 of said Public Records; thence easterly along
126 the South line of said Tax Parcel 762 to the East line
127 of said Tax Parcel 762; thence northerly along said
128 East line to the North line of the SW 1/4 of said
129 Section 34; thence westerly along the North line of
130 the SW 1/4 of said Section 34 to the intersection of
131 the centerline of Babcock St.
132 Bounded on the West by the centerline of Babcock St.
133 Except:
134 Tax Parcel 276 as recorded in Official Record Book
135 5193 Page 3598, in Section 27, Township 29 South,
136 Range 37 East, of Public Records of Brevard County,
137 Florida.

138 Tax Parcel 334 as recorded in Official Record Book
139 5193 Page 3629, in Section 27, Township 29 South,
140 Range 37 East, of Public Records of Brevard County,
141 Florida.
142 Tax Parcel 335 as recorded in Official Record Book
143 5193 Page 3562, in Section 27, Township 29 South,
144 Range 37 East, of Public Records of Brevard County,
145 Florida.
146 Tax Parcel 336 as recorded in Official Record Book
147 5193 Page 3831, in Section 27, Township 29 South,
148 Range 37 East, of Public Records of Brevard County,
149 Florida.
150 Tax Parcel 504 as recorded in Official Record Book
151 5375 Page 6773, in Section 27, Township 29 South,
152 Range 37 East, of Public Records of Brevard County,
153 Florida.
154 Tax Parcel 278 as recorded in Official Record Book
155 4003 page 3742, in Section 22, Township 29 South,
156 Range 37 East, of Public Records of Brevard County,
157 Florida.
158 Tax Parcels 270 and 309, as recorded in Official
159 Record Book 4951 Page 1494, in Section 22, Township 29
160 South, Range 37 East, of Public Records of Brevard
161 County, Florida.
162 AND in the SW 1/4 of Section 15, Township 29 South,
163 Range 37 East being more particularly described as
164 follows:

165 Tax Parcel 519, 573, 536, 572, 532, 549, 533, 575,
166 534, 554, 535, 515 and 540 as recorded in the Official
167 Record Book 4607 page 3439 of the Public Records of
168 Brevard County, Florida.
169 Except: All of land described in ORB 4643 page 324, in
170 Section 15, Township 29 South, Range 37 East, as
171 recorded in Public Records of Brevard County, Florida
172 AKA as tax parcels:
173 Tax parcel 277, as recorded in ORB 4167 page 3180
174 Tax parcel 278, as recorded in ORB 4167 page 3180
175 Tax parcel 279, as recorded in ORB 4167 page 3180
176 Tax parcel 280, as recorded in ORB 4167 page 3180
177 Tax parcel 281, as recorded in ORB 4237 page 679
178 Tax parcel 290, as recorded in ORB 4237 page 680
179 Tax parcel 298, as recorded in ORB 4237 page 681
180 and,
181 The South 435.00 feet of the West 350.00 feet of Lot
182 24, Florida Indian River Land Company Subdivision, as
183 recorded in Plat Book 1, Page 165, of the Public
184 Records of Brevard County, Florida, less and except
185 the South 35.00 feet and the West 50.00 feet thereof.
186
187 (6) INTERGOVERNMENTAL RELATIONS.--The town may participate
188 by contract or otherwise with any governmental entity of the
189 state, or any other state or states of the United States, in the
190 performance of any activity that one or more of such entities
191 have the authority to undertake.

192 Section 2. Town council; mayor; vice mayor; ordinances;
193 eminent domain.--
194 (1) TOWN COUNCIL.--The term "council" means the Grant-
195 Valkaria Town Council and includes the mayor.
196 (a) The town council shall consist of six council members
197 and one mayor, for a total of seven members, all of whom shall
198 be elected at large and in accordance with section 6. The
199 council members shall occupy seats numbered 1 through 6.
200 (b) Four or more members of the town council shall
201 constitute a majority, and five or more members of the town
202 council shall constitute a supermajority. A majority of the town
203 council shall constitute a quorum, but a smaller number may
204 adjourn as required and may compel the attendance of absent
205 members in the manner and subject to any penalties prescribed by
206 rules adopted by the town council.
207 (c) All powers of the town shall be vested in the elected
208 town council, except as otherwise provided by law or by this
209 charter.
210 (2) MAYOR.--The mayor shall preside at meetings of the
211 town council. The mayor shall be a regular voting member of the
212 town council. The mayor shall be recognized as the head of town
213 government for all ceremonial purposes; for purposes of military
214 law; for service of process and execution of town council
215 authorized contracts, deeds, and other documents; and as the
216 town official designated to represent the town when dealing with
217 other governmental entities on behalf of the town.
218 (3) VICE MAYOR.--The vice mayor shall act as mayor in the
219 absence of the mayor. The vice mayor shall be elected from among

220 council members for a term of 1 year or until his or her
221 successor is elected. A council member shall not serve
222 consecutive terms as vice mayor unless no other council member
223 is willing to serve as vice mayor.
224 (4) VACANCIES.--The office of a town council member shall
225 become vacant upon the incumbent's death, resignation, or
226 removal from office in any manner authorized by law or by
227 forfeiture of his or her office.
228 (a) A town council member shall forfeit his or her seat if
229 at any time during his or her term he or she ceases to maintain
230 his or her permanent residence in the town or if he or she
231 otherwise ceases to be a qualified elector of the town.
232 (b) Any member of the town council shall be subject to
233 forfeiture of his or her office if he or she is absent without
234 good cause from any three consecutive regular meetings of the
235 council or if he or she is absent without good cause from any
236 four regular meetings of the council within any 12-month period.
237 (c) The town council shall be the sole judge of the
238 qualifications of its members and shall hear all questions
239 relating to forfeiture of a council member's office, including
240 whether good cause for absence has been or may be established.
241 The burden of establishing good cause shall be on the council
242 member in question; however, any council member may at any time
243 during any duly held meeting move to establish good cause for
244 his or her absence or the absence of any other council member
245 from any past, present, or future meeting or meetings, which
246 motion, if carried, shall be conclusive.

247 (d) A council member whose qualifications are in question
248 or who is otherwise subject to forfeiture of his or her office
249 shall not vote on any such matters. The council member in
250 question shall be entitled to a public hearing on requests
251 regarding an alleged forfeiture of office. If a public hearing
252 is requested, notice thereof shall be published in one or more
253 newspapers of general circulation in the town at least 1 week in
254 advance of the hearing.
255 (e) Any final determination by the town council that a
256 council member has forfeited his or her office shall be made by
257 resolution. All votes and other acts of the council member in
258 question prior to the effective date of such resolution shall be
259 valid regardless of the grounds of forfeiture.
260 (5) FILLING OF VACANCIES.--
261 (a) A vacancy on the town council shall be filled by a
262 majority vote of the remaining members of the town council,
263 unless at the time of the vacancy there are fewer than 6 months
264 remaining before the next regular election of town council
265 members, in which case the town council shall have the
266 discretion to leave the seat vacant until the next regular
267 election of town council members. Any person appointed by the
268 town council to fill a vacancy shall hold office until the next
269 regular town council election. The elected replacement shall
270 serve the remaining term for the vacated seat.
271 (b) In the event that all the members of the town council
272 are removed by death, disability, recall, forfeiture of office,
273 resignation, or any combination thereof, the Governor shall
274 appoint an interim town council. The interim town council shall

275 call a special election within not fewer than 60 days or more
276 than 90 days after such appointment. Such election shall be held
277 in the same manner as the initial elections under this charter.
278 However, if there are fewer than 6 months remaining in the
279 unexpired terms, the interim town council appointed by the
280 Governor shall serve out the unexpired terms.
281 (c) Persons filling vacancies shall meet the
282 qualifications specified in section 6(8).
283 (d) Notwithstanding any quorum requirements established
284 herein, if at any time the full membership of the town council
285 is reduced to less than a quorum, the remaining members may, by
286 unanimous vote, appoint additional members to the extent
287 permitted or required under this subsection.
288 (6) COMPENSATION; REIMBURSEMENT FOR EXPENSES.--
289 (a) The council members shall serve as town volunteers and
290 shall not be compensated.
291 (b) The council members shall receive reimbursement for
292 council-approved expenses in accordance with applicable law, or
293 as may be otherwise provided by ordinance, for authorized travel
294 and per diem expenses incurred in the performance of their
295 official duties. An ordinance establishing, increasing, or
296 decreasing reimbursement for expenses of the council members may
297 be adopted at any time.
298 (7) INVESTIGATIONS.--The town council may make
299 investigations into the affairs of the town and the conduct of
300 any town department, office, or agency and for this purpose may
301 subpoena witnesses, administer oaths, take testimony, and
302 require the production of evidence.

303 (8) MEETINGS.--
304 (a) The town council shall hold a minimum of 11 monthly
305 meetings in each fiscal year at such times and places as the
306 town council may prescribe by rule. Special meetings may be held
307 on the call of the mayor or four or more members and, whenever
308 feasible, upon no less than 24 hours' notice to each member.
309 Except as otherwise provided by general law, all meetings shall
310 be public.
311 (b) The town council shall determine its own rules and
312 order of business and procedure; however, in the absence of
313 same, the latest edition of Robert's Rules of Order shall be
314 used. The town council shall provide for keeping the journal of
315 its proceedings, which journal shall be a public record except
316 as otherwise provided by general law.
317 (c) During all town council votes, the individual votes as
318 cast by each person on the town council shall be recorded in the
319 journal of that meeting. No action of the town council, except
320 as otherwise provided in this charter, shall be valid or binding
321 unless adopted by a majority decision. Except as otherwise
322 provided in this charter, all land use and quasi-judicial items
323 shall require a supermajority decision.
324 (9) ORDINANCES.--In addition to other acts required by law
325 or by specific provision of this charter to be done by
326 ordinance, those acts of the town council shall be done by
327 ordinance, in accordance with the provisions of this charter,
328 which:
329 (a) Adopt or amend an administrative code or establish,
330 alter, or abolish any town department, office, or agency;

331 (b) Regulate land use and development;
332 (c) Levy taxes;
333 (d) Grant, renew, or extend a franchise;
334 (e) Regulate the rate charged by a public utility for its
335 services;
336 (f) Authorize the borrowing of money;
337 (g) Convey or lease, or authorize the conveyance or lease
338 of, any lands of the town;
339 (h) Provide for a fine or other penalty or establish a
340 rule or regulation for violation of which a fine or other
341 penalty is imposed;
342 (i) Amend or repeal any ordinance previously adopted; or
343 (j) Adopt, with or without amendment, ordinances proposed
344 under the initiative power.
345
346 Acts other than those referred to in this subsection may be done
347 either by ordinance or by resolution.
348 (10) EMINENT DOMAIN.--In no case shall the town council
349 exercise its powers of eminent domain or condemnation to acquire
350 property for private development purposes, regardless of the
351 public good such eminent domain or condemnation might support.
352 (11) ORDINANCES IN GENERAL.--
353 (a) Every proposed ordinance shall be introduced in
354 writing and in the form required for final adoption. No
355 ordinance shall contain more than one subject, which shall be
356 clearly expressed in its title. The enacting clause shall read,
357 "The Town of Grant-Valkaria hereby ordains:". Any ordinance that
358 repeals or amends an existing ordinance or part of the town code

359 shall set out in full the ordinance and the sections or
360 subsections to be repealed or amended and shall indicate matters
361 to be omitted by enclosing brackets or by strikeout type and
362 shall indicate new matters by italics or by underscoring.
363 (b) Any member of the town council at any regular or
364 special meeting of the town council may introduce an ordinance.
365 Upon introduction of any ordinance, the town clerk shall
366 distribute a copy to each council member and the town
367 administrator, shall file a reasonable number of copies in the
368 office of the town clerk and such other public places as the
369 town council may designate, and shall publish the ordinance
370 together with a notice setting out the time and place for a
371 public hearing thereon and for its consideration by the town
372 council. The public hearing shall follow the publication by at
373 least 7 calendar days, may be held separately or in connection
374 with a regular or special town council meeting, and may be
375 adjourned from time to time; all persons interested shall have
376 an opportunity to be heard. After the hearing, the town council
377 may adopt the ordinance with or without amendment or reject it,
378 but if it is amended as to any matter of substance, the town
379 council may not adopt it until the ordinance or its amended
380 sections have been subjected to all the procedures hereinbefore
381 required in the case of a newly introduced ordinance. As soon as
382 feasible after adoption, the clerk shall have the ordinance and
383 a notice of its adoption published and available at a reasonable
384 price. As used in this section, the term "publish" means to
385 provide in the contemporary means of information sharing, which
386 includes, but is not limited to, one or more newspapers of

387 general circulation in the town and, if available, in a website,
388 the ordinance or a brief summary thereof, the places where
389 copies of it have been filed, and the times when they are
390 available for public inspection and purchase at a reasonable
391 price.
392 (c) Except as otherwise provided in this charter, every
393 adopted ordinance shall become effective at the expiration of 30
394 days after adoption or at any later date specified therein.
395 (d) To meet a public emergency affecting life, health,
396 property, or the public peace, the town council may adopt one or
397 more emergency ordinances, but such ordinances may not levy
398 taxes; grant, renew, or extend a franchise; regulate the rate
399 charged by any public utility for its services; or authorize the
400 borrowing of money except as provided in section 5(8). An
401 emergency ordinance shall be introduced in the form and manner
402 prescribed for ordinances generally, except that it shall be
403 plainly designated as an emergency ordinance and shall contain,
404 after the enacting clause, a declaration stating that an
405 emergency exists and describing it in clear and specific terms.
406 An emergency ordinance may be adopted with or without amendment
407 or rejected at the meeting at which it is introduced, but the
408 affirmative vote of four or more members shall be required for
409 adoption. After its adoption, the ordinance shall be published
410 as prescribed for other adopted ordinances. It shall become
411 effective upon adoption or at such later time as it may specify.
412 Every emergency ordinance except an emergency appropriation as
413 described in section 5(9) shall automatically stand repealed as
414 of the 61st day following the date on which it was adopted, but

415 this shall not prevent reenactment of the ordinance in the
416 manner specified in this section if the emergency still exists.
417 An emergency ordinance may also be repealed by adoption of a
418 repealing ordinance in the same manner specified in this section
419 for adoption of emergency ordinances.
420 (e) The town council may adopt any standard code of
421 technical regulations by reference thereto in an adopting
422 ordinance. The procedure and requirements governing such an
423 adopting ordinance shall be as prescribed for ordinances
424 generally, except that:
425 1. The requirements of this charter for distribution and
426 filing of copies of the ordinance shall be construed to include
427 copies of the code of technical regulations as well as of the
428 adopting ordinance.
429 2. A copy of each adopted code of technical regulations as
430 well as of the adopting ordinance shall be authenticated and
431 recorded by the town clerk pursuant to this charter.
432 3. Copies of any adopted code of technical regulations
433 shall be made available by the town clerk for distribution or
434 for purchase at a reasonable price, consistent with the current
435 year's budget.
436 (f) The town clerk shall authenticate by signing and shall
437 record in full in a properly indexed document kept for that
438 purpose all ordinances and resolutions adopted by the town
439 council.
440 (g) Within 3 years after adoption of this charter and at
441 least every 10 years thereafter, the town council shall provide
442 for the preparation of a general codification of all town

443 ordinances and resolutions having the force and effect of law.
444 The general codification shall be adopted by the town council by
445 ordinance and shall be published, together with this charter and
446 any amendments thereto, pertinent provisions of the constitution
447 and other laws of the state, and such codes of technical
448 regulations and other rules and regulations as the town council
449 may specify. This compilation shall be known and cited
450 officially as the Grant-Valkaria Town Code. Copies of the code
451 shall be furnished to town officers, placed in libraries, public
452 offices, and, if available, on a website for free public
453 reference, and made available for purchase by the public at a
454 reasonable price fixed by the town council.
455 (h) The town council shall cause each ordinance and
456 resolution having the force and effect of law and each amendment
457 to this charter to be published promptly following its adoption,
458 and the published ordinances, resolutions, and charter
459 amendments shall be distributed or sold to the public at
460 reasonable prices as fixed by the town council. Following
461 publication of the first Grant-Valkaria Town Code and at all
462 times thereafter, the ordinances, resolutions, and charter
463 amendments shall be published in substantially the same style as
464 the code currently in effect and shall be suitable in form for
465 integration therein. The town council shall make such further
466 arrangements as it deems desirable with respect to reproduction
467 and distribution of any changes in or additions to the
468 provisions of the Constitution and laws of the State of Florida
469 or the codes of technical regulations and other rules and
470 regulations included in the code.

471 Section 3. Town administrator.--
472 (1) APPOINTMENT; QUALIFICATIONS; COMPENSATION.--The town
473 council, by majority vote, shall appoint a town administrator
474 for an indefinite term and set the town administrator's
475 compensation. The town administrator shall be appointed
476 primarily on the basis of education and experience in the
477 accepted competencies and practices of local government
478 management. The town administrator need not be a resident of the
479 town or state at the time of appointment but may reside outside
480 the town while in office only with the approval of the town
481 council. The town administrator is continuously responsible to
482 the town council, the elected representatives of the people.
483 (2) REMOVAL.--The town council may request the resignation
484 of the town administrator. If the town administrator declines to
485 resign at the town council's request, the town council may
486 suspend the administrator by a resolution approved by a majority
487 of the town council. Such resolution shall set forth the reasons
488 for suspension and proposed removal. A copy of such resolution
489 shall be served immediately upon the town administrator. The
490 town administrator shall have 15 days in which to reply thereto
491 in writing and, upon request, shall be afforded a public
492 hearing, which shall occur not earlier than 10 days or later
493 than 15 days after such hearing is requested. After the public
494 hearing, if one is requested, and after full consideration, the
495 town council, by a majority vote, may adopt a final resolution
496 of removal. The town administrator shall continue to receive
497 full salary until the effective date of a final resolution of
498 removal.

499 (3) ABSENCE OR DISABILITY.--
500 (a) To perform his or her duties during his or her
501 temporary absence or disability, the town administrator may
502 designate, by letter filed with the town clerk, an interim town
503 administrator.
504 (b) In the event of failure or inability of the town
505 administrator to make such designation, or should the person so
506 designated by the town administrator be unsatisfactory to the
507 town council, the town council may by resolution appoint an
508 interim town administrator to perform the duties of the town
509 administrator until he or she returns or his or her disability
510 ceases.
511 (4) POWERS AND DUTIES.--The town administrator shall be
512 the chief executive officer of the town, responsible to the town
513 council for the management of all town affairs placed in the
514 town administrator's charge by or under this charter. The town
515 administrator shall:
516 (a) Hire or fill existing positions, including the town
517 clerk, and when the town administrator deems it necessary for
518 the good of the town, suspend or remove town employees, except
519 as otherwise provided by law or this charter. The town
520 administrator may serve as town clerk.
521 (b) Direct and supervise the administration of all
522 departments and offices, but not town boards or agencies, except
523 as otherwise directed by the town council or provided by this
524 charter.

525 (c) Attend all town council meetings. The town
526 administrator shall have the right to take part in discussion
527 but shall not have the right to vote.
528 (d) Ensure that all laws, provisions of this charter, and
529 acts of the town council, subject to enforcement by the town
530 administrator or by officers subject to the town administrator's
531 direction and supervision, are faithfully executed.
532 (e) Prepare and submit the annual budget and capital
533 program, as specified in section 5, to the town council and
534 implement the final budget approved by the town council to
535 achieve the goals of the town.
536 (f) Submit to the town council, and make available to the
537 public, a complete report on the financial and administrative
538 activities of the town as of the end of each fiscal year.
539 (g) Prepare such other reports as the town council may
540 require concerning the operations of town departments, offices,
541 boards, and agencies.
542 (h) Keep the town council fully advised as to the
543 financial condition and current and future needs of the town.
544 (i) Assist the town council in developing long-term goals
545 for the town and strategies to implement these goals.
546 (j) Make recommendations to the town council concerning
547 the affairs of the town and facilitate the work of the town
548 council in developing policy.
549 (k) Provide staff support services for the mayor and
550 council members.
551 (l) Encourage and provide staff support for regional and
552 intergovernmental cooperation.

553 (m) Promote partnerships among the town council, staff,
554 and citizens in developing public policy and building a sense of
555 community.
556 (n) Perform all such other duties as are specified in this
557 charter or that may be required by the town council.
558 (5) BOND.--The town administrator and, where applicable,
559 an interim town administrator shall furnish a security bond to
560 be approved by the town council, in such amount as the town
561 council may specify, such bond to be conditioned on the faithful
562 performance of his or her duties. The premium of the bond shall
563 be paid by the town.
564 Section 4. Departments, offices, and agencies; town
565 attorney; land use.--
566 (1) CREATION OF DEPARTMENTS, OFFICES, AND AGENCIES.--The
567 town council may establish town departments, offices, and
568 agencies in addition to those created by this charter and shall
569 prescribe the functions of all departments, offices, and
570 agencies. No function assigned by this charter to a particular
571 department, office, or agency may be discontinued or assigned to
572 any other unless specified by this charter.
573 (2) DIRECTION BY TOWN ADMINISTRATOR.--All departments,
574 offices, and agencies under the direction and supervision of the
575 town administrator shall be administered by an officer appointed
576 by and subject to the direction and supervision of the town
577 administrator. With the consent of the town council, the town
578 administrator may serve as the head of one or more such
579 departments, offices, or agencies or may appoint one person as
580 the head of two or more of them.

581 (3) PERSONNEL SYSTEM.--
582 (a) All appointments and promotions of town officers and
583 employees shall be made primarily on the basis of merit or other
584 evidence of competence.
585 (b) Consistent with all applicable federal and state laws,
586 the town council shall provide by ordinance for the
587 establishment, regulation, and maintenance of a merit system
588 governing personnel policies necessary to effective
589 administration of the employees of the town's departments,
590 offices, and agencies.
591 (4) TOWN ATTORNEY.--The town council shall appoint the
592 town attorney by an affirmative vote of a majority of the town
593 council. The town council shall establish a contract term for
594 the town attorney that includes scheduled reviews. The town
595 attorney shall report to the town council to serve as chief
596 legal adviser to the town council, the town administrator, and
597 all town departments, offices, and agencies. Compensation and
598 benefits of the town attorney shall be set by the town council.
599 The town attorney shall be a member in good standing of The
600 Florida Bar. The town council may remove the town attorney at
601 any time by an affirmative vote of a majority of the town
602 council. The town attorney shall take office immediately on
603 appointment, and the terms and conditions shall be reduced to a
604 written contract. The town council shall have the authority to
605 engage such additional legal counsel as it deems advisable and
606 necessary.
607 (5) LAND USE, DEVELOPMENT, AND ENVIRONMENTAL
608 PLANNING.--Consistent with all applicable federal and state laws

609 with respect to land use, development, and environmental
610 planning, the town council shall:
611 (a) Designate an agency or agencies to carry out the
612 planning function and such decisionmaking responsibilities as
613 may be specified by ordinance or in section 9.
614 (b) Adopt a comprehensive plan and determine to what
615 extent zoning and other land use control ordinances must be
616 consistent with the plan.
617 (c) Determine to what extent the comprehensive plan and
618 zoning and other land use ordinances must be consistent with
619 regional plans.
620 (d) Adopt development regulations, to be specified by
621 ordinance, to implement the plan.
622
623 The designated agency, the town administrator, and the town
624 council shall seek to act in cooperation with other
625 jurisdictions and organizations in their region to promote
626 integrated approaches to regional issues.
627 Section 5. Finances.--
628 (1) ACCOUNTING PROCEDURES.--The town administrator shall
629 prescribe and require, except as may be prescribed and required
630 by law, the use of plain and uniform systems of keeping books of
631 accounts by all town departments, officers, or employees who are
632 charged with the receipt or disbursements of any of the funds of
633 the town or who may be authorized to purchase materials and
634 supplies or to employ labor for the town.
635 (2) FISCAL YEAR.--The fiscal year of the town shall begin
636 with the first day of October in each year and end on the last

637 day of September of the following year, as set forth in section
638 166.241, Florida Statutes.
639 (3) ANNUAL AUDIT.--The town council shall retain a
640 certified public accountant to be the independent auditor of
641 accounts of the town. It shall be the duty of the auditor to
642 audit the accounts of the town and all its officers whose duty
643 involves the collection, custody, and payment of moneys to or by
644 the town. The auditor shall, on or before April 15 of each year,
645 make and deliver a detailed report of any and all accounts,
646 records, and books from the previous fiscal year examined and
647 audited by him or her, which report under his or her hand and
648 seal shall be made available for public inspection.
649 (4) PUBLIC FINANCIAL RECORDS.--The town administrator
650 shall regularly make available as public records at a suitable
651 location all major revenues and expenditures of the town for a
652 given fiscal year. This information shall be made available, at
653 a minimum, quarterly.
654 (5) PUBLIC DEPOSITS.--All public deposits shall be made in
655 qualified public depositories and shall be secured as provided
656 by state law.
657 (6) PURCHASE, SALE, AND LEASE OF REAL PROPERTY.--All
658 purchases or sales of real property by the town or leases of
659 town-owned property are subject to public notice and hearing
660 before action is taken by the town council. Such action shall
661 require a supermajority vote of the town council. The public
662 notice shall be of the same extent and nature as that required
663 by general law for rezoning.
664 (7) ANNUAL BUDGET.--

665 (a) Submission of annual budget.--On or before July 15 of
666 each year, the town administrator shall submit a budget in
667 accordance with state law. It shall outline the financial
668 policies of the town for the ensuing fiscal year, describe the
669 important features of the budget, indicate any major changes
670 from the current year in fiscal policy, summarize the town's
671 fiscal position, and include any other material as the town
672 administrator deems necessary.
673 (b) Town council action on the budget.--
674 1. The town council shall adopt a budget for the ensuing
675 fiscal year by resolution on or before September 30 of each
676 year.
677 2. The town council shall not authorize or allow to be
678 authorized a budget that exceeds the reasonably expected revenue
679 for the ensuing fiscal year.
680 (c) Budget financial procedures.--
681 1. If at any time during the fiscal year it appears
682 probable to the town administrator that the revenues available
683 will be insufficient to meet the amount appropriated in the
684 budget, the town administrator shall report to the town council
685 without delay. The town council shall then take action to
686 prevent or minimize any deficit and for that purpose may, by
687 resolution, reduce one or more appropriations.
688 2. The town administrator shall have full authority to
689 transfer unencumbered funds between different programs within a
690 department, office, or agency. The town administrator shall not
691 have the authority to transfer funds between departments,
692 offices, or agencies.

693 3. The town council may, by resolution, transfer or
694 otherwise allocate or reallocate part or all of any unencumbered
695 balance within a department, office, or agency to any other
696 department, office, or agency.
697 (d) Budget as public record.--Copies of the budget as
698 adopted shall be public record and shall be made available to
699 the public at a suitable location in the town.
700 (8) TAXATION AND REVENUE.--
701 (a) Property taxable.--All property, real or personal, in
702 the town not expressly exempt by state law shall be subject to
703 taxation by the town within the limits set forth by the State
704 Constitution and general law.
705 (b) Authority of town to levy taxes.--The town council
706 shall have the right to raise, by taxation on the taxable
707 property within the corporate limits of the town and on
708 licenses, such amounts as may be necessary to carry on the
709 government of the town, within the limits set forth by the State
710 Constitution and general law. The town council shall have the
711 right to levy such additional taxes, within the limits set forth
712 by the State Constitution and general law, as may be necessary
713 to pay the interest on, and to provide a sinking fund for the
714 ultimate redemption of, the outstanding bonds of the town as may
715 from time to time be issued in accordance with law and to pay
716 any lawful judgment that the town may be compelled to satisfy.
717 (c) Borrowing money; selling bonds.--Unless authorized by
718 the electors of the town at a duly held referendum election, the
719 town council shall not authorize or allow to be authorized the
720 issuance of revenue bonds or enter into lease-purchase contracts

721 or any other unfunded multiyear contracts for the purchase of
722 real property or the construction of capital improvements the
723 repayment of which extends beyond the end of any fiscal year.
724 (9) EMERGENCY APPROPRIATIONS.--To address a public
725 emergency affecting life, health, property, or the public peace,
726 the town council may make emergency appropriations. Such
727 appropriations may be made by emergency ordinance in accordance
728 with the provisions of section 2. To the extent that there are
729 no available unappropriated revenues or a sufficient fund
730 balance to meet such appropriations, the town council may by
731 such emergency ordinance authorize the issuance of emergency
732 notes, which may be renewed from time to time, but the emergency
733 notes and renewals of any fiscal year shall be paid or
734 refinanced as long-term debt not later than the last day of the
735 fiscal year next succeeding that in which the emergency
736 appropriation was made.
737 Section 6. Town elections.--
738 (1) CONDUCT OF ELECTIONS.--The provisions of the general
739 election laws of the state shall apply to all elections held
740 under this charter. The town council may, by ordinance, make all
741 regulations it considers needful or desirable, not inconsistent
742 with this charter, for the conduct of municipal elections and
743 for the prevention of fraud therein. Nothing in this charter
744 shall preclude the town council from authorizing the
745 administration of town elections by the county supervisor of
746 elections.
747 (a) Regular elections.--The regular town elections shall
748 be held every 2 years beginning on November 7, 2006, coincident

749 with county, state, and national elections. Poll workers and
750 clerks of elections, if required, shall be appointed by the
751 Brevard County Supervisor of Elections.
752 (b) Special elections.--Special elections, when required,
753 shall be scheduled by the town council at such times and in such
754 manner as shall be consistent with this charter and state law.
755 (c) Single candidates.--No election for a town council
756 seat shall be required in any election if there is only one duly
757 qualified candidate for that seat.
758 (d) Electors.--Any person who is a resident of the town,
759 is qualified as an elector of the state, and is registered to
760 vote in the manner prescribed by law shall be an elector of the
761 town.
762 (e) Nonpartisan elections.--All elections for the offices
763 of council member and mayor shall be conducted on a nonpartisan
764 basis.
765 (2) COMMENCEMENT OF TERMS.--The term of office of any
766 elected official shall commence 2 weeks after the election.
767 (3) OATH OF OFFICE.--All elected officers, before entering
768 upon their duties, shall take and subscribe to the following
769 oath of office: "I do solemnly swear (or affirm) that I will
770 support, protect, and defend the Constitution and Government of
771 the United States and of the State of Florida and the charter of
772 the Town of Grant-Valkaria; that I am duly qualified to hold
773 office under the Constitution of the State and of the charter of
774 the Town of Grant-Valkaria; that I will well and faithfully
775 perform the duties of (mayor or council member) upon which I am
776 about to enter; and that I will work to preserve and promote the

777 history, environment, and rural character of the Town of Grant-
778 Valkaria."
779 (4) METHOD OF ELECTING COUNCIL MEMBERS.--The ballot for
780 the general election shall contain the names of all qualified
781 candidates for council members and the number of seats up for
782 election. The ballot shall instruct electors to cast one vote
783 for each open council seat. The candidates who receive the
784 largest number of votes shall be the duly elected council
785 members and shall be designated as holding a specific council
786 seat number. Council seat numbers shall be assigned such that
787 the lowest seat number available is given to the candidate who
788 receives the largest number of votes.
789 (5) METHOD OF ELECTING THE MAYOR.--If the mayor's term is
790 expiring, the ballot for the general election shall contain the
791 names of all qualified candidates for mayor and shall instruct
792 electors to cast one vote for mayor. The candidate for mayor
793 receiving the largest number of votes shall be the duly elected
794 mayor.
795 (6) TIE VOTES.--In the event of a tie for the office of
796 council member or mayor, the winner shall be determined by lot.
797 (7) CANDIDATE FORUMS.--The town shall sponsor and budget
798 for a minimum of three candidate forums. Each candidate for
799 mayor or council seat shall participate in a minimum of two
800 candidate forums.
801 (8) QUALIFYING OF CANDIDATES FOR OFFICE OF COUNCIL MEMBER
802 OR MAYOR.--

803 (a) Only electors of the town who have resided in the town
804 for the 2 years preceding the date of filing for candidacy shall
805 be eligible to hold the office of council member or mayor.
806 (b) Candidates for council member or mayor shall qualify
807 for election by the filing of a written notice of candidacy with
808 the clerk of the town at such time and in such manner as may be
809 prescribed by ordinance, plus payment of any fees required by
810 general law as a qualifying fee. The candidate shall submit a
811 qualifying statement, as prescribed by ordinance, with the
812 signatures of at least 1 percent of the total number of electors
813 at the last general election, and pay any required filing fee.
814 (c) The qualifying period shall not be less than 45 days
815 and not more than 60 days prior to the elections. If there is an
816 insufficient number of candidates at the conclusion of the
817 qualifying period, all candidates shall be seated according to
818 paragraph (1)(c) and subsection (6). The qualifying period shall
819 be extended 5 business days for the remaining open seat or
820 seats.
821 (d) A person may not be a candidate for more than one
822 office in the same election.
823 (9) INITIATIVE, CITIZEN REFERENDUM, AND RECALL.--
824 (a) The electors of the town shall have power to propose
825 ordinances to the town council; however, such power shall not
826 extend to the budget or capital program or any ordinance
827 relating to appropriation of money, levy of taxes, or salaries
828 of town employees. If the town council fails to adopt the
829 proposed ordinance or a modification thereof, the electors shall
830 have the power to adopt or reject it at a town election.

831 (b) The electors of the town shall have the power to
832 require reconsideration by the town council of any adopted
833 ordinance. If the town council fails to repeal an ordinance so
834 reconsidered, the electors may approve or reject it at a town
835 election. However, such power of reconsideration shall not
836 extend to the budget or capital program or any emergency
837 ordinance or ordinance relating to appropriation of money, levy
838 of taxes, or salaries of town employees.
839 (c) The electors of the town shall have the power to
840 remove from office any elected official of the town in
841 accordance with general law.
842 (10) INITIATIVE AND REFERENDUM PROCEEDINGS.--
843 (a) Any five electors may commence initiative or
844 referendum proceedings by filing with the town clerk an
845 affidavit stating that they will constitute the petitioners'
846 committee, stating that they will be responsible for circulating
847 the petition and filing it in proper form, stating their names
848 and addresses, specifying the address to which all notices to
849 the petitioners' committee are to be sent, and setting out in
850 full the proposed initiative ordinance or the proposed amendment
851 or repeal action relating to an existing ordinance. The town
852 clerk shall promptly file the affidavit with the town
853 administrator so that it can be placed on the agenda for the
854 next town council meeting. If the proposed ordinance is in the
855 correct form and is compatible with the town charter and general
856 and special law, the town council shall promptly consider the
857 proposal on its merits and substance. If deficiencies of form or
858 legality exist, the proposal shall be returned to its sponsors

859 for correction and resubmission. If the town council delays,
860 rejects, changes, or refuses to consider a proposed ordinance or
861 amendment or repeal request for reasons that fail to satisfy its
862 sponsors, the proposed ordinance or amendment or repeal request
863 may be submitted to referendum by petition. Production of
864 petition forms and validation of signatures shall be the
865 responsibility of the petitioners' committee.
866 (b) Referendum and initiative petitions must be signed by
867 electors of the town, as certified by the Brevard County
868 Supervisor of Elections, equal in number to at least 20 percent
869 of the total number of electors voting at the last regular
870 election.
871 (c) All papers of a petition shall be uniform in size and
872 style and shall be assembled as one instrument for filing. Each
873 signature shall be executed in ink or indelible pencil and shall
874 be followed by the address of the person signing. Referendum and
875 initiative petitions shall contain or shall have attached to
876 them throughout their circulation the full text of the proposed
877 ordinance, amendment, or repeal request.
878 (d) Each paper of a petition shall have attached to it,
879 when filed, an affidavit executed by its circulator stating that
880 the circulator personally circulated the paper, giving the
881 number of signatures on the paper, and stating that all the
882 signatures were affixed in the circulator's presence, that the
883 circulator believes them to be the genuine signatures of the
884 persons whose names they purport to be, and that each signer had
885 an opportunity before signing to read the full text of the
886 proposed ordinance, amendment, or repeal request.

887 (e) Referendum petitions must be filed within 30 days
888 after adoption by the town council of the ordinance sought to be
889 reconsidered.
890 (f) Within 20 days after the petition is filed, the town
891 clerk shall complete a certificate as to its sufficiency,
892 specifying, if it is insufficient, the particulars in which it
893 is defective, and shall within 2 working days send a copy of the
894 certificate to the petitioners' committee by registered mail.
895 Verification of electors shall be as certified by the Brevard
896 County Supervisor of Elections. A petition certified
897 insufficient for lack of the required number of valid signatures
898 may be amended once if the petitioners' committee files a notice
899 of intention to amend it with the town clerk within 5 days after
900 receiving the copy of the certificate and if the petitioners'
901 committee files a supplementary petition upon additional papers
902 within 10 days after receiving the copy of the certificate. Such
903 supplementary petition shall comply with the requirements of
904 paragraphs (c) and (d). Within 20 days after a supplementary
905 petition is filed, the town clerk shall complete a certificate
906 as to the sufficiency of the petition as amended and shall
907 promptly send a copy of such certificate to the petitioners'
908 committee by registered mail. If a petition or amended petition
909 is certified sufficient, or if a petition or amended petition is
910 certified insufficient and the petitioners' committee does not
911 elect to amend or to request town council review under paragraph
912 (g) within the time required, the town clerk shall promptly
913 present the certificate to the town council, and the certificate

914 shall then be a final determination as to the sufficiency of the
915 petition.
916 (g) If a petition has been certified insufficient for
917 reasons other than the required number of elector signatures and
918 the petitioners' committee does not file notice of intention to
919 amend it, or if an amended petition has been certified
920 insufficient for reasons other than the required number of
921 elector signatures, the committee may, within 5 days after
922 receiving the copy of such certificate, file a request that the
923 petition be reviewed by the town council. The town council shall
924 review the petition and its accompanying certificate at its next
925 meeting following the filing of such request and shall approve
926 or disapprove it. The town council's determination shall then be
927 a final determination as to the sufficiency of the petition.
928 (h) A final determination as to the sufficiency of a
929 petition shall be subject to court review. A final determination
930 of insufficiency, even if sustained upon court review, shall not
931 prejudice the filing of a new petition for the same purpose.
932 (i) The cost of checking the names on a petition against
933 the list of electors shall be borne by the petitioners'
934 committee.
935 (j) When a referendum petition is filed with the town
936 clerk, the ordinance sought to be reconsidered shall be
937 suspended from taking effect. Such suspension shall terminate
938 when:
939 1. There is a final determination of insufficiency of the
940 petition;
941 2. The petitioners' committee withdraws the petition;

942 3. The town council repeals the ordinance; or
943 4. Thirty days have elapsed after a vote of the electors
944 of the town on the ordinance.
945 (k) When an initiative or referendum petition has been
946 finally determined sufficient, the town council shall promptly
947 consider adoption of the proposed initiative ordinance or
948 reconsider the referred ordinance by voting its repeal. If,
949 within 60 days after the petition is determined sufficient, the
950 town council fails to adopt a proposed initiative ordinance
951 without any change in substance or fails to repeal the referred
952 ordinance, it shall submit the proposed or referred ordinance to
953 the electors of the town.
954 (l) The election on a proposed or referred ordinance shall
955 be held not fewer than 30 days and not later than 1 year from
956 the date that the petition was determined sufficient. If no
957 regular town election is to be held within such period, the town
958 council shall provide for a special election; otherwise, the
959 vote shall be held at the same time as such regular election,
960 except that the town council may in its discretion provide for a
961 special election at an earlier date within such period. Copies
962 of the proposed or referred ordinance shall be made available at
963 the polls.
964 (m) An initiative or referendum petition may be withdrawn
965 at any time prior to the 15th day preceding the day scheduled
966 for a vote of the town by filing with the town clerk or other
967 official designated by the town council a request for withdrawal
968 signed by at least four members of the petitioners' committee.
969 Upon the filing of such request, the petition shall have no

970 further force or effect and all proceedings thereon shall be
971 terminated.
972 (11) RESULTS OF INITIATIVE OR REFERENDUM.--
973 (a) If a majority of the electors voting in a referendum
974 on a proposed initiative ordinance votes in favor of it, it
975 shall be considered adopted upon certification of the election
976 results and shall be treated in all respects in the same manner
977 as ordinances adopted by the town council.
978 (b) If a majority of the electors voting in a referendum
979 on a request to repeal an existing ordinance votes in favor of
980 repeal, the ordinance shall be considered repealed upon
981 certification of the election results.
982 Section 7. General provisions.--
983 (1) CONDUCT OF OFFICIALS IN OFFICE.--
984 (a) All town council members, town officials, and town
985 employees shall be subject to the code of ethics for public
986 officers and employees set forth in part III of chapter 112,
987 Florida Statutes, as required by law.
988 (b) The use of public office for private gain is
989 prohibited. The town council shall implement this prohibition by
990 ordinance, the terms of which shall address, but not be limited
991 to:
992 1. Acting in an official capacity on matters in which the
993 official has a private financial interest clearly separate from
994 that of the general public.
995 2. The acceptance of gifts and other things of value.
996 3. Acting in a private capacity on matters dealt with as a
997 public official.

998 4. The use of confidential information.
999 5. Appearances by public officials before other town
1000 departments, offices, or agencies on behalf of private
1001 interests.
1002
1003 This ordinance shall include a statement of purpose and shall
1004 provide for reasonable public disclosure of finances by
1005 officials with major decisionmaking authority over monetary
1006 expenditures and regulatory matters. Insofar as permissible
1007 under state law, this ordinance may provide for fines and
1008 imprisonment for violations.
1009 (2) PROHIBITIONS.--Except where authorized by law, neither
1010 the mayor nor any council member shall hold any other elected
1011 public office during the term for which the mayor or council
1012 member is elected. No elected town official shall hold any
1013 appointive town office or town employment while in office. No
1014 former elected town official shall hold any compensated
1015 appointive town office or town employment until 12 months after
1016 the expiration of his or her term. This subsection shall not
1017 prevent participation in, or compensation for, activities
1018 connected with any volunteer organization of the town.
1019 (3) APPOINTMENTS AND REMOVALS.--Neither the council
1020 members nor the mayor shall in any manner control or demand the
1021 appointment or removal of any town administrative officer or
1022 employee whom the town administrator or any subordinate of the
1023 town administrator is empowered to appoint, but the town council
1024 may express its views and fully and freely discuss with the town

1025 administrator anything pertaining to appointment and removal of
1026 such officers and employees.
1027 (4) INTERFERENCE WITH ADMINISTRATION.--Except for the
1028 purpose of inquiries and investigations, the town council and
1029 its members shall deal with the town officers and employees who
1030 are subject to the direction of the town administrator solely
1031 through the town administrator, and neither the town council nor
1032 its members shall give orders to any such officer or employee
1033 either publicly or privately.
1034 (5) CAMPAIGN FINANCE.--
1035 (a) The town council shall adopt ordinances to protect the
1036 ability of citizens to be informed of financing used in
1037 campaigns for local office. The ordinances shall provide for
1038 convenient public disclosure. Insofar as is permissible under
1039 state law, such regulations may also provide for fines and
1040 imprisonment for violations.
1041 (b) The town council may adopt ordinances that limit
1042 contributions, time limits on fundraising, and public financing.
1043 (6) LONG-RANGE PLAN.--The town council shall meet to
1044 discuss long-range goals and objectives that, when achieved,
1045 will sustain town operations and continued quality of life for
1046 inhabitants of the town. Each year, goals and objectives shall
1047 be established for 5, 10, and 20 years into the future. Once
1048 established, the goals and objectives shall be presented as a
1049 long-range plan at a meeting of the town council and documented
1050 in presentations and minutes of the meeting. Inputs shall be
1051 solicited from town residents during the preparation of the
1052 long-range plan.

1053 (7) FIVE-YEAR FINANCIAL PLAN.--In accordance with the 5-
1054 year goals and objectives established in the long-range plan by
1055 the town council, the town council shall prepare a 5-year
1056 financial plan (FYFP). The FYFP shall be presented in
1057 conjunction with the annual budget and shall contain projected
1058 financial requirements necessary to support proposed plans and
1059 programs.
1060 (8) EMERGENCY OPERATIONS.--The town council shall
1061 establish an emergency preparedness plan for the town. This plan
1062 shall be reviewed annually.
1063 (9) DISSOLUTION.--The charter of this town may not be
1064 revoked except in accordance with the dissolution procedures of
1065 chapter 165, Florida Statutes.
1066 Section 8. Charter amendment.--
1067 (1) PROCEDURE TO AMEND THE CHARTER.--
1068 (a) The town council may, by ordinance, propose amendments
1069 to this charter. Upon approval of the initiating ordinance by
1070 majority of the town council, the proposed amendment shall be
1071 placed on the ballot at the next regularly scheduled election,
1072 unless the amendment calls for placement on the ballot at a
1073 special election.
1074 (b) The electors of the town may propose amendments to
1075 this charter by petition signed by 20 percent of the registered
1076 electors as of the last general election. Once the petition is
1077 verified, the proposed amendment shall be placed on the ballot
1078 at the next regularly scheduled ballot, unless the amendment
1079 calls for placement on the ballot at a special ballot. The
1080 proposed charter amendment will be published twice in the local

1081 paper not fewer than 30 days or more than 60 days before the
1082 scheduled election.
1083 (2) CHARTER REVIEW.--The charter shall be reviewed no
1084 later than 3 years from the date the town was established. After
1085 the initial review, the charter shall be reviewed no more than
1086 once every 10 years. Each town council member shall appoint one
1087 person to a seven-member charter review committee. The charter
1088 review committee shall be appointed at least 6 months before the
1089 next scheduled election and complete its work and present any
1090 recommendations for change no later than 90 days before the
1091 election. The town council shall hold a minimum of two public
1092 hearings on the proposed changes prior to placement on the
1093 regularly scheduled ballot.
1094 (3) RESULTS OF ELECTION.--If a majority of the electors
1095 voting on the proposed amendment passes the item, it shall be
1096 considered adopted upon certification of the election results.
1097 The town council shall have the amendment incorporated into the
1098 charter and shall file the revised charter with the Department
1099 of State.
1100 Section 9. Land use, zoning, and development.--
1101 (1) RURAL CHARACTER OF TOWN.--This section secures the
1102 foundation on which this town was formed and maintains the
1103 existing rural character of the town. "Rural" includes several
1104 key elements that constitute the makeup of the town. These
1105 elements include:
1106 (a) Low development intensity and an abundance of
1107 agricultural lands.

1108 (b) Inherent "green canopy" and natural preserve that
1109 currently covers the majority of the town.
1110 (c) Inherent natural resources including aquifers,
1111 watersheds, wetlands, and the waterways of the Indian River
1112 Lagoon.
1113 (d) Predominant and viable wildlife areas and protected
1114 species habitat.
1115 (e) Small, family-owned and family-operated businesses.
1116 (f) Commercial development as deemed appropriate to the
1117 character and emerging needs of the town.
1118 (2) LAND USE, ZONING, AND DEVELOPMENT REQUIREMENTS.--In
1119 order to preserve and promote the existing rural elements listed
1120 in subsection (1), this section outlines land use, zoning, and
1121 development requirements and the requirements for approval of
1122 development intensity increases for any parcel within the
1123 boundaries of the town. The provisions of this section shall
1124 make it incumbent upon all future development to protect the
1125 rural elements of the town and:
1126 (a) Continue the use of private wells as sources of
1127 potable water and the use of private septic recycling.
1128 (b) Promote and preserve public lands and parks for
1129 community enjoyment.
1130 (c) Protect and promote the wildlife and the wildlife
1131 habitat that coexist within the town.
1132 (d) Preserve the natural view and existing scenic highway
1133 designation of U.S. Highway 1 through careful management of
1134 development along and within these natural assets.
1135

1136 By proactively managing future growth as a rural community and
1137 limiting impacts through thoughtful community-based planned
1138 development, the naturally existing rural character of the town
1139 will be sustained. To this end, the land development regulations
1140 and ordinances of the town shall uphold and enforce the goals
1141 and overall spirit of this section. All zoning in effect at the
1142 time of incorporation shall remain unchanged after incorporation
1143 (i.e. "grandfathered in"). All present county zoning
1144 classifications and land use designation terminology shall
1145 continue in effect until the town is established and the town's
1146 long-range comprehensive plan and future land use map are
1147 completed and adopted. A new long-range comprehensive plan and
1148 future land use map shall be completed and adopted within 1 year
1149 after incorporation.
1150 (3) PROPOSED CHANGE; PRIOR NOTICE; VOTE REQUIRED.--Prior
1151 to voting on a proposed increase in development intensity,
1152 including, but not limited to, density levels, building heights,
1153 and traffic impacts, the town council shall notify all property
1154 owners inside the town whose property is within 1,500 feet of
1155 the proposed change. Notification shall occur no fewer than 30
1156 days prior to consideration by the town council. An affirmative
1157 vote of six or more members of the town council shall be
1158 required to enact any such proposed change.
1159 Section 10. Transition.--
1160 (1) CREATION AND ESTABLISHMENT OF THE TOWN.--
1161 (a) For the purpose of compliance with general law
1162 relating to the assessment and collection of ad valorem taxes,
1163 the town is hereby created and established effective when

1164 approved by the electors at the August 1, 2006, special election
1165 and filed with the Secretary of State in the manner prescribed
1166 by law.
1167 (b) The town name used in this charter is "Town of Grant-
1168 Valkaria." As a first act of home rule and to ensure community
1169 participation, residents will have the opportunity to select
1170 their town name. The elected town council shall set the
1171 procedures for the residents' selection of the town name within
1172 6 months after the first town council meeting.
1173 (2) TEMPORAL NATURE OF TRANSITION SECTIONS OF
1174 CHARTER.--This section is inserted solely for the purpose of
1175 effecting the incorporation of the town and the transition from
1176 an unincorporated area of Brevard County to a new incorporated
1177 municipality. Each of the following subsections of this section
1178 shall automatically, and without further vote or act of the
1179 electors of the town, become ineffective and no longer a part of
1180 this charter at such time as the implementation of such
1181 subsection has been accomplished.
1182 (3) FIRST TRANSITION PERIOD; CHARTER ACCEPTANCE TO FIRST
1183 ELECTION.--
1184 (a) Since upon approval of the charter a governmental unit
1185 equivalent to the town does not exist to provide people with
1186 positions accredited to effect a transition, an interim council
1187 committed to the charter and the transition to town government
1188 shall be identified and authorized.
1189 (b) Based on prior commitment to and involvement in the
1190 incorporation process, the Grant-Valkaria Preservation
1191 Committee-Steering Committee (GVPC-SC) is recognized as the

1192 appropriate body to select an interim council. The interim
1193 council shall transition from charter development and community
1194 organization by providing an interim town government during the
1195 time period between the approval of the charter and the
1196 dissolution of the interim council. Upon the certification of
1197 acceptance of the charter by the electors of the town, as
1198 reported by the Brevard County Supervisor of Elections, the
1199 GVPC-SC shall convene forthwith and identify five electors to
1200 act as interim town council members.
1201 (c) Dissolution of the interim council shall occur at the
1202 beginning of the term of the first elected town council.
1203 (d) The positions of interim council members shall be
1204 voluntary positions. Interim council members shall receive no
1205 compensation.
1206 (e) Powers of the interim council shall be in accordance
1207 with this charter and shall include:
1208 1. Preparing and adopting temporary regulations that are
1209 applicable only to the first town council election and designed
1210 to ensure its proper conduct, to prevent fraud, and to provide
1211 for recount of ballots in cases of doubt or fraud.
1212 2. Providing a method for certification of candidates for
1213 the first town council election.
1214 3. Scheduling the three community candidate forums as
1215 described in section 6 in preparation for the first town council
1216 election.
1217 4. Coordinating with the Brevard County Supervisor of
1218 Elections with regard to the first town council election and to
1219 effect the timely receipt by the interim council of the official

1220 certification results for the town council election.
1221 5. Scheduling the first town council meeting.
1222 6. Enacting emergency ordinances as may be warranted to
1223 protect public safety.
1224 7. Identifying and managing funds.
1225 8. Filing applicable forms and requests for revenue
1226 sharing and other funding sources.
1227 9. Disbursing funds for the purpose of conducting town
1228 business to include the funding of the first election of the
1229 town council. The moneys available for this purpose shall be
1230 those identified within the Proposed Town of Grant-Valkaria
1231 Municipal Incorporation Feasibility Study and shall accrue from
1232 the municipal ad valorem millage rate of 4.369 mills as applied
1233 to the total taxable value of the properties contained within
1234 the proposed boundaries of the Town of Grant-Valkaria as they
1235 accrue to the town general fund and from those funds accruing
1236 from all applicable state and county revenue-sharing programs as
1237 calculated effective from the first day of the month following
1238 the charter referendum, being the first day of legal status of
1239 the Town of Grant-Valkaria as a newly incorporated municipality
1240 within the state.
1241 (f) Until otherwise modified or replaced by this charter
1242 or the council, all codes, ordinances, and resolutions of
1243 Brevard County in effect on the day of adoption of this charter
1244 shall, to the extent applicable to the town, remain in force and
1245 effect as municipal codes, ordinances, and resolutions of the
1246 town. Until otherwise determined by the council, said codes,
1247 ordinances, and resolutions shall be applied, interpreted, and

1248 implemented by the town in a manner consistent with established
1249 policies of Brevard County on the date of the adoption of this
1250 charter.
1251 (4) FIRST ELECTION; TERMS OF COUNCIL MEMBERS AND MAYOR.--
1252 (a) For the first election, only electors who have resided
1253 within the proposed town boundaries, as described in section
1254 1(5), for the 2 years preceding the date of the first election
1255 shall be eligible to hold the office of council member or mayor.
1256 (b) At the first election under this charter, all six
1257 council members and the mayor shall be elected. The three
1258 council candidates receiving the greatest number of votes shall
1259 be duly elected council members and shall be designated as
1260 holding seats 1, 3, and 5, respectively. The three council
1261 candidates receiving the next greatest number of votes shall be
1262 duly elected council members and shall be designated as holding
1263 seats 2, 4, and 6, respectively. The candidate for mayor
1264 receiving the greatest number of votes shall be the duly elected
1265 mayor. Notwithstanding the date of the first election, the terms
1266 of the mayor and council seats 1, 3, and 5 shall end 2 weeks
1267 after the general election in 2010, and the terms of council
1268 seats 2, 4, and 6 shall end 2 weeks after the general election
1269 in 2008. Division of council seats into 4-year and 2-year terms
1270 is required in order to allow staggered terms of office.
1271 (5) INITIAL EXPENSES.--The initial expenses of the town
1272 council, including the expense of recruiting a town
1273 administrator, shall be paid by the town on vouchers signed by
1274 the mayor. The town council, in order to provide moneys for the
1275 expenses and support of the town, shall have the power to borrow

1276 money, if necessary, for the operation of town government until
1277 such time as a budget is adopted and revenues accrue in
1278 accordance with the provisions of this charter. Notwithstanding
1279 the provisions of paragraph (3)(e), the amount borrowed shall be
1280 in accordance with and shall not exceed the projected revenues
1281 of the incorporation feasibility study for the town for fiscal
1282 year 2006-2007.
1283 (6) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--The town
1284 council shall adopt ordinances and resolutions required to
1285 effect the transition. Ordinances adopted within 60 days after
1286 the first regular council meeting may be passed as emergency
1287 ordinances.
1288 (7) REVENUE SOURCE TRANSITION.--Until otherwise modified
1289 by the council, all municipal taxes and fees imposed within the
1290 town boundaries by the county as the municipal government for
1291 unincorporated Brevard County, which taxes and fees are in
1292 effect on the date of adoption of this charter, shall continue
1293 at the same rate and on the same conditions as if those taxes
1294 and fees had been adopted and assessed by the town.
1295 (8) TRANSITION CONTINUITY OF SERVICES.--To ensure that
1296 there is no discontinuity in the provision, level, or quality of
1297 municipal service delivery to the proposed town, and until such
1298 time as the town may enter into interlocal agreements with
1299 Brevard County regarding the provision of municipal services,
1300 all municipal services currently provided by Brevard County will
1301 continue to be provided by Brevard County at the service levels
1302 existing at the time of municipal incorporation. All federal,
1303 state, grant, and other funding sources existing prior to the

1304 time the town is incorporated shall continue to be applied in
1305 the manner and at the level anticipated and projected by the
1306 Brevard County Budget prior to the incorporation of the town.
1307 The future cost and level of municipal service delivery provided
1308 to the town by Brevard County beyond fiscal year 2006-2007 shall
1309 be negotiated and determined through interlocal agreement
1310 between the town and appropriate representatives of Brevard
1311 County.
1312 (9) STATE-SHARED REVENUES.--The town shall be entitled to
1313 participate in all shared revenue programs of the state,
1314 effective immediately on the date of incorporation. The
1315 provisions of section 218.23, Florida Statutes, shall be waived
1316 for the purpose of eligibility to receive revenue-sharing funds
1317 from the date of incorporation through the end of state fiscal
1318 year 2005-2006. The provisions of section 218.26(3), Florida
1319 Statutes, shall be waived for state fiscal year 2005-2006, and
1320 the apportionment factors for the municipalities and counties
1321 shall be recalculated pursuant to section 218.245, Florida
1322 Statutes. The initial population estimates for calculating
1323 eligibility for shared revenues shall be determined by the
1324 University of Florida Bureau of Economic and Business Research
1325 as of the effective date of this charter. Should the bureau be
1326 unable to provide an appropriate population estimate, the
1327 initial population for calculating eligibility for shared
1328 revenues shall be established at the level of 3,907 as projected
1329 in the incorporation feasibility study.
1330 (10) GAS TAX REVENUES.--Notwithstanding the requirements
1331 of section 336.025, Florida Statutes, to the contrary, the town

1332 shall be entitled to receive local option gas tax revenues
1333 beginning the first day of the month following the charter
1334 referendum. These revenues shall be distributed to the town as a
1335 fully eligible incorporated municipality of Brevard County in
1336 accordance with the distribution formula initially established
1337 and adopted on October 18, 1988, as part of the "Brevard County
1338 Local Option Gasoline Tax Revenue Distribution, Interlocal
1339 Agreement" and as amended by the Board of County Commissioners
1340 of Brevard County through Ordinance No. 99-40 as ratified on
1341 October 12, 1999, extending the Local Option Gas Tax Interlocal
1342 Agreement through August 31, 2021.
1343 (11) SHARED REVENUES.--Brevard County shall distribute to
1344 the town, from taxes, franchise fees, and ad valorem taxes,
1345 revenues collected within the municipal boundaries of the town.
1346 This calculation shall be based upon a population projection of
1347 3,907 residents for the town as estimated for the feasibility
1348 study in anticipation of the year 2008 census.
1349 Section 11. Severability.--If any section or part of a
1350 section of this charter shall be held invalid by a court of
1351 competent jurisdiction, such holding shall not affect the
1352 remainder of this charter nor the context in which such section
1353 or partial section so held invalid may appear, except to the
1354 extent that an entire section or a partial section may be
1355 inseparably connected in meaning and effect with the section or
1356 partial section to which such holding shall directly apply.
1357 Section 12. This act shall only take effect upon approval
1358 by a majority vote of those qualified electors of the area
1359 described in subsection (5) of section 1 voting in a referendum

1360 to be called by the Brevard County Supervisor of Elections on or
1361 before August 1, 2006, except that this section shall take
1362 effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No.1297

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Poppell offered the following:
3
4 **Amendment**
5 Remove line(s) 1252-1344 and insert:
6
7 (a) The first election for council members and mayor will
8 be held on November 7, 2006. For the first election, only
9 electors who have resided within the proposed town boundaries,
10 as described in section 1(5), for the 2 years preceding the date
11 of the first election shall be eligible to hold the office of
12 council member or mayor.
13 (b) At the first election under this charter, all six
14 council members and the mayor shall be elected. The three
15 council candidates receiving the greatest number of votes shall
16 be duly elected council members and shall be designated as
17 holding seats 1, 3, and 5, respectively. The three council
18 candidates receiving the next greatest number of votes shall be
19 duly elected council members and shall be designated as holding
20 seats 2, 4, and 6, respectively. The candidate for mayor
21 receiving the greatest number of votes shall be the duly elected

22 mayor. Notwithstanding the date of the first election, the terms
23 of the mayor and council seats 1, 3, and 5 shall end 2 weeks
24 after the general election in 2010, and the terms of council
25 seats 2, 4, and 6 shall end 2 weeks after the general election
26 in 2008. Division of council seats into 4-year and 2-year terms
27 is required in order to allow staggered terms of office.
28 (5) INITIAL EXPENSES.--The initial expenses of the town
29 council, including the expense of recruiting a town
30 administrator, shall be paid by the town on vouchers signed by
31 the mayor. The town council, in order to provide moneys for the
32 expenses and support of the town, shall have the power to borrow
33 money, if necessary, for the operation of town government until
34 such time as a budget is adopted and revenues accrue in
35 accordance with the provisions of this charter. Notwithstanding
36 the provisions of paragraph (3)(e), the amount borrowed shall be
37 in accordance with and shall not exceed the projected revenues
38 of the incorporation feasibility study for the town for fiscal
39 year 2006-2007.
40 (6) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--The town
41 council shall adopt ordinances and resolutions required to
42 effect the transition. Ordinances adopted within 60 days after
43 the first regular council meeting may be passed as emergency
44 ordinances.
45 (7) REVENUE SOURCE TRANSITION.--Until otherwise modified
46 by the council, all municipal taxes and fees, including
47 communications services tax, imposed within the town boundaries
48 by the county as the municipal government for unincorporated
49 Brevard County, which taxes and fees are in effect on the date
50 of adoption of this charter, shall continue at the same rate and

51 on the same conditions as if those taxes and fees had been
52 adopted and assessed by the town.
53 (8) TRANSITION CONTINUITY OF SERVICES.--To ensure that
54 there is no discontinuity in the provision, level, or quality of
55 municipal service delivery to the proposed town, and until such
56 time as the town may enter into interlocal agreements with
57 Brevard County regarding the provision of municipal services,
58 all municipal services currently provided by Brevard County will
59 continue to be provided by Brevard County at the service levels
60 existing at the time of municipal incorporation. All federal,
61 state, grant, and other funding sources existing prior to the
62 time the town is incorporated shall continue to be applied in
63 the manner and at the level anticipated and projected by the
64 Brevard County Budget prior to the incorporation of the town.
65 The future cost and level of municipal service delivery provided
66 to the town by Brevard County beyond fiscal year 2006-2007 shall
67 be negotiated and determined through interlocal agreement
68 between the town and appropriate representatives of Brevard
69 County.
70 (9) STATE-SHARED REVENUES.--The town shall be entitled to
71 participate in all shared revenue programs of the state,
72 effective immediately on December 1, 2006. The provisions of
73 section 218.23, Florida Statutes, shall be waived for the
74 purpose of eligibility to receive revenue-sharing funds from
75 December 1, 2006 through the end of state fiscal year 2008-2009.
76 The provisions of section 218.26(3), Florida Statutes, shall be
77 waived through state fiscal year 2008-2009, and the
78 apportionment factors for the municipalities and counties shall
79 be recalculated pursuant to section 218.245, Florida Statutes.
80 The initial population estimates for calculating eligibility for

81 shared revenues shall be determined by the University of Florida
82 Bureau of Economic and Business Research as of the effective
83 date of this charter. Should the bureau be unable to provide an
84 appropriate population estimate, the initial population for
85 calculating eligibility for shared revenues shall be established
86 at the level of 3,907 as projected in the incorporation
87 feasibility study.
88 (10) GAS TAX REVENUES.--Notwithstanding the requirements
89 of section 336.025, Florida Statutes, to the contrary, the town
90 shall be entitled to receive local option gas tax revenues
91 beginning the first day of the month following the charter
92 referendum. These revenues shall be distributed to the town as a
93 fully eligible incorporated municipality of Brevard County in
94 accordance with the distribution formula initially established
95 and adopted on October 18, 1988, as part of the "Brevard County
96 Local Option Gasoline Tax Revenue Distribution, Interlocal
97 Agreement" and as amended by the Board of County Commissioners
98 of Brevard County through Ordinance No. 99-40 as ratified on
99 October 12, 1999, extending the Local Option Gas Tax Interlocal
100 Agreement through August 31, 2021.
101 (11) SHARED REVENUES.- Beginning December 1, 2006,
102 through December 31, 2007, Brevard County shall distribute to
103 the town, from taxes, franchise fees, and ad valorem taxes,
104 which includes communication services tax,
105
106

CS/HB 1321

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1321 CS Entertainment Industry Economic Development
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Tourism Committee	8 Y, 0 N, w/CS	McDonald	McDonald
2) Finance & Tax Committee		Rice ACR	Diez-Arguelles
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

The bill moves the location of the Entertainment Industry Financial Incentive Program in the statutes and changes the program from a reimbursement of expenditures to a credit that can be applied against corporate income tax and sales and use tax liability.

Productions of filmed entertainment qualified by the Office of Film and Entertainment and certified by the Governor's Office of Tourism, Trade, and Economic Development are eligible for a tax credit of 15% of qualified expenditures in the state.

There are three separate queues eligible to receive an allocation of the credits: the film, television, and episodic queue; the television pilot queue; and the commercial and music video queue. Productions in the first queue must have a minimum of $625,000 in qualified expenditures for the entire run of the project, or $625,000 in qualified expenditures per episode for a high-impact television series. Qualified high-impact television series will be allowed first position in this queue for its first five production seasons. Productions in the second queue must have $625,000 in expenditures for the pilot episode. Productions in the third queue must have a minimum of $500,000 in total qualified expenditures in a state fiscal year, with a minimum of $75,000 for each production. A single production under a queue may receive no more than $3 million in tax credits. The first queue receives 60% of the available tax credits each fiscal year. The second and third queues each receive 20%.

There is a total tax credit cap of $25 million per fiscal year. If applications for credit exceed that amount, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available. No more than $200 million in tax credits will be allocated over the life of the program.

Tax credits may be carried forward for up to five years for corporate income tax and up to one year for sales tax. The tax credits may be sold or assigned, in whole or in part. Credits cannot be exchanged for less than 85% of their value. The purchaser cannot sell, assign, or otherwise transfer the tax credit. A qualified production company that is not a corporation can sell or assign credits or distribute credits to its partners or members in proportion to the respective distributive share of their income or loss for the state fiscal year in which the credits were approved.

The entertainment industry tax credits authorized under this bill are repealed July 1, 2014.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill creates a tax credit for productions of filmed entertainment that can be applied toward corporate income and sales and use tax liability.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Entertainment Industry Financial Incentive Program

Section 288.1254, F.S., is the Entertainment Industry Financial Incentive Program. The amount of incentives available for the program is based upon an annual legislative appropriation. The program was enacted in 2003 but did not receive funding until FY 2004-05 when $2.45 million was appropriated. The program received another appropriation of $10 million for FY 2005-06.

The purpose of this program is to encourage the use of Florida as a site for film and video production, to advocate the hiring of Florida residents as staff, cast or crew and to support and encourage the use of other Florida services and equipment companies in the production of filmed entertainment. The program is also to encourage the relocation to and/or expansion of digital-media-effects companies and motion picture, television production and postproduction companies in Florida.

Production Incentive:

A qualified production[1] is eligible to receive up to 15% in a cash reimbursement of in-state qualifying expenditures up to a maximum of $2 million provided that the production has a minimum in total qualified expenditures of $850,000 for the entire run of the project. In determining the expenditures, the wages, salaries, or other compensation of the two highest paid employees is excluded. The final reimbursement is determined after receipts and other information has been submitted to the Office of Film and Entertainment (OFE) for review.

By statute, 60% of the incentive funding is dedicated to theatrical or direct-to-video motion pictures, made-for-TV movies, commercials, music videos, industrial and education films, promotional videos or films, documentary films, TV specials, and digital-media-effects productions by entertainment industry to be sold or displayed in an electronic medium. The remaining 40% is dedicated to TV pilots or TV series to be sold or displayed in an electronic medium.[2]

Funding for the two queues remains separate until February 1 of the fiscal year when the funding and queues are combined.

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[1] A "qualified production" is filmed entertainment that makes expenditures in this state for the total or partial production of filmed entertainment. Productions cannot contain obscene content as defined by the United States Supreme Court. A production is not qualified if it is determined that the first day of principal photography in this state occurred on or before the date of submitting an application to OFE or prior to certification by OTTED. Also, note that electronic gaming industry and sporting events are specifically excluded.

[2] Included in the 40% are drama, reality, comedy, soap opera, telenovela, game show, or miniseries productions.

Digital Media Effects Company:

The statute provides that a digital-media-effects company in the state may be eligible for a payment of not more than five percent of its annual gross revenues of qualified expenditures as defined in s. 288.1254(2)(c), F.S. OFE reviews applications for reimbursement eligibility.

Qualified Relocation Project:

A qualified relocation project is a corporation, limited liability company, partnership, corporate headquarters, or other private entity that is domiciled in another state or country and relocates its operations in this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital-media-effects or motion picture and television production or postproduction.

The project may receive a one-time incentive payment in an amount equal to five percent of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less.

The Entertainment Industry Financial Incentive Program

Production Impact:

With no multiplier effect included, the return on investment for the $2.45 million appropriated for the entertainment industry incentive in 2004-05 was 7.5:1 with estimated total in-Florida production expenditures of almost $18.5 million with more than $9.1 million being Florida resident wages. The return on the $10 million for FY 05-06 is estimated to be 7.4:1 with an estimated total in-Florida production expenditure of $73.9 million with Florida resident salaries accounting for more than $36.6 million. In the first year, four productions were certified for funding while 15 productions were certified as of December, 2005 for funding in the second year.

Digital Media Effects Company Impact:

According to the OFE, only two digital media applications have been approved in two years.

Qualified Relocation Project Impact:

According to the OFE, there have been no applications received for company relocations over the two years that funding has been available. As stated earlier, company relocations are often encouraged through other, more lucrative economic development incentives available through the Governor's Office of Tourism, Trade, and Economic Development (OTTED) with recommendation by Enterprise Florida and through local government economic development agencies.

Florida Film and Entertainment Advisory Council (FFEAC)

The FFEAC is a statutorily-created advisory body to OTTED and to OFE. The 17 member council is composed of members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives. One of the duties of FFEAC is to advise and consult on laws governing the entertainment industry.

Based upon a series of public meetings, the following changes were approved for recommendation at the December 9, 2005 meeting. These changes addressed concerns relating to commercial production, television pilots and episodes, minimum expenditure requirements, encouraging independent production, application process, and method of funding of the incentive. The following were recommended:

- Eliminate specific incentives in law relating to qualified relocation projects and digital-media-effects companies because of lack of use.
- Change the current law allowing for two queues to four queues to do the following:
    1. Recognize the differences between commercial and music video production and film, television movies, and specials by splitting into two queues, with 58% of funding for the film queue and 20% for the commercial and video production;
    2. Provide emphasis on TV pilots by changing the current TV pilots or TV series queue to include only TV pilots and shift the series (episodics) to the film queue, with 20% of funding to be used for TV pilots; and,
    3. Create a new queue for an independent film and video distribution bonus to encourage independent, indigenous productions, with 2% of funding set aside for this purpose.
- Reduce the minimum Florida qualified expenditure requirement from $850,000 to $625,000 for the film, TV Movie, TV series, and TV pilots to conform to what is the current Screen Actors Guild minimum threshold for low-budget films.
- Reduce minimum expenditure to $500,000 and reduce the $2 million reimbursement cap to $500,000 for commercials and music videos and allow production companies to add up qualified expenditures from multiple commercials within fiscal year to reach minimum expenditures. Also allow for cumulative spend over a fiscal year to meet minimum expenditure level.
- Modify the application and reimbursement process, provide for rules, and specify marketing requirements for Florida recognition in productions.
- Retain the current maximum reimbursement of 15% up to the maximum payout of $2 million.

The FFEAC was reviewing and comparing the current funding of the incentive through appropriation to the use of a transferable tax credit similar to what most of Florida's competitor states use as their incentive. The official recommendation was not provided at the meeting.

Subsequent to the meeting, the FFEAC endorsed the use of a transferable tax credit. The FFEAC also agreed to remove the proposed queue on distribution for independent films because of difficulty in implementing the proposal at this time.

Other States[3]

Some states without a strong infrastructure, such as Louisiana, are using incentives to lure business while infrastructure is being brought in from outside until a base can be built in the state. The director of the Louisiana Film Office has compared the state to Canada ten years ago before it had developed its infrastructure.

Louisiana and seven other states have enacted transferable tax credits that are assignable, can be sold, or can be carried forward for a number of years. Depending upon the state, these credits are offered to production companies on investments (LA, GA), payroll (LA, GA, IL, MA), and production costs (LA, AZ, GA, MA, MO, PA, RI). Nine states offer income tax refunds, rebates, or credits on payroll, production costs, or investments. New Mexico and New Jersey offer low interest loans or loan guarantees to encourage film production. Three states, Louisiana, Oklahoma, and South Carolina, offer incentives for investment in facilities, productions, and certain entertainment businesses.

Unlike Florida's incentive that does not require the hiring of a percentage of residents, the production incentives offered by many other states are tied to employment of residents, with some requiring the hiring of a percentage of local crew, or the use of soundstages or other facilities. Some states offer additional incentives related to employment and to the training or mentoring of crew by a production. Often these are used to help build the infrastructure base of a state.

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[3] Florida's Entertainment Industry Infrastructure: *Are We Growing the Indigenous Industry as well as Support Production?*, Tourism Committee, Florida House of Representatives, 2006, p 16.

Proposed Changes:

The bill moves the entertainment industry incentive program from s. 288.1254, F.S., to s. 220.192, F.S., changes the program from a reimbursement of expenditures to a credit against corporate income tax, and sales and use tax liability.

The digital media-effects company and qualified relocation project incentives that were in s. 288.1254, F.S., are deleted. The incentive in s. 220.192, F.S., pertains only to the production of filmed entertainment.

Definitions are amended to make clarifications and to reflect the change to a tax credit program. The definition of "filmed entertainment" is changed to add "television special" to the list and to change the exclusions from the definition to include only news shows and sporting events. Also, a definition of "high-impact television series" is added to distinguish it from other television series. The high-impact television series is created to run multiple seasons with at least seven episodes per season and qualified expenditures of at least $625,000 per episode. "Production costs" now include wages, salaries, or other compensation paid through payroll services companies. "Qualified expenditures" is modified to include changes made in the definition of "production costs" and to clarify that only production costs incurred in this state within the current fiscal year are qualified expenditures. The definition is also changed by removing "employees" which is not accurate. A definition of "qualified production company" is added.

The application procedure and application approval process for filmed entertainment have been changed to reflect change to a tax credit. In addition to technical changes and the shift of language to the section on rules, the following changes are made in the bill relating to application:

- the signed affirmation that information on an application form has been verified and is correct is shifted from OFE to the applicant;
- the time frame for OFE to review the application, determine if the applicant is a qualified production, make recommendation to OTTED regarding the maximum amount of the tax credit award, and notify an applicant that the information provided is not complete has been increased from five days to ten business days; and,
- Within ten days after receiving notice from OFE, OTTED shall certify the maximum tax credit award, if any. Certification will be transmitted to the applicant and to the executive director of the Department of Revenue (DOR). The applicant is responsible for forwarding a certified application to DOR.

Productions of filmed entertainment that are qualified by OFE and certified by OTTED are eligible for a tax credit of 15% of qualified expenditures in the state, excluding wages, salaries, and other compensation paid to the two highest-paid residents of this state working on the production.

The bill provides that a qualified production that starts in one state fiscal year and finishes in the next state fiscal year to have all qualified expenditures from both fiscal years certified for the latter state fiscal year. This provision does not apply to commercials and music videos.

There is a total credit cap of $25 million per fiscal year. If applications for credit exceed that amount for a fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available for allocation. The bill provides for limits on the aggregate amount of tax credits that can be allocated and provides that when the total amount of tax credits allocated reaches $200 million, no more credits can be allocated.

Tax credits awarded in a fiscal year will be made based on the production's principal photography start date for the queue in which it is placed, within the first two weeks after the queue's opening. Other qualified productions entering into a queue after the initial two weeks will be on a first come, first served basis.

There are three queues: the film, television, and episodic queue; the television pilot queue; and the commercials and music video queue.

The film, television, and episodic queue. Productions in this queue must have a minimum of $625,000 in total qualified expenditures for the entire run of the project except for high-impact television series which must have a minimum of $625,000 in qualified expenditures for each episode. A single production in this queue may receive a maximum credit of $2 million, with the exception of a high-impact television series which may receive a maximum credit of $3 million. This queue receives 60% of the available tax credit in any fiscal year. Television series, including, but not limited to, high-impact television series, are not allowed tax credits after five seasons. Qualified high-impact television series will be allowed first position in this queue for their first five production seasons in the state, if an application is received by OFE within the first two weeks after the queue opens. Unless otherwise provided in the section, high-impact television series must file an application for each state fiscal year in which it is eligible to receive the tax credit.

The television pilot queue. Productions in this queue must demonstrate $625,000 in expenditures for the pilot episode or presentation. A single production in this queue may receive a maximum credit of $2 million. This queue receives 20% of the available tax credit in any fiscal year.

The commercials and music video queue. This queue requires productions to demonstrate a minimum of $500,000 in combined total qualified expenditures in a state fiscal year, with a minimum of $75,000 in qualified expenditure for each production. A single production in this queue may receive no more than $500,000. This queue receives 20% of the available tax credit in any fiscal year.

On March 1 of each year, credits remaining in the first two queues will be merged and placed into a general queue for use for other purposes as determined by OFE. On April 1 of each fiscal year, credits remaining in the third queue will be merged into the general queue.

If a qualified production is not continued subject to a reasonable schedule or if OFE has been notified that a qualified production will no longer be produced, OFE shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have not received their full tax credit.

OFE is required to develop a process for receiving information on qualified expenditures from certified productions at the conclusion of the production. OFE is to verify data to substantiate the qualified expenditures. OFE reports the verified amount available for the tax credit to OTTED. OTTED then notifies DOR that the qualified production has met all requirements and recommends the final amount of the credit.

Unused tax credits applied against corporate income tax liability may be carried forward for up to five years and up to one year for sales and use tax liability.

Upon application and approval by DOR, a taxpayer may sell or assign, in whole or in part, tax credits granted under this section. Credits cannot be exchanged for consideration of less than 85% of the tax credit to be transferred. Purchasers of the credit may use it subject to the same limitations as the taxpayer to whom the credit was granted. The purchaser cannot sell, assign, or otherwise transfer the tax credit. Tax credits cannot be sold or assigned until all credits the taxpayer is eligible to use under ch. 220 (corporate income tax) and ch. 212 (sales and use tax), F.S., are used.

A qualified production company that is not a corporation, as defined in s. 220.03(1)(e), F.S., can make an application to DOR to transfer credits or to distribute credits to its partners or members in proportion to the respective distributive share of the partners' or members' income or loss for the year in which the credits were approved. Unused credits may be carried forward five years.

A company may use the tax credit against the tax liability imposed under ch. 220, F.S., in whole or in part, and against the liability imposed under ch. 212, F.S., as long as the credits are used only once.

The bill requires OFE to ensure that appropriate marketing materials, when appropriate, are included in filmed entertainment.

The bill requires the development of rules by OTTED and authorizes DOR to adopt rules.

The bill provides that an applicant who submits fraudulent information on an application is liable for reimbursement of reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent application.

The entertainment industry tax credits authorized under ch. 220 and 212, F.S., are repealed July 1, 2014.

The bill amends s. 212.08(5), F.S., to authorize the use of certain entertainment industry tax credits as a refund against the state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to DOR for the credit. Requirements, procedures, and limitations are provided. DOR may adopt rules to implement the new provision established under s. 212.08(5), F.S.

The bill amends s. 220.02, F.S., revising the order in which credits against the corporate income or franchise tax may be applied. The bill requires that the entertainment industry tax credits created in s. 220.192, F.S., only be used after all other applicable credits are exhausted.

Finally, the bill makes a cross-reference change in s. 477.0135, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.08(5), F.S; authorizing the use of certain entertainment industry tax credits as a refund against sales and use tax liability under specified circumstances; providing requirements, procedures, and limitations; authorizing the Department of Revenue to adopt rules.
Section 2. Amends s. 220.02, F.S.; revising the order in which credits against the corporate income or franchise tax may be applied.
Section 3. Transfers and renumbers s. 288.1254, F.S., as s. 220.192, F.S.; revising the entertainment industry financial incentive program, authorizing a tax credit; revising definitions; revising application procedures; requiring an annual report; providing criteria and limitations for awards of tax credits; providing stipulations; authorizing credits to be used against tax liability under chapter 212, F.S.; providing marketing requirements; providing for rules; providing liability for fraudulent applications; and providing for repeal of the section on July 1, 2014.
Section 4. Amends s. 477.0135(5), F.S., correcting a cross-reference.
Section 5. Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-07	FY 2007-08
General Revenue	($25)m	($25)m
Total	($25)m	($25)m

2. Expenditures:

The Department of Revenue has indicated a need for an additional $286,257 in FY 2006-2007 and $93,571 on a recurring basis thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The credit is intended to encourage more television series to work in Florida. Since a television series generally runs for a number of years, this bill will bring longer term employment and stability to the state's entertainment industry infrastructure. The bill also provides greater incentive for commercials and music videos which generally are filmed during a time when other segments of filmed entertainment are not as active in the state.

The purpose of the credit is to encourage the state as a site for filming and to develop and sustain the workforce and infrastructure for filmed entertainment. Additional funds from more production as well as a sustained level of production business will help the state to maintain and possibly increase its trained, experienced crew base and other infrastructure. The Florida Agency for Workforce Innovation stated that in 2004 the average salary for crew in Florida was $52,972, excluding health care and retirement benefits.[4]

An increase in filmed entertainment in the state will impact not only the persons directly employed by the production but will impact ancillary businesses such as building supply companies, nurseries, restaurants, and hotels.

D. FISCAL COMMENTS:

The aggregate amount of tax credits allowed under the bill is $25 million in any fiscal year from FY 2006-07 to FY 2013-2014. The total aggregate credit allowed over the eight years is $200 million. At this time, it is not known how much of the credit will be used in any year.

There could be some impact on OFE if there is an increase in applications for the incentive when it is changed from an appropriation to a tax credit. OFE has not requested any additional resources to implement the legislation.

The FY 2005-06 appropriation of $10 million for the entertainment industry incentive yielded an estimated $73.9 million in in-state production expenditures, hiring 3,775 Florida residents, and having 12,444 hotel room nights. The Florida wages paid were almost $37 million. The return on investment was 7.4:1[5].

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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[4] Florida Agency for Workforce Innovation, Labor Market Statistics, 2001 – 2004.

[5] "Florida's Entertainment Industry Infrastructure: Are We Growing the Indigenous Industry as well as Supporting Production? 2006" Florida House of Representatives Tourism Committee, Appendix F.

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other[6]:

   In *Cuno v. DaimlerChrysler*,[7] the Sixth Circuit Court of Appeals invalidated an Ohio state corporate franchise tax credit on grounds that it violated the dormant Commerce Clause of the United States Constitution. The Ohio tax credit applied to the purchase of manufacturing machinery and equipment used in the state and was intended to provide an incentive for the location or expansion of business within the state.

   At present the case has no precedent value to courts in the Eleventh Circuit, which includes Florida, because it has been decided in the Sixth Circuit. On September 27, 2005, however, the Supreme Court granted petitions for certiorari by the State of Ohio and DaimlerChrysler, challenging the *Cuno* decision. Arguments were heard by the Court on March 1, 2006. The Court should issue a ruling in the summer of 2006. If the Court affirms the *Cuno* decision, it will become the law of the land, and similar tax incentives in Florida will be at risk of being struck down.

   As a general rule, a tax credit or exemption will violate the dormant Commerce Clause if it discriminates on its face or if, on the basis of "a sensitive, case-by-case analysis of purposes and effects," the provision "will in its practical operation work discrimination against interstate commerce" by "providing a direct commercial advantage to local business."[8] The high court has defined "discrimination" in this context to mean the "differential treatment of in-state and out-state economic interests that benefits the former and burdens the latter."[9]

   Under *Cuno*, the constitutional challenge that a tax incentive faces will turn on whether the taxpayer is subject to the state's taxing power and whether the tax incentive favors in-state as opposed to out-of-state activities. The *Cuno* test may be explained as follows:

   1. Is the business subject to Florida's taxing power?
   2. Will the business reduce its Florida tax liability by availing itself of the tax incentive for location or expansion of business in Florida and not by locating or expanding business activity out-of-state? or Will its location or expansion of business activity out-of-state result in a comparative tax increase, as to a similarly-situated business expanding in Florida, because it will not be able to avail itself of the in-state tax incentive?

   If the answer is questions 1 and 2 are "yes", the tax incentive likely fails the *Cuno* test.[10]

B. RULE-MAKING AUTHORITY:

   The bill requires rulemaking by OTTED and authorizes DOR to adopt rules to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None

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[6] Information taken from *An Analysis of Cuno v.DaimlerChrysler And Its Possible Effects on Florida Business Location Tax Incentives*, November 3, 2005, prepared by staff of the Economic Development, Trade and Banking Committee, Florida House of Representatives.

[7] Cuno v. DaimlerChrysler, 386 F.3d 738(6th Cir. 2004)

[8] Id. at 743 (quoting West Lynn Creamery v. Healy, 512 U.S. 186, 201 (1994)).

[9] Id. (quoting Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 99 (1994)).

[10] *An Analysis of Cuno v. DaimlerChrysler And Its Possible Effects on Florida Business Location Tax Incentives*, November 3, 2005, prepared by staff of the Economic Development, Trade and Banking Committee, Florida House of Representatives, p. 7.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Tourism Committee adopted a strike-all amendment to HB 1321. Other than technical and clarifying changes, the differences between the original bill and the committee substitute are as follows:

- Provides rulemaking authorization for DOR to implement provisions of the bill related to corporate tax credits and the use of tax credits as a refund of sales and use tax liability.
- Amends s. 212.08(5), F.S., authorizing the use of certain entertainment industry tax credits as a refund against sales and use tax liability under circumstances; providing the procedures, requirements, and limitations on the use of credits.
- Amends s. 220.02, F.S., revising the order of priority list of applicable credits against certain taxes.
- Provides that the tax credit award is 15% of qualified expenditures.
- Requires that no tax credits awarded under s. 220.192, F.S., could be sold or assigned until all credits the taxpayer is eligible to use is exhausted.
- Authorizes companies to use tax credit against the corporate tax liability and against liability for sales and use taxes. Broadens the base of companies that may purchase credits or to which credits can be assigned.
- Requires that the sale or assignment of a credit shall not be for less than 85% of the transferred amount of the credit.
- Provides that the non-corporate distribution of credits includes sale or assignment of credits.
- Requires that once the maximum amount of total credits has been allocated, no more credits can be allocated.
- Provides for maximum of credit allocations allowed in specified fiscal years.
- Provides for a process for verification of tax credit award by OFE.
- Provides that a qualified production spanning two years shall have all qualified expenditures from both state fiscal years certified for the latter state fiscal year. Excludes commercials and music videos.
- Requires a qualified high-impact television series file an application for each state fiscal year in which it is eligible to receive the credit, unless otherwise provided in s. 220.192, F.S.
- Provides that no television series shall receive a tax credit after its fifth production season in the state.

CHAMBER ACTION

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1 The Tourism Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to entertainment industry economic
7 development; amending s. 212.08, F.S.; authorizing the use
8 of certain entertainment industry tax credits as a refund
9 against sales and use tax liability under certain
10 circumstances; providing requirements, procedures, and
11 limitations; authorizing the Department of Revenue to
12 adopt rules; amending s. 220.02, F.S.; revising the order
13 of priority list of applicable credits against certain
14 taxes; transferring, renumbering, and amending s.
15 288.1254, F.S.; revising the entertainment industry
16 financial incentive program to provide corporate income
17 tax credits to qualified entertainment entities rather
18 than reimbursements from appropriations; revising
19 provisions relating to definitions, creation and scope,
20 application procedures, approval process, eligibility,
21 required documents, qualified productions, and annual
22 reports; providing criteria and limitations for awards of
23 tax credits; providing marketing requirements; requiring

24 the Office of Tourism, Trade, and Economic Development and
25 Department of Revenue to adopt rules; providing liability
26 for reimbursement of certain costs and fees associated
27 with fraudulent applications; providing for future repeal;
28 amending s. 477.0135, F.S.; correcting a cross-reference;
29 providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Paragraph (r) is added to subsection (5) of
34 section 212.08, Florida Statutes, to read:
35 212.08 Sales, rental, use, consumption, distribution, and
36 storage tax; specified exemptions.--The sale at retail, the
37 rental, the use, the consumption, the distribution, and the
38 storage to be used or consumed in this state of the following
39 are hereby specifically exempt from the tax imposed by this
40 chapter.
41 (5) EXEMPTIONS; ACCOUNT OF USE.--
42 (r) Entertainment industry tax credits; authorization;
43 eligibility for credits.--Beginning July 1, 2006, any company
44 engaged in producing filmed entertainment in this state that has
45 registered with the department under this chapter to collect or
46 remit sales or use tax and has satisfied the requirements
47 enumerated in and has received credits under s. 220.192 may use
48 the award of credits against the tax imposed by this chapter as
49 provided by this section.
50 1. The credit shall be granted as a refund against state
51 sales and use taxes reported on returns and remitted in the 12

52 months preceding the date of application to the department for
53 the credit.
54 2. A company may not be awarded more than $2 million in
55 tax credits under this paragraph and s. 220.192, unless the
56 production is a high-impact television series as defined in s.
57 220.192(2)(b), in which case the production shall be eligible
58 for a maximum tax credit award of $3 million.
59 3. The total amount of tax credits which may be granted
60 for all programs approved under this paragraph and s. 220.192 is
61 $25 million in any state fiscal year.
62 4. A company may use the tax credit against the tax
63 liability imposed under this chapter, in whole or in part, and
64 against the liability imposed under chapter 220, so long as the
65 credit is actually applied only once.
66 5. The department may adopt rules pursuant to ss.
67 120.536(1) and 120.54 to administer this paragraph, as provided
68 by s. 220.192(6)(b).
69 Section 2. Subsection (8) of section 220.02, Florida
70 Statutes, is amended to read:
71 220.02 Legislative intent.--
72 (8) It is the intent of the Legislature that credits
73 against either the corporate income tax or the franchise tax be
74 applied in the following order: those enumerated in s. 631.828,
75 those enumerated in s. 220.191, those enumerated in s. 220.181,
76 those enumerated in s. 220.183, those enumerated in s. 220.182,
77 those enumerated in s. 220.1895, those enumerated in s. 221.02,
78 those enumerated in s. 220.184, those enumerated in s. 220.186,
79 those enumerated in s. 220.1845, those enumerated in s. 220.19,

80 those enumerated in s. 220.185, ~~and~~ those enumerated in s.
81 220.187, and those enumerated in s. 220.192.
82 Section 3. Section 288.1254, Florida Statutes, is
83 transferred and renumbered as section 220.192, Florida Statutes,
84 and amended to read:
85 220.192 ~~288.1254~~ Entertainment industry financial
86 incentive program; creation; purpose; definitions; application
87 procedure; approval process; ~~reimbursement~~ eligibility;
88 submission of required documentation; recommendations for credit
89 award ~~payment~~; policies and procedures; fraudulent claims.--
90 (1) CREATION AND PURPOSE OF PROGRAM.--~~Subject to specific~~
91 ~~appropriation,~~ There is created within the Office of Film and
92 Entertainment an entertainment industry financial incentive
93 program. The purpose of this program is to encourage the use of
94 this state as a site for filming and developing and sustaining
95 the workforce and infrastructure ~~providing production services~~
96 for filmed entertainment.
97 (2) DEFINITIONS.--As used in this section, the term:
98 (a) "Filmed entertainment" means a theatrical or direct-
99 to-video motion picture, a made-for-television motion picture
100 teleproduction, a commercial, a music video, an industrial or
101 educational film, a promotional video or film, a documentary
102 film, a television pilot, a presentation for a television pilot,
103 a television special, a television series, including, but not
104 limited to, a drama, a reality, a comedy, a soap opera, a
105 telenovela, a game show, and a miniseries production, or a
106 digital-media-effects production by the entertainment industry
107 to be sold or displayed in an electronic medium, excluding news

108 shows and sporting events. As used in this paragraph, the term
109 "motion picture" means a motion picture made on or by film,
110 tape, or otherwise and produced by means of a motion picture
111 camera, electronic camera or device, tape device, any
112 combination of the foregoing, or any other means, method, or
113 device now used or which may hereafter be adopted. As used in
114 this paragraph, the term "digital-media-effects" means visual
115 elements created through the modification of already existing or
116 newly created visual elements for film, video, or animated media
117 through the use of digital 2D/3D animation or painting, motion
118 capture, or compositing technologies. ~~For purposes of this~~
119 ~~section, the term "filmed entertainment" does not include the~~
120 ~~electronic gaming industry or sporting events.~~
121 (b) "High-impact television series" means a production
122 created to run multiple production seasons with an estimated
123 order of at least seven episodes per season and qualified
124 expenditures of at least $625,000 per episode.
125 (c) ~~(b)~~ "Production costs" means the costs of ~~real,~~
126 tangible~~,~~ and intangible property used and services performed
127 primarily or customarily in the production, including
128 preproduction and postproduction, of qualified filmed
129 entertainment. Production costs generally include, but are not
130 limited to:
131 1. Wages, salaries, or other compensation, including
132 amounts paid through payroll service companies, for technical
133 and production crews, directors, producers, and performers ~~who~~
134 ~~are residents of this state~~.

135 2. Expenditures for sound stages, backlots, production
136 editing, digital effects, sound recordings, sets, and set
137 construction.
138 3. Expenditures for rental equipment, including, but not
139 limited to, cameras and grip or electrical equipment.
140 4. Expenditures for meals, travel, and accommodations~~, and~~
141 ~~goods~~ used in producing filmed entertainment ~~that is located and~~
142 ~~doing business in this state~~.
143 5. Expenditures for goods and services used in producing
144 filmed entertainment.
145 (d) ~~(c)~~ "Qualified expenditures" means production costs
146 incurred in this state within the current state fiscal year for
147 goods purchased or leased from or services provided by
148 ~~purchased, leased, or employed from a resident of this state or~~
149 a vendor or supplier who is located and doing business in this
150 state~~,~~ or payments to residents of this state in the form of
151 salary, wages, or other compensation ~~but~~ excluding wages,
152 salaries, and ~~or~~ other compensation paid to the two highest-paid
153 residents of this state ~~employees~~.
154 (e) ~~(d)~~ "Qualified production" means filmed entertainment
155 that meets or exceeds minimum qualified ~~makes~~ expenditures
156 required in this state for the total or partial production of
157 filmed entertainment. Productions that are deemed by the Office
158 of Film and Entertainment to contain obscene content, as defined
159 by the United States Supreme Court, are not qualified
160 productions. ~~Also, a production is not a qualified production if~~
161 ~~it is determined that the first day of principal photography in~~
162 ~~this state occurred on or before the date of submitting its~~

163 ~~application to the Office of Film and Entertainment or prior to~~
164 ~~certification by the Office of Tourism, Trade, and Economic~~
165 ~~Development.~~
166 (f) ~~(e)~~ "Qualified production company ~~relocation project~~"
167 means a corporation, limited liability company, partnership,
168 ~~corporate headquarters,~~ or other legal ~~private~~ entity engaged in
169 the production of filmed entertainment ~~that is domiciled in~~
170 ~~another state or country and relocates its operations to this~~
171 ~~state, is organized under the laws of this or any other state or~~
172 ~~country, and includes as one of its primary purposes digital~~
173 ~~media effects or motion picture and television production, or~~
174 ~~postproduction~~.
175 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.--
176 (a) Any company engaged in this state in producing filmed
177 entertainment may submit an application to the Office of Film
178 and Entertainment for the purpose of determining qualification
179 for an award of credits against the tax imposed by this chapter
180 as ~~receipt of reimbursement~~ provided in this section. The office
181 must be provided information required to determine if the
182 production is a qualified production and to determine the
183 qualified expenditures, production costs, and other information
184 necessary for the office to determine ~~both~~ eligibility for the
185 tax credit ~~and level of reimbursement~~.
186 (b) ~~A digital media effects company in the state which~~
187 ~~furnishes digital material to filmed entertainment may submit an~~
188 ~~application to the Office of Film and Entertainment for the~~
189 ~~purpose of determining qualification for receipt of~~
190 ~~reimbursement authorized by this section. The office must be~~

191 ~~provided information required to determine if the company is~~
192 ~~qualified and to determine the amount of reimbursement.~~
193 ~~(c) Any corporation, limited liability company,~~
194 ~~partnership, corporate headquarters, or other private entity~~
195 ~~domiciled in another state which includes as one of its primary~~
196 ~~purposes digital media effects or motion picture and television~~
197 ~~production and which is considering relocation to this state may~~
198 ~~submit an application to the Office of Film and Entertainment~~
199 ~~for the purpose of determining qualification for reimbursement~~
200 ~~under this section.~~
201 ~~(d)1. The Office of Film and Entertainment shall establish~~
202 ~~a process by which an application is accepted and reviewed and~~
203 ~~reimbursement eligibility and reimbursement amount are~~
204 ~~determined. The Office of Film and Entertainment may request~~
205 ~~assistance from a duly appointed local film commission in~~
206 ~~determining qualifications for reimbursement and compliance.~~
207 1.~~2.~~ The Office of Film and Entertainment shall develop a
208 standardized application form for use in qualifying an applicant
209 as ~~approving~~ a qualified production~~, a qualified relocation~~
210 ~~project, or a company qualifying under paragraph (a), paragraph~~
211 ~~(b), or paragraph (c)~~. The application form for qualifying an
212 applicant as a qualified production must include, but need not
213 be limited to, production-related information on employment,
214 proposed total production budgets, planned expenditures in this
215 state ~~which are intended for use exclusively as an integral part~~
216 ~~of preproduction, production, or postproduction activities~~
217 ~~engaged primarily in this state~~, and a signed affirmation from
218 the applicant ~~Office of Film and Entertainment~~ that the

219 information on the application form has been verified and is
220 correct. The application form shall be distributed to applicants
221 by the Office of Film and Entertainment or local film
222 commissions.
223 2.~~3.~~ Within 10 business days after receipt of an
224 application, the Office of Film and Entertainment shall review
225 the application to determine if the application contains all the
226 information required by this subsection and meets the criteria
227 set out in this section. The office shall qualify all
228 applications that contain the information and meet the criteria
229 set out in this section as eligible to receive a tax credit or
230 shall notify the applicant that the requirements for
231 qualification have not been met. If the application is
232 qualified, the office shall recommend to the Office of Tourism,
233 Trade, and Economic Development approval of the maximum amount
234 of the tax credit to be awarded. ~~The Office of Film and~~
235 ~~Entertainment must complete its review of each application~~
236 ~~within 5 days after receipt of the completed application,~~
237 ~~including all required information, and it must notify the~~
238 ~~applicant of its determination within 10 business days after~~
239 ~~receipt of the completed application and required information.~~
240 3.~~4.~~ Within 10 business days after receiving notice from
241 the Office of Film and Entertainment of qualification of an
242 applicant as a qualified production and a recommended approval
243 of the maximum amount of tax credit to be awarded, the Office of
244 Tourism, Trade, and Economic Development shall certify the
245 maximum tax credit award, if any. The certification shall be
246 transmitted to the applicant and to the executive director of

247 the Department of Revenue. The applicant shall be responsible
248 for forwarding a certified application to the Department of
249 Revenue. ~~Upon determination that all criteria are met for~~
250 ~~qualification for reimbursement, The Office of Film and~~
251 ~~Entertainment shall notify the applicant of such approval. the~~
252 ~~office shall also notify the Office of Tourism, Trade, and~~
253 ~~Economic Development of the applicant approval and amount of~~
254 ~~reimbursement required. The Office of Tourism, Trade, and~~
255 ~~Economic Development shall make final determination for actual~~
256 ~~reimbursement.~~
257 4.~~5.~~ The Office of Film and Entertainment shall deny an
258 application if it determines that:
259 a. The application is not complete or does not meet the
260 requirements of this section; or
261 b. The tax credit amount ~~reimbursement~~ sought does not
262 meet the requirements of this section ~~for such reimbursement~~.
263 (4) CREDIT ~~REIMBURSEMENT~~ ELIGIBILITY; SUBMISSION OF
264 REQUIRED DOCUMENTATION; APPLICATION ~~RECOMMENDATIONS~~ FOR TRANSFER
265 ~~PAYMENT~~.--
266 (a) Tax credit award.--A production of filmed
267 entertainment that is qualified by the Office of Film and
268 Entertainment and is certified by the Office of Tourism, Trade,
269 and Economic Development is eligible for a tax credit for
270 ~~reimbursement of up to~~ 15 percent of its qualified ~~qualifying~~
271 expenditures ~~in this state on a filmed entertainment program~~
272 ~~that demonstrates a minimum of $850,000 in total qualified~~
273 ~~expenditures for the entire run of the project, versus the~~
274 ~~budget on a single episode, within the fiscal year from July 1~~

275 ~~to June 30. However, the maximum reimbursement that may be made~~
276 ~~with respect to any filmed entertainment program is $2 million.~~
277 ~~All reimbursements under this section are subject to~~
278 ~~appropriation.~~
279 (b) Production spanning 2 state fiscal years.--A qualified
280 production that starts in one state fiscal year and finishes in
281 the next state fiscal year shall have all qualified expenditures
282 from both state fiscal years certified for the latter state
283 fiscal year. This requirement does not apply to the commercials
284 and music video queue described in subparagraph (d)3.
285 (c) Aggregate tax credit available.--The aggregate amount
286 of tax credits allowed under this section in any state fiscal
287 year is $25 million. If the total amount of allocated tax
288 credits applied for in any state fiscal year exceeds the
289 aggregate amount of tax credits authorized annually under this
290 section, such excess shall be treated as having been applied for
291 on the first day of the next state fiscal year in which tax
292 credits remain available for allocation. However, no more than
293 an aggregate amount of $100 million in tax credits shall be
294 allocated in state fiscal year 2006-2007, aggregate allocations
295 in state fiscal year 2007-2008 shall not exceed $133 million,
296 aggregate allocations in state fiscal year 2008-2009 shall not
297 exceed $166 million, and aggregate allocations in state fiscal
298 years 2009-2010 and thereafter shall not exceed $200 million. At
299 such time as $200 million of tax credits have been allocated, no
300 additional tax credits shall be allocated.
301 (d) Filmed entertainment queues.--Tax credits awarded
302 ~~Payments~~ under this section in a state fiscal year shall be made

303 to qualified productions according to a production's principal
304 photography start date, for those qualified productions having
305 entered into the first queue as cited in subparagraph 1. or the
306 second queue cited in subparagraph 2. within the first 2 weeks
307 after the queue's opening. All other qualified productions
308 entering into either queue after the initial 2-week openings
309 shall be on a first-come, first-served basis ~~until the~~
310 ~~appropriation for that fiscal year is exhausted~~. ~~On February 1~~
311 ~~of each year, the remaining funds within both queues shall be~~
312 ~~combined into a single queue and distributed based on a~~
313 ~~project's principal photography start date. The eligibility of~~
314 ~~qualified productions may not carry over from year to year, but~~
315 ~~such productions may reapply for eligibility under the~~
316 ~~guidelines established for doing so. The Office of Film and~~
317 ~~Entertainment shall develop a procedure to ensure that qualified~~
318 ~~productions continue on a reasonable schedule until completion.~~
319 ~~If a qualified production is not continued according to a~~
320 ~~reasonable schedule, the office shall withdraw its eligibility~~
321 ~~and reallocate the funds to the next qualified productions~~
322 ~~already in the queue that have yet to receive their full maximum~~
323 ~~or 15 percent financial reimbursement, if they have not started~~
324 ~~principal photography by the time the funds become available.~~
325 1. Film, television, and episodic queue.--Theatrical or
326 direct-to-video motion pictures, made-for-television movies,
327 ~~commercials, music videos,~~ industrial and educational films,
328 promotional videos or films, documentary films, television
329 specials, television series, including, but not limited to,
330 miniseries and telenovelas, and digital-media-effects

331 productions by the entertainment industry to be sold or
332 displayed in an electronic medium that demonstrate a minimum of
333 $625,000 in total qualified expenditures for the entire run of
334 the project, which, for a television series, means a season even
335 if the season is not completed in the same state fiscal year in
336 which principal photography began, shall have their own separate
337 queue established, and such queue shall have dedicated to it 60
338 percent of all available tax credits in any state fiscal year
339 for which this section applies ~~of the state incentive money~~. The
340 maximum tax credit award that may be made from this queue for
341 any single production is $2 million, unless the production is a
342 high-impact television series, in which case the production
343 shall be eligible for a maximum tax credit award of $3 million,
344 provided such production meets the other criteria of this
345 section. On March 1 of each year, the remaining tax credits
346 within this queue shall be merged into a general queue and may
347 be used for other purposes of this section as determined by the
348 Office of Film and Entertainment. A television series,
349 including, but not limited to, a qualified high-impact
350 television series, is not eligible for a tax credit award under
351 this section after its fifth production season. A qualified
352 high-impact television series shall be allowed first position in
353 this queue for its first five production seasons in this state
354 if the application is received by the Office of Film and
355 Entertainment within the first 2 weeks after the queue's
356 opening. A qualified high-impact television series must file an
357 application for each state fiscal year in which it is eligible

358 to receive the credit, unless otherwise provided in this
359 section.
360 2. Television pilot queue.--Television pilots and~~,~~
361 presentations for television pilots for television series
362 intended to be shot in this state and~~, or television series,~~
363 ~~including, but not limited to, drama, reality, comedy, soap~~
364 ~~opera, telenovela, game show, or miniseries productions, by the~~
365 ~~entertainment industry to be~~ sold or displayed in an electronic
366 medium that demonstrate a minimum of $625,000 in total qualified
367 expenditures for the pilot episode or presentation shall have
368 their own separate queue established, and such queue shall have
369 dedicated to it 20 ~~40~~ percent of all available tax credits in
370 any given state fiscal year for which this section applies ~~of~~
371 ~~the state incentive money~~. The maximum tax credit award that may
372 be made from this queue for any single project is $2 million. On
373 March 1 of each year, the remaining tax credits within this
374 queue shall be merged into a general queue and may be used for
375 other purposes of this section as determined by the Office of
376 Film and Entertainment.
377 3. Commercials and music video queue.--Commercials and
378 music videos by the entertainment industry to be sold or
379 displayed in an electronic medium that demonstrate a minimum of
380 $500,000 in combined total qualified expenditures from a
381 production company during the state fiscal year with a minimum
382 of $75,000 in qualified expenditures for each production shall
383 have their own separate queue established. Such queue shall have
384 dedicated to it 20 percent of available tax credits in any given
385 state fiscal year for which this section applies. The maximum

386 tax credit award that may be made from this queue for any single
387 production company is $500,000 for a state fiscal year. On April
388 1 of each year, the remaining tax credits within this queue
389 shall be merged into a general queue and may be used for other
390 purposes of this section as determined by the Office of Film and
391 Entertainment.
392 (e) Loss of eligibility; reallocation of tax credits.--If
393 a qualified production is not continued according to a
394 reasonable schedule or the Office of Film and Entertainment is
395 notified that a qualified production will no longer be produced,
396 the office shall withdraw the production's eligibility for tax
397 credits and reallocate the tax credits to the next qualified
398 productions already in the queue that have yet to receive a full
399 tax credit if such next qualified productions have not started
400 principal photography by the time the tax credits become
401 available.
402 (f) Verification of tax credit award.--The Office of Film
403 and Entertainment shall develop a process by which a qualified
404 production that has been certified by the Office of Tourism,
405 Trade, and Economic Development shall submit to the Office of
406 Film and Entertainment, in a timely manner after production ends
407 and after making all of its qualified expenditures, verifying
408 data to substantiate each qualified expenditure. The Office of
409 Film and Entertainment shall report to the Office of Tourism,
410 Trade, and Economic Development the final verified amount of
411 actual qualified expenditures made by the qualified production.
412 The Office of Tourism, Trade, and Economic Development shall
413 then notify the executive director of the Department of Revenue

414 that the qualified production has met all requirements of the
415 incentive program and shall recommend the final amount of the
416 tax credit.
417 (g) ~~(b)~~ Use of tax credit; carry forward.--The tax credit
418 available under this section shall only be surrendered in
419 satisfaction of the tax owed by a qualified production company
420 under this chapter and only up to the face amount of the credit.
421 If the qualified production company cannot use the entire tax
422 credit in the state fiscal year in which the credit is approved,
423 any excess may be carried over to a succeeding state fiscal
424 year. A tax credit granted under this section and applied
425 against taxes imposed under this chapter may be carried forward
426 only for a maximum of 5 state fiscal years following the state
427 fiscal year in which the credit was approved. ~~A digital media-~~
428 ~~effects company in the state which furnishes digital material to~~
429 ~~filmed entertainment may be eligible for a payment in an amount~~
430 ~~not to exceed 5 percent of its annual gross revenues on~~
431 ~~qualified expenditures as defined in paragraph (2)(c) before~~
432 ~~taxes or $100,000, whichever is less. A company applying for~~
433 ~~payment must submit documentation annually as required by the~~
434 ~~Office of Film and Entertainment for determination of~~
435 ~~eligibility of claimed billing and determination of the amount~~
436 ~~of payment for which the company is eligible.~~
437 (h) ~~(c)~~ Transfer of tax credits.--Upon application and
438 approval by the Department of Revenue, a taxpayer may sell or
439 assign, in whole or in part, a tax credit granted under this
440 section. The sale or assignment of any amount of the tax credit
441 shall not be exchanged for consideration received by the

442 taxpayer of less than 85 percent of the transferred amount of
443 tax credit. The purchaser or assignee shall surrender the tax
444 credit in the state fiscal year acquired from the qualified
445 production company and otherwise may carry the tax credit over
446 subject to the same limitations on tax credit usage as the
447 qualified production company awarded the tax credit. The
448 purchaser may not sell, assign, or otherwise transfer the tax
449 credit. Tax credits granted by this section may not be sold or
450 assigned, in whole or in part, until all credits the taxpayer is
451 eligible to use under this chapter and chapter 212 are
452 exhausted. The Department of Revenue may adopt rules pursuant to
453 ss. 120.536(1) and 120.54 to administer this paragraph, as
454 provided in paragraph (6)(b). ~~A qualified relocation project~~
455 ~~that is certified by the Office of Film and Entertainment is~~
456 ~~eligible for a one-time incentive payment in an amount equal to~~
457 ~~5 percent of its annual gross revenues before taxes for the~~
458 ~~first 12 months of conducting business in its Florida domicile~~
459 ~~or $200,000, whichever is less. A company applying for payment~~
460 ~~must submit documentation as required by the Office of Film and~~
461 ~~Entertainment for determination of eligibility of claimed~~
462 ~~billing and determination of the amount of payment for which the~~
463 ~~company is eligible.~~
464 (i) ~~(d)~~ Noncorporate distributions of tax credits.--A
465 qualified production company that is not a corporation, as
466 defined in s. 220.03(1)(e), shall elect to make an application~~,~~
467 ~~a digital media effects company, or a qualified relocation~~
468 ~~project applying for a payment under this section must submit~~
469 ~~documentation for claimed qualified expenditures~~ to the

470 Department of Revenue as provided in paragraph (h) or distribute
471 tax credits awarded under this section to its partners or
472 members in proportion to the respective distributive share of
473 such partners' or members' income or loss in the state fiscal
474 year in which such tax credits were approved. A tax credit
475 granted under this section and applied against taxes imposed
476 under this chapter shall be carried forward only for a maximum
477 of 5 state fiscal years following the state fiscal year in which
478 the credit was approved ~~Office of Film and Entertainment~~. The
479 Department of Revenue may adopt rules pursuant to ss. 120.536(1)
480 and 120.54 to administer this paragraph, as provided in
481 paragraph (6)(b).
482 (j) ~~(e)~~ Use of tax credits.--A company may use the tax
483 credit against the tax liability imposed under this chapter, in
484 whole or in part, and against the tax liability imposed under
485 chapter 212. ~~The Office of Film and Entertainment shall notify~~
486 ~~the Office of Tourism, Trade, and Economic Development whether~~
487 ~~an applicant meets the criteria for reimbursement and shall~~
488 ~~recommend the reimbursement amount. The Office of Tourism,~~
489 ~~Trade, and Economic Development shall make the final~~
490 ~~determination for actual reimbursement.~~
491 (5) MARKETING REQUIREMENTS.--The Office of Film and
492 Entertainment shall ensure appropriate marketing materials,
493 including promotions of this state as a tourist or filming
494 destination, are required when appropriate to be included on
495 any filmed entertainment as a condition of receiving a tax
496 credit under this section. The Office of Film and

497 Entertainment shall consult with appropriate entities for the
498 development and implementation of marketing materials.
499 (6) ~~(5)~~ RULES ~~POLICIES AND PROCEDURES~~.--
500 (a) The Office of Tourism, Trade, and Economic Development
501 shall adopt rules pursuant to ss. 120.536(1) and 120.54 ~~policies~~
502 ~~and procedures~~ to implement this section, including, but not
503 limited to, rules specifying requirements for the application
504 and approval process, records required for ~~submission for~~
505 substantiation of credit awards ~~for reimbursement~~, ~~and~~
506 determination of and qualification for credit awards, and
507 marketing requirements for credit recipients ~~reimbursement~~.
508 (b) The Department of Revenue may adopt rules pursuant to
509 ss. 120.536(1) and 120.54 to administer the provisions of this
510 section, including rules governing the manner and form of
511 documentation required to claim tax credits granted or
512 transferred under this section, and may establish guidelines as
513 to the requisites for an affirmative showing of qualification
514 for tax credits granted or transferred under this section.
515 (7) ~~(6)~~ FRAUDULENT CLAIMS.--
516 (a) Any applicant who submits an application under this
517 section that includes fraudulent information shall be liable for
518 reimbursement of the reasonable costs and fees associated with
519 the review, processing, investigation, and prosecution of the
520 application.
521 (b) An eligible entity or company that obtains a credit
522 ~~payment~~ under this section through a claim that it knows is
523 fraudulent is liable for reimbursement of the credit ~~amount paid~~
524 plus a penalty in an amount double the credit ~~payment~~ and

525 reimbursement of reasonable costs, which penalty is in addition
526 to any criminal penalty to which the entity or company is liable
527 for the same acts, plus interest. The entity or company is also
528 liable for costs and fees incurred by the state in investigating
529 and prosecuting the fraudulent claim.
530 (8) ~~(7)~~ ANNUAL REPORT.--The Office of Film and
531 Entertainment shall provide an annual report for the previous
532 state fiscal year, due October 1, to the Governor, the President
533 of the Senate, and the Speaker of the House of Representatives
534 outlining the return on investment to the state on tax credits
535 awarded ~~funds expended~~ pursuant to this section.
536 (9) REPEAL.--This section is repealed July 1, 2014.
537 Section 4. Subsection (5) of section 477.0135, Florida
538 Statutes, is amended to read:
539 477.0135 Exemptions.--
540 (5) A license is not required of any individual providing
541 makeup, special effects, or cosmetology services to an actor,
542 stunt person, musician, extra, or other talent during a
543 production recognized by the Office of Film and Entertainment as
544 a qualified production as defined in s. 220.192 ~~288.1254(2)~~.
545 Such services are not required to be performed in a licensed
546 salon. Individuals exempt under this subsection may not provide
547 such services to the general public.
548 Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1413 CS Argyle Fire District, Walton County
SPONSOR(S): Brown
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	Smith	Hamby
2) Finance & Tax Committee		Monroe KDM	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates as an independent district the Argyle Fire District (District) in Walton County to provide a single comprehensive special act charter for the District. The bill specifies that the purpose of the District includes providing fire protection and firefighting services, rescue services, and emergency medical services. The District is granted all the powers under chapters 189, and 191, F.S., and is required to comply with the provisions of those chapters. This bill provides for the District boundaries.

The bill authorizes the District to levy annual assessments against the taxable real property within the district. The bill authorizes the District to levy impact fees and preserves the District's authority to impose a special assessment of $25.00 per residential dwelling or mobile home.

The bill also includes legislative intent; provides for duties of the property appraiser; provides for special assessments; provides for those assessments to become a lien; provides for deposit of special assessments; provides for the District to disburse funds; authorizes the board to borrow money; provides for the use of district funds; authorizes the board to adopt rules and regulations; authorizes the board to enact fire prevention ordinances, appoint a District fire chief, acquire land, enter into contracts, establish salaries, and establish and operate a fire rescue service; allows the District to expand its boundaries to include lands within municipal boundaries subject to specific requirements; provides for dissolution of the District; and provides for district expansion.

According to the Economic Impact Statement, the bill will result in estimated revenues of $38,000 for fiscal year 2006-07 and $39,000 for fiscal year 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/ensure lower taxes – This bill creates an independent special fire control district with authority to impose impact fees and preserves the District's authority to impose special assessments.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

The bill authorizes the District to levy annual assessments against the taxable real property within the district. The bill authorizes the District to levy impact fees and preserves the District's authority to impose a special assessment of $25.00 per residential dwelling or mobile home.

The bill also includes legislative intent; provides for duties of the property appraiser; provides for special assessments; provides for those assessments to become a lien; provides for deposit of special assessments; provides for the District to disburse funds; authorizes the board to borrow money; provides for the use of district funds; authorizes the board to adopt rules and regulations; authorizes the board to enact fire prevention ordinances, appoint a District fire chief, acquire land, enter into contracts, establish salaries, and establish and operate a fire rescue service; allows the District to expand its boundaries to include lands within municipal boundaries subject to specific requirements; provides for dissolution of the District; and provides for district expansion.

Argyle Fire District

The Argyle Fire District was created in 1986, by county ordinance number 86-17, and amended in 1989 to add additional land. The purpose of the District is to provide fire protection and other services in emergency and crisis situations for the benefit of the residents and properties within the District. The District is governed by five commissioners who reside within the fire district. The board of commissioners is designated as the governing body of the District. The District currently levies a special assessment.

Background

Independent special districts, including independent special fire control districts, may only be created by the Legislature. The creation of independent fire control special districts is governed by ch. 189, F.S., the "Uniform Special District Accountability Act of 1989", and ch. 191, F.S., the "Independent Special Fire Control District Act". However, the legislature may provide an exemption from the general law requirements in chs.189 and 191, F.S., in a local bill creating an independent special district. If a local bill creates an exemption from general law, Rule 5.5 of the Florida House of Representatives prohibits the local bill from being placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills.

The Uniform Special District Accountability Act of 1989

Chapter 189, F.S., known as the "Uniform Special District Accountability Act of 1989", includes requirements that must be satisfied when the Legislature creates any independent special district, including independent special fire control districts created under ch. 191, F.S. Unless the Legislature has enacted a special law exempting a particular independent special district, all districts must comply with applicable provisions of ch. 189, F.S., including provisions related to

issues that must be addressed in a district's charter, election of district governing board members, bond referenda, public records and meetings, and reporting requirements.

The Independent Special Fire Control District Act

Chapter 191, F.S., is known as the "Independent Special Fire Control District Act" (the Act). Section 191.002, F.S., sets forth the Act's purpose, which is to establish standards and procedures concerning the operations and governance of independent special fire control districts (districts), and to provide greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of districts. Currently, there are 56 districts in Florida.

Unless otherwise exempted by special or general law, the Act requires each district, whether created by special act, general law of local application, or county ordinance, to comply with the Act and provides that it is the intent of the Legislature that the Act supersede all special acts or general laws of local application provisions that contain the charter of a district. Provisions that address district boundaries and geographical subdistricts for the election of members of the governing board are excepted.

District Governing Board

Section 191.005, F.S., prescribes procedures for the election, composition, and general administration of a district's governing board. With the exception of districts whose governing boards are appointed collectively by the Governor, the county commission, and any cooperating city within the county, requires the business affairs of each district to be conducted and administered by a five-member board. Each member must be elected for a term of four years and serve until the member's successor assumes office. Each member of the board must be a qualified elector at the time he or she qualifies and continually throughout his or her term. Any board member who ceases to be a qualified elector is automatically removed pursuant to the Act. Prior to election, each candidate must qualify for election by either paying a filing fee or obtaining the signatures of at least 25 registered electors of the district on petition forms provided by the supervisor of elections and submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates. A candidate who does not collect contributions and whose only expense is the filing fee is not required to appoint a campaign treasurer or designate a primary campaign depository.

The electors of the district must elect board members at the next general election following the effective date of a special act or general act of local application creating a new district. Except as provided by the Act, all elections must be held at the time and in the manner prescribed by law for holding general elections in accordance with s. 189.405(2)(a) and (3), F.S. If a vacancy occurs on the board due to the resignation, death, or removal of a board member, or the failure of anyone to qualify for a board seat, the remaining members may appoint a qualified person to fill the seat until the next general election, at which time an election must be held to fill the vacancy for the remaining term, if any.

Members of the board may each be paid a salary or honorarium to be determined by at least a majority plus one vote of the board but which may not exceed $500 per month for each member. Separate compensation for the board member serving as treasurer may be authorized by like vote so long as total compensation for the board member does not exceed $500 per month. Members may be reimbursed for travel and per diem expenses as provided in general law.

Each member must, upon assuming office, take and subscribe to the oath of office prescribed by s. 5(b), Art. II of the State Constitution and s. 876.05, F.S. Each member, within 30 days of

assuming office, must also give the Governor a good and sufficient surety bond in the sum of $5,000, the cost thereof being borne by the district, conditioned on the member's faithful performance of his or her duties of office.

The board must keep a permanent record book in which the minutes of all meetings, resolutions, proceedings, certificates, bonds given by commissioners, and corporate acts are recorded. The record book must be open to inspection in the same manner as state, county, and municipal records are open under ch. 119. F.S., and s. 24, Art. I of the State Constitution. All meetings of the board must be open to the public consistent with ch. 286, s. 189.417, and other applicable general laws.

General Powers

Section 191.006, F.S., sets forth the following general powers of a district, which may be exercised by a majority vote of the district's governing board:

- To sue and be sued in the name of the district, to adopt and use a seal and authorize the use of a facsimile thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To provide for a pension or retirement plan for its employees. In accordance with general law, the board may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.
- To contract for the services of consultants to perform planning, engineering, legal, or other professional services.
- To borrow money and accept gifts, to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith, and to hold, use, sell, and dispose of such moneys or property for any district purpose in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of other documents and records of the district. The board may also adopt ordinances and resolutions that are necessary to conduct district business, if such ordinances do not conflict with any ordinances of a local general purpose government within whose jurisdiction the district is located. Any resolution or ordinance adopted by the board and approved by referendum vote of district electors may only be repealed by referendum vote of district electors.
- To maintain an office at places it designates within a county or municipality in which the district is located and appoint an agent of record.
- To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate therein for any purpose authorized by this act and to trade, sell, or otherwise dispose of surplus real or personal property. The board may purchase equipment by an installment sales contract if funds are available to pay the current year's installments on the equipment and to pay the amounts due that year on all other installments and indebtedness.
- To hold, control, and acquire by donation or purchase any public easement, dedication to public use, platted reservation for public purposes, or reservation for those purposes authorized by this act and to use such easement, dedication, or reservation for any purpose authorized by this act consistent with applicable adopted local government comprehensive plans and land development regulations.
- To lease as lessor or lessee to or from any person any facility or property of any nature for the use of the district when necessary to carry out the district's duties and authority under this act.

- To borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, taxes and assessments, warrants, notes, or other evidence of indebtedness, and mortgage real and personal property when necessary to carry out the district's duties and authority under this act.
- To charge user and impact fees authorized by resolution of the board, in amounts necessary to conduct district activities and services, and to enforce their receipt and collection in the manner prescribed by resolution and authorized by law. However, the imposition of impact fees may only be authorized as provided by general law.
- To exercise the right and power of eminent domain, pursuant to general law, over any property within the district, except municipal, county, state, special district, or federal property used for a public purpose, for the uses and purposes of the district relating solely to the establishment and maintenance of fire stations and fire substations, specifically including the power to take easements that serve such facilities consistent with applicable adopted local government comprehensive plans and land development regulations.
- To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act.
- To assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments as authorized by this act.
- To impose and foreclose non-ad valorem assessment liens as provided by this act or to impose, collect, and enforce non-ad valorem assessments pursuant to general law.
- To select as a depository for its funds any qualified public depository as defined by general law which meets all the requirements of ch. 280, F.S., and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.
- To provide adequate insurance on all real and personal property, equipment, employees, volunteer firefighters, and other personnel.
- To organize, participate in, and contribute monetarily to organizations or associations relating to the delivery of or improvement of fire control, prevention, emergency rescue services, or district administration.

Special Powers

Section 191.008, F.S., requires districts to provide for fire suppression and prevention by establishing and maintaining fire stations and fire substations and by acquiring and maintaining firefighting and fire protection equipment deemed necessary to prevent or fight fires. All construction must be in compliance with applicable state, regional, and local regulations, including adopted comprehensive plans and land development regulations.

This section grants districts the following special powers relating to facilities and duties authorized by the Act:

- To establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to general law and any certificate of public convenience and necessity or its equivalent issued thereunder.
- To employ, train, and equip such personnel, and train, coordinate, and equip such volunteer firefighters, as are necessary to accomplish the duties of the district. The board may employ and fix the compensation of a fire chief or chief administrator. The board must prescribe the duties of such person, which include supervision and management of the operations of the district and its employees and maintenance and operation of its facilities and equipment. The fire chief or chief administrator may employ or terminate the employment of such other persons, including, without limitation, professional, supervisory, administrative, maintenance, and clerical employees, as are necessary and authorized by the board. The board must provide the compensation and other conditions of employment of the officers and employees of the district.

- To conduct public education to promote awareness of methods to prevent fires and reduce the loss of life and property from fires or other public safety concerns.
- To adopt and enforce firesafety standards and codes and enforce the rules of the State Fire Marshal consistent with the exercise of the duties authorized by chs. 553 or 633, F.S., with respect to fire suppression, prevention, and firesafety code enforcement.
- To conduct arson investigations and cause-and-origin investigations.
- To adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency.
- To contract with general purpose local government for emergency management planning and services.

District Funding Mechanisms

Section 191.009, F.S., authorizes districts to levy ad valorem taxes, special assessments, user charges, and impact fees.

Ad Valorem Taxes -- An elected board may levy and assess ad valorem taxes on all taxable property in the district to construct, operate, and maintain district facilities and services, to pay the principal of, and interest on, general obligation bonds of the district, and to provide for any sinking or other funds established in connection with such bonds. An ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and the Act. The levy of ad valorem taxes must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. The tax is assessed, levied, and collected in the same manner as county taxes.

Non-Ad Valorem Assessments -- A district may levy non-ad valorem assessments to construct, operate, and maintain district facilities and services. The rate of such assessments must be fixed by resolution of the board pursuant to statutory procedures. Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous five years. Non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition. Proposed non-ad valorem assessment increases which exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last five years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum of the electors of the district. The referendum on the first-time levy of an assessment must include a notice of the future non-ad valorem assessment rate increases permitted by the Act without a referendum. Non-ad valorem assessments must be imposed, collected, and enforced pursuant to general law.

User Charges -- The board may provide a reasonable schedule of user charges for the following services:

- Special emergency services, including firefighting occurring in or to structures outside the district, motor vehicles, marine vessels, aircraft, or rail cars, or as a result of the operation of such motor vehicles or marine vessels, to which the district is called to render such emergency service, and may charge a fee for the services rendered in accordance with the schedule;

- Fighting fires occurring in or at refuse dumps or as a result of an illegal burn, which fire, dump, or burn is not authorized by general or special law, rule, regulation, order, or ordinance and which the district is called upon to fight or extinguish;
- Responding to or assisting or mitigating emergencies that either threaten or could threaten the health and safety of persons, property, or the environment, to which the district has been called, including a charge for responding to false alarms; and
- Inspecting structures, plans, and equipment to determine compliance with firesafety codes and standards.

The district has a lien upon any real property, motor vehicle, marine vessel, aircraft, or rail car for any user charge assessed.

Impact Fees -- If the general purpose local government has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries, the board may establish a schedule of impact fees to pay for the cost of new facilities and equipment, the need for which is in whole or in part the result of new construction. The impact fees collected by the district must be kept separate from other revenues of the district and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof needed to provide fire protection and emergency services to new construction. The term "new facilities" is defined as land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles, radiotelemetry equipment, and other firefighting or rescue equipment. The board must maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment. The board may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by the governments.

District Bonds

Section 191.012, F.S., authorizes a district to issue general obligation bonds, assessment bonds, revenue bonds, notes, bond anticipation notes, or other evidences of indebtedness to finance all or a part of any proposed improvements authorized to be undertaken under the Act or other law, provided the total annual payments for the principal and interest on such indebtedness does not exceed 50 percent of the total annual budgeted revenues of the district. This section also provides detailed instructions and procedures regarding the issuance and satisfaction of district bonds.

Bonds are payable from non-ad valorem assessments or other non-ad valorem revenues, including, without limitation, user fees or charges or rental income authorized to be levied or collected or received pursuant to the Act or general law. General obligation bonds payable from ad valorem taxes may also be issued by the district, but only after compliance with s. 12, Art. VII of the State Constitution. Subject to referendum approval, a district may pledge its full faith and credit for the payment of principal and interest on general obligation bonds and for any reserve funds provided therefor and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all property in the district to the extent necessary for the payment thereof. A district is authorized, after notice and opportunity to be heard has been afforded to those affected, to impose, charge, and collect non-ad valorem revenues in connection with any of the improvements authorized under the Act and to pledge the same for the payment of bonds.

District Boundaries and Mergers

Section 191.014, F.S., provides that boundaries of a district may be modified, extended, or enlarged only upon approval or ratification by the Legislature. The merger of a district with all or portions of other independent special districts or dependent fire control districts is effective only upon ratification by the Legislature. A district may not, solely by reason of a merger with another governmental entity, increase

ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless approved by the electors of the district by referendum.

C. SECTION DIRECTORY:

Section 1. Provides definitions.
Section 2. Creates the District specifying that it has all powers provided in chs. 189 and 191, F.S., and those granted by the Legislature; describes the boundaries of the District; specifies the District's purpose; specifies that the District charter may only be amended by special act.
Section 3. Provides for the composition and election of the District's governing board.
Section 4. Provides for the administration of the District's governing board.
Section 5. Specifies the District's powers, duties, and responsibilities regarding reporting, planning, and the authority to levy annually a special assessment against the taxable property within the district and collection methods.
Section 6. Authorizes the District to impose impact fees on new users of services to the extent new construction requires new facilities.
Section 7. Authorizes the District to impose special assessments against the real property that is not otherwise exempt or immune within the District to provide funds for the purpose of the District.
Section 8. Provides for the duties of the property appraiser; provides the tax collector will receive a commission or fee of 1 percent for collection of special assessments.
Section 9. Provides for special assessment as a lien.
Section 10. Provides for the deposit of special assessment and fees; authorizes District to disburse funds.
Section 11. Authorizes the District to borrow money.
Section 12. Specifies permissible uses of District funds.
Section 13. Provides for recording keeping, adoption of rules and regulations, annual reporting, and budgeting.
Section 14. Provides for adoption of fire prevention ordinances, provides for the appointment and employment of the fire chief, authorizes the acquisition of land by the District, provides for contracts, provides for salaries of the District personnel; and authorizes the District to establish and maintain emergency medical and rescue response services and acquire and maintain equipment.
Section 15. Specifies that municipal annexations will follow procedures in s. 171.093, F.S.
Section 16. Specifies that dissolution of the District must be accomplished by special act.
Section 17. Provides for expanding the boundaries of the District by Legislative enactment.
Section 18. Provides for liberal construction of the act.
Section 19. Provides for severability of the act.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 29, 2005 and January 5, 2006.

WHERE? *The Breeze* combined with *The Defuniak Springs Herald,* Defuniak Springs, Walton 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 []

According to the Economic Impact Statement, the bill will result in estimated revenues of $38,000 for fiscal year 2006-07 and $39,000 for fiscal year 2007-08.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the board to adopt rules and regulations and authorizes the board to enact fire prevention ordinances.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Mr. Tommy Yates, Chairman, Argyle Fire District, sent the following statement relating to the boundaries of the district:

> Chief Day and I have looked over the boundary land descriptions and they appear correct as you have them. The discrepancies come from land we have "lost" as the City of DeFuniak has annexed parcels, especially north of Walton road and east of Hwy 83 north.[1]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one strike-all amendment on April 5, 2006. The amendment removes specific provisions relating to the tort liability and annexation and makes technical changes. The bill, as amended, was reported favorably with committee substitute.

[1] *See* e-mail from Tommy Yates, Chairman, Argyle Fire District (April 4, 2006) (on file with House of Representatives, Local Government Council).

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to Argyle Fire District, Walton County;
7 creating a special district; providing definitions;
8 providing for creation, status, charter amendments,
9 boundaries, and purposes; providing for a board of
10 commissioners; providing for election and terms of
11 commissioners; providing for employment of board
12 personnel; providing for election of board officers;
13 providing for compensation and bonds of commissioners;
14 providing for powers, duties, and responsibilities of the
15 board; preserving the authority to impose special
16 assessments; providing for impact fees; providing
17 legislative intent; providing for duties of the property
18 appraiser; providing for special assessment as a lien;
19 providing for deposit of such special assessments;
20 providing for authority to disburse funds; authorizing the
21 board to borrow money; providing for use of district
22 funds; requiring a record of all board meetings;
23 authorizing the board to adopt rules and regulations;

24 providing for the board to make an annual budget;
25 requiring an annual report; authorizing the board to enact
26 fire prevention ordinances, appoint a district fire chief,
27 acquire land, enter contracts, establish salaries, and
28 establish and operate a fire rescue service; providing for
29 dissolution; providing for district expansion; providing
30 for construction and effect; providing an effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. The Argyle Fire District in Walton County is
35 hereby created and the charter for the district is created to
36 read:
37 Section 1. Definitions.--As used in the act, unless
38 otherwise specified:
39 (1) "District" means the Argyle Fire District.
40 (2) "Board" means the board of commissioners created
41 pursuant to this act and chapter 191, Florida Statutes.
42 (3) "Board of directors" means the existing policymaking
43 and governing body of the Argyle Fire District of Walton County.
44 (4) "Commissioner" means a member of the board of
45 commissioners of and for the district.
46 (5) "Director" means a member of the board of directors.
47 (6) "Residence" means one single-family dwelling,
48 including one single-apartment dwelling unit; one single-
49 condominium dwelling unit; one single duplex, triplex, or other
50 attached dwelling unit; one single-family detached dwelling
51 unit; or one single mobile or modular home dwelling unit.

52 (7) "Business" means motels, apartments, or rental
53 dwellings, along with other standard commercial or industrial
54 businesses such as gasoline stations, stores, marinas, and
55 similar establishments, as authorized pursuant to the applicable
56 local government comprehensive plan, whether or not such
57 businesses are required to pay or collect sales taxes.
58 Section 2. Creation; status; charter amendments;
59 boundaries; district purposes.--There is hereby created an
60 independent special fire control district and rescue service
61 district incorporating lands in Walton County described in
62 subsection (1) which shall be a public corporation having the
63 powers, duties, obligations, and immunities herein set forth
64 under the name of the Argyle Fire District. The district is
65 organized and exists for all purposes and shall hold all powers
66 set forth in this act and chapters 189 and 191, Florida
67 Statutes.
68 (1) The lands to be included within the district are the
69 following described lands in Walton County:
70 Those portions in Township 2 North, Range 18 West
71 which include, entire sections 1 through 24 inclusive.
72 Sections 26 through 29 inclusive. Sections 33 through
73 35 inclusive. And all of Sections 30 and 32 lying East
74 of the center of Bruce Creek.
75 Those portions within Township 2 North, Range 19 West
76 which include, Sections 13 and 24 lying East of the
77 center of Bruce Creek. Sections 1 and 2 lying outside
78 of the present city limits of DeFuniak Springs.

79 Those portions in Township 3 North, Range 18 West
80 which include, Sections 4 though 9 inclusive. Sections
81 16 through 21 inclusive. Sections 28 through 29
82 inclusive. Sections 32 and 33 inclusive. Those
83 portions of Sections 30 and 31 lying outside of the
84 present city limits of DeFuniak Springs.
85 Those portions in Township 3 North, Range 19 West
86 which include, those parts of Sections 1 and 2 lying
87 South of the centerline of County Road 1883 and
88 Sunrise Road. The portion of Section 3 lying south of
89 the centerline of Sunrise Road. The portion of Section
90 10 lying North and Southeast of Lake Juniper. Entire
91 Sections 11, 12, 13, 14 and 24. Those portions of
92 Section 15 lying East of a line running North and
93 South from the center of the Lake Juniper Dam and
94 lying outside of the present city limits of DeFuniak
95 Springs. The portion of Section 22 lying East of a
96 line running North and South from the center of the
97 Lake Juniper Dam and lying outside of the present city
98 limits of DeFuniak Springs. Those portions of section
99 23, 24, 25, and 36 lying North and or East of the
100 present city limits of DeFuniak Springs.
101 Those portions within Township 4 North, Range 18 West
102 which include, those portions of Section 31, lying
103 South of the centerline of Coy Ellis Road. Those parts
104 of Sections 32 and 33 lying South of the centerline of
105 County Road 183 North. The portion of Section 33 lying
106 East of County Road 183A.

107 The portion within Township 4 North, Range 19 West
108 which includes, that part of Section 36 lying South
109 and East of County Road 1883 and Coy Ellis Road.
110 (2) The purpose of this act is to promote the general
111 health, welfare, and safety of the citizens and residents of
112 Walton County who reside within the geographical limits of the
113 Argyle Fire District by providing for the financial support of
114 the Argyle Fire District of Walton County, a not-for-profit
115 corporation, which currently provides the district with fire
116 protection services, facilities, and firefighting equipment; the
117 establishment and maintenance of fire stations and fire
118 substations; the acquisition and maintenance of all firefighting
119 and protection equipment necessary for the prevention of fires
120 or fighting of fires; the employment and training of such
121 personnel as may be necessary to accomplish fire prevention and
122 firefighting; the establishment and maintenance of emergency
123 services; the acquisition and maintenance of rescue and other
124 emergency equipment; and the employment and training of
125 necessary emergency personnel. The district may provide
126 emergency medical services. The district shall have all other
127 powers necessary to carry out these purposes.
128 (3) Nothing herein shall prevent the district from
129 cooperating with the state or other local governments to render
130 such services to communities adjacent to the land described in
131 this section as evidenced by a signed aid agreement.
132 (4) The district charter may be amended only by special
133 act of the Legislature.
134 Section 3. Board of commissioners.--

135 (1) Pursuant to chapter 191, Florida Statutes, the
136 business and affairs of the district shall be governed and
137 administered by a board of five commissioners, who shall be
138 qualified electors residing within the district and shall be
139 elected by the qualified electors residing within the district
140 at a general election, subject to the provisions of chapters 189
141 and 191, Florida Statutes, and this act. Each commissioner shall
142 hold office until his or her successor is elected and qualified
143 under the provisions of this act. The procedures for conducting
144 district elections and for qualification of candidates and
145 electors shall be pursuant to chapters 189 and 191, Florida
146 Statutes.
147 (2) The five members of the initial board shall be elected
148 by the qualified electors residing within the district. The
149 three elected members for seats 1, 3, and 5 in the initial
150 election under this act shall serve terms of 4 years each. The
151 remaining two selected members for seats 2 and 4 in the initial
152 election under this act shall serve terms of 2 years each.
153 Subsequent elections under this act shall coincide with the
154 general elections of this state. The members of the board shall
155 serve on a nonpartisan basis for a term of 4 years each.
156 (3) Vacancies in office shall be filled by special
157 election, said election to be held coincidental with the next
158 countywide general or special election. The board may appoint a
159 qualified elector of the district to act as commissioner until
160 the vacancy is filled by election. A commissioner must be a
161 qualified elector residing within the district. A commissioner

162 may be removed from office for any reason that a state or county
163 officer may be removed.
164 (4) All elections shall be noticed, called, and held
165 pursuant to the provisions of the general laws of the state,
166 except as otherwise provided herein. The board shall, to the
167 extent possible, coordinate all elections with countywide
168 general or special elections in order to minimize costs.
169 Elections shall be called through the adoption of an appropriate
170 resolution of the district directed to the Board of County
171 Commissioners of Walton County, the Supervisor of Elections of
172 Walton County, and other appropriate officers of the county. The
173 district shall reimburse county government for the actual cost
174 of district elections. No commissioner shall be a paid employee
175 of the district while holding said position. This shall not
176 prevent volunteers from receiving reimbursement for expenses
177 from serving as commissioners.
178 (5) The board may employ such personnel as deemed
179 necessary for the proper function and operation of a fire
180 district. The salaries of fire department and emergency service
181 personnel and any other wages shall be determined by the board.
182 Section 4. Officers; board compensation; bond.--
183 (1) In accordance with chapter 191, Florida Statutes, each
184 elected member of the board shall assume office 10 days
185 following the member's election. Annually, within 60 days after
186 election of new members of said board, the members shall
187 organize by electing from their number a chair, vice chair,
188 secretary, and treasurer. However, the same member may be both

189 secretary and treasurer, in accordance with chapter 191, Florida
190 Statutes.
191 (2) The commissioners may receive reimbursement for actual
192 expenses incurred while performing the duties of their offices
193 in accordance with general law governing per diem for public
194 officials. Commissioners may receive compensation for their
195 services in accordance with chapter 191, Florida Statutes.
196 (3) Each commissioner, upon taking office and in
197 accordance with chapters 189 and 191, Florida Statutes, shall
198 execute to the Governor, for the benefit of the district, a bond
199 of $5,000 with a qualified personal or corporate surety,
200 conditioned upon the faithful performance of the duties of the
201 commissioner's office and upon an accounting for all funds which
202 come into his or her hands as commissioner; however, the
203 treasurer shall furnish a bond of $10,000, which may be in lieu
204 of the $5,000 bond. The premium of such bonds shall be paid from
205 district funds.
206 Section 5. Powers; duties; responsibilities.--
207 (1) The district shall have and the board may exercise by
208 majority vote all the powers and duties set forth in this act
209 and chapters 189, 191, and 197, Florida Statutes, including, but
210 not limited to, powers related to special assessments, other
211 revenue-raising capabilities, budget preparation and approval,
212 liens and foreclosure of liens, use of tax deeds and tax
213 certificates as appropriate from non-ad valorem assessments,
214 contractual agreements, and adoption of ordinances and
215 resolutions that are necessary to conduct district business if
216 such ordinances do not conflict with any ordinance of a local

217 general purpose government within whose jurisdiction the
218 district is located.
219 (2) The board shall continue to have the right, power, and
220 authority to levy annually special assessment against the
221 taxable property within the district to provide funds for the
222 purposes of the district, in an amount not to exceed the limit
223 provided in chapter 191, Florida Statutes.
224 (3) The methods for assessing and collecting special
225 assessments, fees, or service charges shall be as set forth in
226 this act and chapters 170, 189, 191, and 197, Florida Statutes.
227 (4) The district shall impose and collect special
228 assessments in accordance with chapter 200, Florida Statutes.
229 (5) The district is authorized to impose and enforce
230 special assessments in accordance with chapters 170, 189, 191,
231 and 197, Florida Statutes.
232 (6) The district's planning requirements shall be as set
233 forth in this act and chapters 189 and 191, Florida Statutes.
234 (7) Requirements for financial disclosure, meeting
235 notices, reporting, public records maintenance, and per diem
236 expenses for officers and employees shall be as set forth in
237 this act and chapters 112, 119, 189, 191, and 286, Florida
238 Statutes.
239 Section 6. Impact fees.--
240 (1) Pursuant to section 191.009(4), Florida Statutes, it
241 is hereby declared that the cost of new facilities borne by fire
242 protection and emergency services should be borne by new users
243 of the district's services to the extent new construction
244 requires new facilities, but only to that extent. It is the

245 legislative intent of this section to transfer to the new users
246 of the district's fire protection and emergency services a fair
247 share of the costs that new users impose on the district for new
248 facilities. This shall only apply in the event that the general-
249 purpose local government in which the district is located has
250 not adopted an impact fee for fire services which is distributed
251 to the district for construction within its jurisdictional
252 boundaries.
253 (2) The impact fees collected by the district pursuant to
254 this section shall be kept as a separate fund from other
255 revenues of the district and shall be used exclusively for the
256 acquisition, purchase, or construction of new facilities or
257 portions thereof required to provide fire protection and
258 emergency services to new construction. "New facilities" means
259 land, buildings, and capital equipment, including, but not
260 limited to, fire and emergency vehicles and radio telemetry
261 equipment. The fees shall not be used for the acquisition,
262 purchase, or construction of facilities which must be obtained
263 in any event, regardless of growth within the district. The
264 board of fire commissioners shall maintain adequate records to
265 ensure that impact fees are expended only for permissible new
266 facilities.
267 Section 7. Special assessments.--
268 (1) The board shall have the right, power, and authority
269 to impose special assessments against the real property that is
270 not otherwise exempt or immune within the district to provide
271 funds for the purpose of the district.

272 (2)(a) For each residential dwelling or mobile home
273 situated on any parcel of land within said district, the charge
274 shall be $25 annually. It is expressly understood that mobile
275 home parks or multiunit dwellings are not included in this
276 category and shall be included in paragraph (b).
277 (b) For each mobile home park, apartment building, motel,
278 hotel, condominium, townhouse, or other multifamily residence,
279 the charge shall not exceed:
280 1. 2 to 4 units or lots, $25 each annually.
281 2. 5 to 10 units or lots, $20 each annually.
282 3. 11 to 25 units or lots, $18 each annually.
283 4. Over 25 units or lots, $15 each annually.
284 (c) For each commercial establishment or business, the
285 charge shall not exceed the following rates:
286 1. Up to 5,000 square feet of floor space: $50 annually.
287 2. Over 5,000 square feet of floor space: $100 annually.
288
289 The existence of a commercial establishment or business shall be
290 evidenced by the presence of advertising signs, by tax roll
291 classification, or by custom. Business enterprises wholly
292 contained within a residential unit shall not be included in
293 this category and shall be included under paragraph (a).
294 Multifamily residential units and mobile home parks shall be
295 included under paragraph (b).
296 (d) No assessment shall be levied for any parcel of
297 agricultural, timber, unimproved residential, or other
298 unimproved property. Adjoining parcels owned by an individual
299 taxpayer will be treated as one parcel for assessment purposes,

300 even though they may be shown as separate items on the county
301 tax roll.
302 (e) No assessment shall be levied against churches,
303 schools, governmental property, or property owned by other
304 nonprofit charitable organizations.
305 (f) Any increase in the special assessment must be
306 approved by a majority of the electors within the Argyle Fire
307 District.
308 (3) It is the legislative intent that this act shall
309 authorize the Walton County Property Appraiser and the Walton
310 County Tax Collector to take all appropriate action to comply
311 with the intent of the purpose of this act.
312 (4) It is also the legislative intent that the board of
313 commissioners shall be a vehicle to provide funding to
314 accomplish the purpose set out in this act.
315 Section 8. Property appraiser.--
316 (1) The Walton County Property Appraiser shall furnish the
317 commissioners a tax roll covering all taxable properties within
318 the district on or before July 1 of each year.
319 (2) The Walton County Property Appraiser shall include in
320 the Walton County tax roll the assessments made by the board,
321 and the same shall be collected in the manner as provided for by
322 this act and paid over by the Walton County Tax Collector to the
323 board.
324 (3) The Walton County Property Appraiser shall be
325 reimbursed for assessing such special assessments in the manner
326 and amount authorized by general law, and the Walton County Tax

327 Collector shall receive a commission or fee of 1 percent for
328 collection of such special assessments.
329 Section 9. Special assessment as a lien.--The special
330 assessment levied and assessed by the district shall be a lien
331 upon the property so assessed along with the county taxes
332 assessed against such property until said assessment and taxes
333 have been paid, and if the special assessment levied by the
334 district becomes delinquent, such special assessment shall be
335 considered a part of the county tax subject to the same
336 penalties, charges, fees, and remedies for enforcement and
337 collection of such taxes.
338 Section 10. Deposit of special assessments; fees;
339 authority to disburse funds.--
340 (1) The proceeds of the assessments and funds of the
341 district shall be deposited in qualified public depositories in
342 accordance with chapters 191 and 280, Florida Statutes, in the
343 name of the district in a bank authorized to receive deposits of
344 district funds. The bank shall be designated by a resolution of
345 the board.
346 (2) All warrants for the payment of labor, equipment, and
347 other expenses of the board, and in carrying into effect this
348 act and the purpose thereof, shall be payable by the treasurer
349 of the board on accounts and vouchers approved and authorized by
350 two board members. No funds of the district shall be paid out or
351 disbursed except by check signed by two board members.
352 Section 11. Authority to borrow money.--
353 (1) The board of commissioners shall have the power and
354 authority to borrow money or issue other evidences of

355 indebtedness for the purpose of the district in accordance with
356 chapters 189 and 191, Florida Statutes, provided, however, that
357 the total payments in any one year, including principal and
358 interest, on any indebtedness incurred by the district shall not
359 exceed 50 percent of the total estimated annual budgeted
360 revenues of the district.
361 (2) The board of commissioners, board of directors as a
362 body, or any of the members of either board as individuals shall
363 not be personally or individually liable for the repayment of
364 such loan. Such repayment shall be made out of the special
365 assessment receipts of the district, except as provided in this
366 subsection. The commissioners shall not create any indebtedness
367 or incur obligations for any sum or amount which they are unable
368 to repay out of district funds available to them at that time,
369 except as otherwise provided in this act, provided, however,
370 that the commissioners may make purchases of equipment on an
371 installment basis as necessary if funds are available for the
372 payment of the current year's installment on such equipment plus
373 the amount due in that year of any of the installments and the
374 repayment of any bank loan or other existing indebtedness which
375 may be due that year.
376 Section 12. Use of district funds.--No funds of the
377 district shall be used for any purposes other than the
378 administration of the affairs and business of the district; the
379 construction, care, maintenance, upkeep, operation, and purchase
380 of firefighting and rescue equipment or fire station; the
381 payment of public utilities; and the payment of salaries of
382 district personnel as the board may from time to time determine

383 to be necessary for the operations and effectiveness of the
384 district.
385 Section 13. Record of board meetings; authority to adopt
386 rules and regulations; annual reports; budget.--
387 (1) A record shall be kept of all meetings of the board,
388 and in such meetings concurrence of a majority of the
389 commissioners present shall be necessary to any affirmative
390 action by the board.
391 (2) The board shall have the authority to adopt and amend
392 rules and regulations for the administration of the affairs of
393 the district under the terms of this act and chapters 189 and
394 191, Florida Statutes, which shall include, but not be limited
395 to, the authority to adopt the necessary rules and regulations
396 for the administration and supervision of the property and
397 personnel of the district; for the prevention of fires, fire
398 control, fire hydrant placement, and flow testing in accordance
399 with current NFPA rules; and for rescue work within the
400 district. Said commissioners shall have all the lawful power and
401 the authority necessary to carry out the purposes of said fire
402 district; to purchase all necessary real and personal property;
403 to purchase and carry standard insurance policies on all such
404 equipment; to employ such personnel as may be necessary to carry
405 out the purpose of said fire district; to provide adequate
406 insurance for said employees; to purchase and carry appropriate
407 insurance for the protection of all firefighters and personnel
408 as well as all equipment and personal property on loan to the
409 district; to sell surplus real and personal property in the same
410 manner and subject to the same restrictions as provided for such

411 sales by counties; to enter into contracts with qualified
412 service providers, the Argyle Fire District of Walton County,
413 other fire departments, municipalities, and state and federal
414 governmental units for the purpose of obtaining financial aid;
415 and for otherwise carrying out the purposes of the district. The
416 commissioners shall adopt a fiscal year for said fire district,
417 which shall be October 1 to September 30.
418 (3) Any policies, rules, and regulations promulgated and
419 made by the board shall have the force and effect of law after
420 copies thereof, signed by the secretary and chair or vice chair,
421 shall have been posted in three public places within the
422 district in conspicuous locations and advertised by title once a
423 week for 2 consecutive weeks in a newspaper of general paid
424 circulation in the district.
425 (4) The board shall, on or before November 1, make an
426 annual report of its actions and accounting of its funds as of
427 September of that year, and shall file said report in the office
428 of the Clerk of the Circuit Court of Walton County, whose duty
429 it shall be to receive and file said report and hold and keep
430 the same as a public record.
431 (5) For the purposes of carrying into effect this act, the
432 board shall annually prepare, consider, and adopt a district
433 budget pursuant to the applicable requirements of chapters 189
434 and 191, Florida Statutes. The board shall, at the same time as
435 it makes its annual report, file its estimated budget for the
436 fiscal year beginning October 1, which budget shall show the
437 estimated revenue to be received by the district and the

438 estimated expenditures to be incurred by the district in
439 carrying out its operations.
440 Section 14. Authority to enact fire prevention ordinances;
441 appoint or employ a fire chief; acquire land; enter contracts;
442 establish salaries; general and special powers; authority to
443 provide emergency medical and rescue services.--
444 (1) The board of commissioners shall have the right and
445 power to enact fire prevention ordinances in the same manner
446 provided for the adoption of policies and regulations in
447 subsection (2) of section 13, and when the provisions of such
448 fire prevention ordinances are determined by the board to be
449 violated, the office of the state attorney, upon written notice
450 of such violation issued by the board, is authorized to
451 prosecute such person or persons held to be in violation
452 thereof. Any person found guilty of a violation may be punished
453 as provided in chapter 775, Florida Statutes, as a misdemeanor
454 of the second degree. The cost of such prosecution shall be paid
455 out of the district funds, unless otherwise provided by law.
456 (2) The board shall have the power to appoint or employ a
457 fire chief, who shall be a person experienced in all types of
458 firefighting and fire prevention and who shall work with and
459 cooperate with the Fire Marshal in which the district is
460 situated in the prevention of fires of all types. The district
461 fire chief shall be authorized to enter, at all reasonable
462 hours, any building or premises for the purpose of making any
463 inspection or investigation which the State Fire Marshal is
464 authorized to make pursuant to state law and regulation. The
465 owner, lessee, manager, or operator of any building or premises

466 shall permit the district fire chief to enter and inspect the
467 building or premises at all reasonable hours. The district fire
468 chief shall report any violations of state fire safety laws or
469 regulations to the appropriate officials.
470 (3) The board shall have the power to acquire, by gift or
471 purchase, lands or rights in lands, and any other property, real
472 and personal, tangible or intangible, necessary, desirable, or
473 convenient for carrying out the purposes of the district, and to
474 pay any and all costs of same out of the funds of the district,
475 provided that prior to the acquisition of the location of a fire
476 station site, an appropriate investigation shall be conducted
477 which shall include, but not be limited to, obtaining the staff
478 recommendation of the Walton County Planning Department.
479 (4) The board shall have the power to enter into contracts
480 or to otherwise join with the Argyle Fire District of Walton
481 County, or to otherwise join with any other district, city, or
482 town, the United States of America, or any agency or authority
483 thereunder, for the purpose of expanding services, providing
484 effective aid, and accomplishing and carrying out the purposes
485 for which the district was created and for the further purpose
486 of specifically obtaining financial aid, assistance, or subsidy.
487 (5) The salaries of fire department personnel and any
488 other wages shall be determined by the board.
489 (6) The district is authorized to establish and maintain
490 emergency medical and rescue response services and acquire and
491 maintain rescue, medical, and other emergency equipment, subject
492 to the provisions of chapter 401, Florida Statutes.

493 Section 15. Annexations.--If any municipality or other
494 fire control district annexes any land included in the district,
495 such annexation shall follow the procedures set forth in section
496 171.093, Florida Statutes.
497 Section 16. Dissolution.--The district shall exist until
498 dissolved in the same manner as it was created. If the Argyle
499 Fire District of Walton County is dissolved or ceases to exist
500 for any reason, or if the board determines that the Argyle Fire
501 District of Walton County is unable to carry out its objectives
502 as stated or the objectives of the district as stated in
503 subsection (2) of section 2, or the district's published
504 policies, the board shall in its discretion make arrangements
505 for other means of providing fire protection and rescue
506 services.
507 Section 17. District expansion.--
508 (1) The district boundaries may be extended from time to
509 time as follows:
510 (a) Land contiguous to the boundaries of the district in
511 unincorporated Walton County may be included in the district
512 when a petition for inclusion signed and sworn to by a majority
513 of the owners of the real property within the tract or tracts to
514 be included in the district has been presented to the board of
515 commissioners and the proposal has been approved by the
516 affirmative vote of no fewer than three members of the board of
517 commissioners at a regular meeting.
518 (b) The petition must contain the legal description of the
519 property sought to be added to the district and the names and
520 addresses of the owners of the property.

521 (2) If a proposal to add an area to the district as
522 defined in subsection (1) is approved by the affirmative vote of
523 no fewer than three members of the board of commissioners at a
524 regular meeting, the board of commissioners shall thereafter
525 adopt a resolution describing the lands to be included within
526 the district and shall cause such resolution to be duly enrolled
527 in the record of the meeting and a certified copy of the
528 resolution to be recorded in the Office of the Clerk of the
529 Circuit Court of Walton County.
530 (3) Upon adoption of the resolution by the board, the
531 district shall, pursuant to chapter 191, Florida Statutes,
532 request that its legislative delegation approve said addition
533 and sponsor legislation amending the district boundary. Upon
534 approval by the Legislature, the boundary shall be amended.
535 Section 18. Construction.--This act shall be construed as
536 remedial and shall be liberally construed to promote the purpose
537 for which it is intended.
538 Section 19. Effect.--In the event that any part of this
539 act should be held void for any reason, such holding shall not
540 affect any other part thereof.
541 Section 2. This act shall take effect upon becoming a law.

HB 1483

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1483 Grove Community District, Okeechobee County
SPONSOR(S): Attkisson
TIED BILLS: IDEN./SIM. BILLS: SB 2766

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates the Grove Community District (district), which encompasses approximately 6,000 undeveloped acres within Okeechobee County, for the purpose of providing community development systems, facilities, services, projects, improvements, and infrastructure to the area. The bill provides the minimum requirements that must be included in the charter when creating an independent special district. The bill authorizes the district to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; bridges or culverts; roadways and roads, parkways, hardscaping, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the district; conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; emergency medical care; higher education facilities, school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste collection and disposal; impact fee credit agreements; health care facilities; buildings and structures for district offices, maintenance facilities, meeting facilities, community centers, or any other project authorized by this bill.

The district may levy user charges and fees; non-ad valorem maintenance taxes as authorized by general law; and special assessments. The district may impose ad valorem taxes not to exceed 3 mills upon voter approval at referendum conducted after the entire board is elected by electors of the district.

The bill creates a five-member Board of Supervisors to govern the district. The Board is initially elected on a one-acre/one-vote basis, however, as population in the district increases, members are elected by qualified electors of the district. According to an estimated development schedule, a majority of the board will be elected by qualified electors after approximately 19 years.

The attached Economic Impact Statement does not project any fiscal impact in FY 05-06 and FY 06-07; however, the district is authorized to levy special assessments, fees, non ad-valorem assessments, and ad valorem taxes (upon approval at referendum) but the amount of revenues generated by these assessments is indeterminate. This bill appears to provide exemptions from the provisions of general 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. [Please see p. 20 of this analysis.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill creates an independent special district that is authorized to perform a wide range of functions within its jurisdictional boundaries and extraterritorially, and that may adopt a wide range of administrative rules pursuant to ch. 120, F.S.

Provide for Lower Taxes: The district is authorized to raise revenues by levying ad valorem taxes up to 3 mills, if approved at referendum; non-ad valorem maintenance taxes; non-ad valorem assessments; benefit special assessments; maintenance special assessments; special assessments; and fees, or service charges.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Special Districts Generally

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; rather, they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter.

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s.189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and Board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

Election Procedure for Independent Special Districts Generally

The bill specifies that "[t]he transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes." 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 of the district. That section 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, provided that all of the following conditions are satisfied at least 60 days prior to the referendum:

1. The district has a total population of at least 500 qualified electors; and
2. A petition signed by 10 percent of the qualified electors is filed with the governing board and certified by the supervisor of elections.

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. After approval, the board must prepare maps of the district describing the "urban areas"[1] within the district. A process is provided in statute for landowners or qualified electors to contest the accuracy of the urban area maps. Upon adoption of the urban area maps by the board, the maps are used to determine the extent of urban area within the district and the number of governing board members to be elected by qualified electors and those elected on a one-acre/one-vote basis.

If the electors disapprove the election procedure, elections of board members continue as described by general law or enabling legislation of the district.

Community Development Districts

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments. Community Development Districts (CDDs) must be contained within the boundaries of a single county. CDDs consisting of 1,000 acres or more must be created by rule adopted by the Florida Land and Water Adjudicatory Commission granting a petition for the establishment of the CDD, whereas CDDs with less than 1,000 acres must be created pursuant to county ordinance.

Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges. Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located. As of November 2003, there were 210 active CDDs in Florida.

Section 190.012, F.S., specifies the types of infrastructure CDDs are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and waste water management, reclamation, and reuse; bridges or culverts; roads; street lights; parks and other outdoor recreational, cultural, and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal. CDDs are governed by an elected five-member board of supervisors, who possess the general managerial authority provided to other special districts in the state. This includes the authority to hire and fix the compensation of a general manager; the right

[1] Section 189.4051(1)(b), F.S., defines "urban area" as "a contiguous developed and inhabited urban area within a district with a minimum average resident population density of at least 1.5 persons per acre as defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas must be designated by the governing board of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the district."

to contract; to borrow money; to adopt administrative rules pursuant to ch. 120, F.S.; and the power of eminent domain.[2]

Election Procedures for Community Development Districts Generally

Section 190.006(3), F.S., provides for the transition of Community Development District (CDD) boards that are elected by landowners to boards elected by qualified electors of the districts. If a CDD wishes to exercise ad valorem taxing power, the district board must call an election at which the members of the board of supervisors will be elected by qualified electors. Each member must be elected by the qualified electors of the district for a term of 4 years, except that, at the first such election, three members are elected for a period of 4 years and two members for a period of 2 years. All elected board members must be qualified electors of the district.

Regardless of whether a district has proposed to levy ad valorem taxes, commencing 10 years after the initial appointment of members, the position of each member whose term has expired must be filled by a qualified elector of the district, elected by the qualified electors of the district. However, if, in the 10th year after initial appointment for districts exceeding 5,000 acres in area, there are not at least 500 qualified electors, members of the board continue to be elected by landowners.

If a district has less than 50 qualified electors when the district is created, after the 10th year and, once a district reaches 250 or 500 qualified electors, respectively, then the positions of two board members whose terms are expiring must be filled by qualified electors of the district, elected by the qualified electors of the district for 4-year terms. The remaining board member whose term is expiring must be elected for a 4-year term by the landowners and is not required to be a qualified elector. Thereafter, as terms expire, board members must be qualified electors elected by qualified electors of the district for a term of 4 years.

Once a district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district must be held at the general election in November.

EFFECT OF PROPOSED CHANGES

Grove Community District Generally

This bill creates the Grove Community District (district), a "local government and corporate body politic, (that) is limited to its single, narrow, and special legislative purpose herein expressed, with the power to provide, plan, implement, construct, maintain, and finance as a local government management entity its basic systems, facilities, services, improvements, infrastructure, and projects and possessing financing powers to fund its management purpose over the long term." The boundaries of the district encompass approximately 6,000 undeveloped contiguous acres in Okeechobee County. The limited, single, and specialized purpose of the Grove Community District is to "provide community development systems, facilities, services, projects, improvements, and infrastructure to the new community by exercising its various management powers, with related financing powers, both general and special, as set forth by and limited by this act."

The independent district charter created in this act involves "innovative general and special powers not otherwise available for this unique and highly specialized first ever new community in such a unique area." However, the district must operate and function subject to, and not inconsistent with, the Okeechobee County Comprehensive Plan and Land Development Regulations and any applicable development orders, zoning regulations, or other land development regulations.

[2] *Community Development Districts*, The Florida Senate, Committee on Comprehensive Planning, Interim Project Report 2004-121, Nov. 2003.

On January 12, 2006, the Board of County Commissioners of Okeechobee County adopted Resolution 2006-1, expressing no objection to the creation and establishment of the Grove Community District and finding it consistent with the Okeechobee County Comprehensive Plan.

Referendum Requirement
This bill takes effect upon becoming a law, without a referendum of the voters or landowners in the district; however, the provisions of the bill that authorize the levy of ad valorem assessments take effect only upon express approval by a majority vote of those qualified electors of the district, as required by Section 9 of Article VII of the State Constitution, voting in a referendum to be called by the Supervisor of Elections of Okeechobee County and held by the Board of Supervisors of the Grove Community District. The referendum must be held in accordance with the provisions of law relating to elections in force at the time the referendum is held.

Modification of District Boundaries and Charter
The territorial boundary of the district embraces and includes, without reservation or enclave, all of that certain real property described legally in the district charter. The charter of the district is this act and may be amended, terminated, or repealed only by special act of the Legislature amending or repealing this act.

The board may ask the Legislature through its local legislative delegation in and for Okeechobee County to amend this act to contract or expand the boundaries of the district. The district will remain in existence until:

1. The district is terminated and dissolved pursuant to amendment to this act by the Legislature; or
2. The district has become inactive pursuant to s. 189.4044, F.S.

The jurisdiction of this district, in the exercise of its general and special powers and in the carrying out of its single, narrow, and special purpose, is both within the external boundaries of the legal description of this district and extraterritorially, when limited to, and as authorized expressly elsewhere in, the charter of the district in this act or applicable general law.

District Governing Board
This bill creates the Board of Supervisors of the Grove Community District, which is the governing board and body of the district. Except as otherwise provided, each member holds office for a term of 4 years and until his or her successor is chosen and qualifies. There are five members of the board who must, in order to be eligible, be residents of the state and citizens of the United States. Three members constitute a quorum.

All members of the board, regardless of how elected, are public officers, known as supervisors, and, upon entering into office, must take and subscribe to the oath of office as prescribed by general law. All members of the board, regardless of how elected, and regardless of whether they are qualified electors themselves, are public officials and subject to ethics and conflict of interest laws of the state that apply to all public officers. They hold office for the terms for which they were elected and until their successors are chosen and qualified.

Any elected member of the board may be removed by the Governor for malfeasance, misfeasance, dishonesty, incompetency, or failure to perform the duties imposed upon him or her by this act. Any vacancies which may occur in such office must be filled by the Governor, as soon as practicable, unless filled by the board.

All governing board members elected by qualified electors must be qualified electors elected at large. Candidates seeking election as qualified electors must conduct their campaigns in accordance with general law requirements.

a. Election of Board by Landowners

Within 45 days after the effective date of this act, a specially noticed meeting of the landowners of the district must be held for the purpose of electing the members to the first board. At the meeting, for the election of each person to be elected, each and every acre of land, or any fraction thereof, within the boundary of the district represents one vote and each owner of that acre or fraction thereof is entitled to one vote for every such acre or fraction thereof. Persons who qualify to serve as board members must be nominated at the noticed meeting and prior to the initial election at the noticed meeting. A landowner may vote in person or by proxy in writing. A landowner who sells land to a bona fide purchaser may by written lawful instrument retain the voting rights for that acreage.

At the landowners' meeting for the election of the members of the board on a one-acre, one-vote basis, the two candidates receiving the highest number of votes must be elected for terms expiring November 30, 2008, and the three candidates receiving the next highest number of votes must be elected for terms expiring November 30, 2010. The members of the first board elected by the landowners must serve their respective 4-year or 2-year terms; however, the next election by the landowners must be held on the first Tuesday in November 2008 to elect members to fill those vacancies to 4-year terms. Thereafter, there must be an election of supervisors for the district every 2 years in November on a date established by the board and subject to public notice.

In case of a vacancy in the office of any member of the board, the remaining members of the board must, by majority vote, elect a person to serve as a member of the board for the unexpired portion of the term.

b. Election of the Board by Qualified Electors

Elections of the members of the board must be conducted on a one-acre, one-vote basis until and unless a referendum is called by the board on the question of whether certain members of the board should be elected by qualified electors, providing each of the following conditions has been satisfied at least 60 days prior to the general or special election at which the referendum is to be held:

1. The district has at least 500 qualified electors based on the most recent state population estimate.
2. A petition signed by 10 percent of the qualified electors of the district has been filed with the board. The petition must be submitted to the Supervisor of Elections of Okeechobee County who must, within 30 days after receipt of the petition, certify to the board the percentage of signatures of qualified electors contained in the petition.

Upon verification by the supervisor of elections that 10 percent of the qualified electors of the district have petitioned the board, a referendum election must be called by the board at the next regularly scheduled election of governing board members occurring at least 60 days after verification.

If the qualified electors approve the election procedure described below, the governing board of the district will remain five members and elections must be held pursuant to the criteria described below, beginning with the next regularly scheduled election of board members or at a special election called within 6 months after the referendum and final unappealed approval of district urban area maps as provided in this section, whichever is earlier. If the qualified electors of the district reject the election procedure, elections of the members of the board continue as described in this act on a one-acre, one-vote basis. No further referendum on the question may be held for a minimum period of 2 years after the referendum.

Within 30 days after approval of the election process by qualified electors of the district, the board must direct district staff to prepare and to present maps of the district describing the extent and location of all urban areas within the district. The determination must be based upon the criteria contained in the

definition of urban area in this act. "Urban area" is defined as "a developed and inhabited urban area within the district within a minimum acreage resident population density of least 1.5 persons per acre as defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas must be designated by the board of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the jurisdiction of the district."

Within 60 days after approval of the election process by qualified electors of the district, the maps describing urban areas within the district must be presented to the board.

Any district landowner or elector may contest the accuracy of the urban area maps prepared by district staff within 30 days after submission to the board. Upon notice of objection to the maps, the governing board must request the county engineer to prepare and present maps of the district describing the extent and location of all urban areas within the district. The determination must be based exclusively upon the criteria contained in the definition "urban area". Within 30 days after the governing board submits its request, the county engineer must present the maps to the governing board.

Upon presentation of the maps by the county engineer, the governing board must compare the maps submitted by both the district staff and the county engineer and make a determination as to which set of maps to adopt. Within 60 days after presentation of all such maps, the governing board may amend and must adopt the official maps at a regularly scheduled board meeting. Any district landowner or qualified elector may contest the accuracy of the urban area maps adopted by the board after adoption in accordance with the provision for judicial review as provided in the Administrative Procedure Act. Accuracy must be determined pursuant to the definition of "urban area".

Upon adoption by the board or certification by the court, the district urban area maps must serve as the official maps for determination of the extent of urban area within the district and the number of members of the board to be elected by qualified electors and by one-acre, one-vote at the next regularly scheduled election of governing board members.

Upon a determination of the percentage of urban area within the district as compared with total area within the district, the governing board must determine the number of electors in accordance with the percentages pursuant to this paragraph. The maps must be updated and readopted every 5 years or sooner at the discretion of the board.

The five members of the governing board of the district must be elected in accordance with the following determinations of urban area:

- If urban areas constitute 25 percent or less of the district, one governing board member must be elected by the qualified electors and four governing board members elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute more than 25 percent but less than 50 percent of the district, two governing board members must be elected by the qualified electors and three governing board members elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute at least 50 percent but less than 70 percent of the district, three governing board members must be elected by the qualified electors and two governing board members elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute at least 70 percent but less than 90 percent of the district, four governing board members must be elected by the qualified electors and one governing board member must be elected in accordance with the one-acre, one-vote principle.
- If urban areas constitute at least 90 percent or more of the district, all governing board members must be elected by the qualified electors.

All governing board members elected by qualified electors have a term of 4 years each except for governing board members elected at the first election and the first landowners' meeting following the referendum described above. Governing board members elected at the first election and the first landowners' meeting following the referendum serve as follows:

- If one governing board member is elected by the qualified electors and four are elected on a one-acre, one-vote basis, the governing board members elected by the qualified electors are elected for a term of 4 years each. Governing board members elected on a one-acre, one-vote basis are elected for terms as otherwise prescribed in the provisions governing elections by landowners.
- If two governing board members are elected by the qualified electors and three are elected on a one-acre, one-vote basis, the governing board members elected by the qualified electors are elected for a term period of 4 years each. Governing board members elected on a one-acre, one-vote basis must be elected for terms of 1, 2, and 3 years, respectively, as otherwise prescribed in the provisions governing elections by landowners.
- If three governing board members are elected by the qualified electors and two are elected on a one-acre, one-vote basis, two of the governing board members elected by the qualified electors are elected for a term of 4 years and the other governing board member elected by the electors must be elected for a term of 2 years. Governing board members elected on a one-acre, one-vote basis must be elected for periods of 1 year and 2 years, respectively, as otherwise prescribed in the provisions governing elections by landowners.
- If four governing board members are elected by the qualified electors and one is elected on a one-acre, one-vote basis, two of the governing board members elected by the electors are elected for terms of 2 years each and the other two for term of 4 years each. The governing board member elected on a one-acre, one-vote basis are elected for a term of 1 year as otherwise prescribed in the provisions governing elections by landowners.
- If five governing board members are elected by the qualified electors, three must be elected for terms of 4 years each and two for terms of 2 years each.

If any vacancy occurs in a seat occupied by a governing board member elected by the qualified electors, the remaining members of the governing board must, within 45 days after the vacancy occurs, appoint a person who would be eligible to hold the office for the unexpired term. Each election by qualified electors of members of the board must be conducted in the manner and at a time prescribed by law for holding general elections or prescribed by the Supervisor of Elections in and for the Okeechobee County political subdivision.

An annual landowners' meeting must be held and at least one governing board member must be elected on a one-acre, one-vote basis for so long as 10 percent or more of the district is not contained in an urban area. In the event all district governing board members are elected by qualified electors, there will be no further landowners' meetings.

At any landowners' meeting called for the purpose of addressing elections issues, 50 percent of the district acreage is not be required to constitute a quorum and each governing board member is elected by a majority of the acreage represented either by owner or proxy present and voting at said meeting. All landowners' meetings of districts operating pursuant to this section must be set by the board within the month preceding the month of the election of the governing board members by the electors.

General Powers of the District
The following broad general powers of the district must be construed liberally in order to carry out effectively the single specialized purpose of this act and to secure for the district its ability to be innovative:

- To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire by purchase, gift, devise, or otherwise, and to dispose of, real and

personal property or any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

- To apply for coverage of its employees under the state retirement system in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the state retirement fund.
- To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts are subject to public bidding or competitive negotiation requirements.
- To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt rules and orders pursuant to the provisions of ch.120, F.S., prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt administrative rules with respect to any of the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.
- To maintain an office at such place or places as the board designates in Okeechobee County and within the district when facilities are available.
- To hold, control, and acquire by donation, purchase, or condemnation, and to dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act other than public easements conveyed to or accepted by Okeechobee County and to make use of such easements, dedications, or reservations for the purpose mandated by this act.
- To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out the purposes mandated by this act.
- To borrow money and issue bonds, certificates, warrants, notes, or other evidences of indebtedness as hereinafter provided; to levy such tax and assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.
- To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of the district activities and services and to enforce their receipt and collection in the manner prescribed by resolution not inconsistent with law.
- To exercise within the district, or beyond the district with prior approval by majority vote of a resolution of the governing body of the county if the taking will occur in an unincorporated area, the right and power of eminent domain, pursuant to the provisions of chs. 73 and 74, F.S., over any property within the state, except municipal, county, state, and federal property, for the uses and purpose of the district relating solely to water, sewer, district roads, and water management, specifically including, without limitation, the power for the taking of easements for the drainage of the land of one person over and through the land of another.
- To cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.
- To assess and impose upon lands in the district ad valorem taxes as provided and limited by this act.
- If and when authorized by general law, to determine, order, levy, impose, collect, and enforce maintenance taxes.
- To determine, order, levy, impose, collect, and enforce assessments pursuant to this act, which sets forth a detailed uniform procedure to implement ch. 170, F.S., and as an alternative to determine, order, levy, impose, collect, and enforce assessments under and pursuant to ch.170, F.S., pursuant to authority granted in s. 197.3631, F.S., or pursuant to other provisions of

general law, now or hereinafter enacted, which provide or authorize a supplemental means to impose, levy, and collect special assessments. Such special assessments, in the discretion of the district, as provided in s. 197.3631, F.S., may be collected and enforced pursuant to the provisions of ss. 197.3632 and 197.3635, F.S., and chs. 170 and 173, F.S., or as provided by this act.

- To exercise such special powers and other express powers as may be authorized and granted by this act in the charter of the district, including powers as provided in any interlocal agreement entered into pursuant to ch. 163, F.S., or which are required or permitted to be undertaken by the district pursuant to any development order or development of regional impact, including any interlocal service agreement with Okeechobee County for fair-share capital construction funding for any capital facilities or systems required of the developer pursuant to any applicable development order or agreement.
- To exercise all of the powers necessary, convenient, incidental, or proper in connection with any other powers or duties or the single purpose of the district authorized by this act.

Special Powers of the District

The district is granted the following special powers to implement its special purpose and to provide pursuant to that purpose basic systems, facilities, and services in the district subject to, and not inconsistent with, the regulatory jurisdiction and permitting authority of all other applicable governmental bodies, agencies, and any special districts having authority with respect to any area included therein, and to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, finance, fund, and maintain improvements, systems, facilities, services, works, projects, and infrastructure any or all of the following special powers granted by this act in order to implement the special requirements of this new community within the single special purpose of the district:

- To provide for water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges. In the event that the board assumes the responsibility for providing water management and control for the district which is to be financed by benefit special assessments, the board must adopt plans and assessments pursuant to law or may adopt water management and control plans, assess for benefits, and apportion and levy special assessments in accordance with specified procedures set forth in the bill.
- To provide for water supply, sewer, and wastewater management, reclamation, and reuse or any combination thereof and any irrigation systems, facilities, and services; to construct and operate connecting intercepting or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any street, alley, highway, or other public place or way; and to dispose of any effluent, residue, or other byproducts of such system or sewer system.
- To provide for bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of such works and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut.
- To provide for district roads equal to or exceeding the specifications of the county in which such district roads are located, and streetlights, including conditions of development approval which sometimes may be different specifications than the normal specifications of the county.
- Include as a component thereof roads, parkways, bridges, landscaping, irrigation, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system in general or as tied to the conditions of development approval for the specific district.
- To plan, implement, construct or reconstruct, enlarge or extend, finance, fund, equip, operate, and maintain parking facilities freestanding or as may be related to any innovative strategic intermodal system of transportation pursuant to applicable federal, state, and local laws and ordinances.
- To provide for buses, trolleys, transit shelters, ride-sharing facilities and services, parking improvements, and related signage.

- To cover investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district who caused or contributed to the contamination.
- To provide for conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property.
- Using its general and special powers as set forth in this act, to provide for any other project within or without the boundaries of a district when the project is the subject of an agreement between the district and the Board of County Commissioners of Okeechobee County or with any applicable other public or private entity, including a homeowner association, and is not inconsistent with the Okeechobee County Comprehensive Plan and the Growth Management act which implement the single special purpose of the district.
- To provide for parks and facilities for indoor and outdoor recreational, cultural, and educational uses.
- To provide for fire prevention and control, including fire stations and buildings, water mains and plugs, fire trucks, and other vehicles and equipment, and for emergency medical services, including stations and buildings, vehicles, and equipment.
- To provide for school buildings and related structures, which may be leased, sold, or donated to the school district, for use in the educational system when authorized by the district school board. The district is granted the special power to contract with the Okeechobee County School Board and, as applicable, the Board of County Commissioners of Okeechobee County, and with the applicable landowner developer of the lands within the jurisdiction of the district, to assess the school district educational facilities plan, and to implement a management and financing plan for timely construction, maintenance, and acquisition, at the option of the district, of school facilities, including facilities identified in the facilities work programs or those proposed by charter schools. The district is granted the special power to determine, order, levy, impose, collect, or arrange for the collection and enforcement of assessments, as defined in and pursuant to this act, for such school facilities. The district is eligible for the financial enhancements available to educational facility benefit districts to provide for financing the construction and maintenance of educational facilities pursuant to s. 1013.356, F.S., and, if and when authorized by general law, to acquire such educational facilities.
- To provide for security, including, but not limited to, guardhouses, fences and gates, electronic intrusion detection systems, and patrol cars, when authorized by proper governmental agencies, except that the district may not exercise any powers of a law enforcement agency but may contract with the appropriate local general-purpose government agencies for an increased level of such services within the district boundaries. Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.
- To provide for control and elimination of mosquitoes and other arthropods of public health importance.
- To provide for waste collection and disposal.
- To enter into impact fee credit agreements with Okeechobee County and the Okeechobee County School Board. Under such agreements, where the district constructs or makes contributions for public systems, facilities, services, projects, improvements, works, and infrastructures for which impact fee credits would be available to the landowner developer under the Okeechobee County and Okeechobee County School Board applicable impact fee ordinance, the agreement authorized by this act must provide that such impact fee credit must inure to the landowners within the district in portion to assessments or other burdens levied and imposed upon the landowners with respect to assessable improvements giving rise to such impact fee credits, and the district must, from time to time, execute such instruments, such as

assignments of impact fee credits, as may be necessary, appropriate, or desirable to accomplish or to confirm the foregoing.

- To establish and create, at noticed meetings, such government departments of the board of the district, as well as committees, task forces, boards, commissions, or other agencies under the supervision and control of the district, as from time to time the members of the board may deem necessary or desirable in the performance of the acts or other things necessary to exercise its general or special powers to implement an innovative project to carry out the special purpose of the district as provided in this act and to delegate to such departments, boards, task forces, committees, or other agencies such administrative duties and other powers as the board may deem necessary or desirable, but only if there is a set of expressed limitations for accountability, notice, and periodic written reporting to the board, which must retain its powers.
- So long as not inconsistent with the applicable local government comprehensive plan and development entitlements, to coordinate with the landowner developer on the phasing of the delivery of infrastructure and to create phase entities or units for its charter purpose. Toward this end, and so long as it implements the purpose of the district under this act, the board may designate, therefore, units of development and adopt systems of progressive phased development by units with related management planning, implementation, construction, maintenance, and financing within its phased unit. If the board proceeds to designate such phased units of development, it must adopt at a noticed meeting pursuant to ch. 120, F.S., a rule setting forth detailed procedures and authorizations for such phase unit processes. A committee, department, or agency of the board must be given express duty of oversight with monthly written reports to the board. No such phased units can begin or operate until or unless the required noticed rule has been promulgated. With regard to any phased unit, there must be no bonded indebtedness and no levy of any lienable or nonlienable revenue, whether to amortize bonds or not, within the boundary of a phased unit other than by the board and pursuant to the powers, procedures, and provisions of this act and other applicable laws.
- To plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, maintain, finance, and fund buildings and structures for district offices, maintenance facilities, meeting facilities, town centers, or any other project authorized or granted by this act upon a showing at a noticed meeting of its efficacy to the specialized single purpose of this district for the new community.
- To plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, maintain, finance, and fund edifices and facilities for the provision of health care when authorized by applicable public or private agencies providing health care and upon a showing of efficacy to carry out the purpose of the district.
- To coordinate, work with, and, as the board deems appropriate, enter into interlocal agreements subject to the provisions of this charter with any public or private institution of higher education, including the Indian River Community College and any public or private university. The purpose of such coordination and agreements is to help sustain high-quality infrastructure in, around, and for the universities as may be appropriate under the law on the basis that the provision of such systems, facilities, and services, including classrooms or other buildings for such institutions, constitutes enhancement of the intrinsic value and marketability of property within the new community and also provides for increased enjoyment and enhanced use of the property. These systems, facilities, and services, including buildings, must be first liens on the property within the community and serve a lawful public purpose upon a showing by the board in a nonarbitrary and informed manner of special and peculiar benefits that flow to the property within the community as a logical connection from the systems, facilities, and services, resulting in added use, enhanced enjoyment, decreased insurance premiums on, or enhanced value in the marketability of the property.
- To adopt and enforce appropriate rules following the procedures of ch. 120, F.S., in connection with the provisions of one or more its systems, facilities, services, projects, improvements, works, and infrastructure.

The enumeration of special powers is not exclusive or restrictive but must be deemed to incorporate all powers, express or implied, necessary or incident to carrying out such enumerated special powers,

including also the general powers provided by this special act charter to the district to implement its single purpose.

District Borrowing and Issuance of Bonds
The district is authorized to obtain loans in any amount and on such terms as the board approves at an interest rate not to exceed the maximum rate allowed by general law. The district is also authorized to issue bond anticipation notes, interim certificates, certificates of indebtedness, assessment bonds, revenue bonds, and refunding bonds. Any general obligation bonds, special assessment bonds, or revenue bonds may be authorized by resolution or resolutions of the board, which must be adopted by a majority of all the members thereof then in office. Such resolution or resolutions may be adopted at the same meeting at which they are introduced and need not be published or posted.

The district is authorized to issue general obligation bonds to finance or refinance capital projects or to refund outstanding bonds in an aggregate principal amount of bonds outstanding at any one time not in excess of 35 percent of the assessed value of the taxable property within the district as shown on the pertinent tax records at the time of the authorization of the general obligation bonds for which the full faith and credit of the district is pledged. Except for refunding bonds, general obligation bonds may not be issued unless the bonds are issued to finance or refinance a capital project and the issuance has been approved at an election held in accordance with the requirements for such election as prescribed by the State Constitution.

The district may pledge its full faith and credit for the payment of the principal and interest on such general obligation bonds and for any reserve funds provided therefor and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all taxable property in the district, to the extent necessary for the payment thereof, without limitations as to rate or amount.

The power of the district to issue bonds under the provisions of this act may be determined, and any of the bonds of the district maturing over a period of more than 5 years must be validated and confirmed, by court decree, under the provisions of ch. 75, F.S.

To the extent allowed by general law, all bonds, interest paid and all fees, charges, and other revenues derived by the district from the projects are exempt from all taxes by the state or by any political subdivision, agency, or instrumentality thereof; however, any interest, income, or profits on debt obligations issued are not exempt from the tax imposed by ch. 220, F.S. Further, the district is not exempt from the provisions of ch. 212, F.S.

The state pledges to the holders of any bonds issued that it will not limit or alter the rights of the district to own, acquire, construct, reconstruct, improve, maintain, operate, or furnish the projects or to levy and collect the taxes, assessments, rentals, rates, fees, and other charges provided for herein or to fulfill the terms of any agreement made with the holders of such bonds or other obligations and that it will not in any way impair the rights or remedies of such holders.

A default on the bonds or obligations of a district does not constitute a debt or obligation of the state or any local general-purpose government or the state.

Taxes, Special Assessments, Fees, and Charges

Ad valorem taxes. A board elected by and consisting of qualified electors is authorized to levy and assess an ad valorem tax on all the taxable property in the district to construct, operate, and maintain assessable improvements; to pay the principal of, and interest on, any general obligation bonds of the district; and to provide for any sinking or other funds established in connection with any such bonds. An ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3 mills. The ad valorem tax is in addition to county and all other ad valorem taxes provided for by law, and is assessed, levied, and collected in the same manner and at the same time as county

taxes. The levy of ad valorem taxes must be approved by referendum when required by the State Constitution.

Benefit Special Assessments. The board must annually determine, order, and levy the annual installment of the total benefit special assessments for bonds issued for and expenses related to financing assessable improvements. Each annual installment of benefit special assessments is a lien on the property against which assessed until paid and is enforceable in a like manner as county taxes. The amount of the assessment for the exercise of the district's powers must be determined by the board based upon a report by the district's engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land.

Non-Ad Valorem Maintenance Tax. In order to maintain and preserve the physical facilities and services constituting the works, improvements, or infrastructure provided by the district, and to repair and restore any one or more of them, when needed, and for the purpose of defraying the current expenses of the district, including any sum which may be required to pay state and county ad valorem taxes on any lands which may have been purchased and which are held by the district, the board may, upon the completion of said systems, facilities, services, works, improvements, or infrastructure, in whole or in part, as may be certified to the board by the engineer of the board, levy annually a non-ad valorem and nonmillage tax upon each tract or parcel of land within the district, to be known as a "maintenance tax." This non-ad valorem maintenance tax must be apportioned upon the basis of the net assessments of benefits assessed as accruing from the original construction, and must be authorized by general law before it is levied.

Maintenance Special Assessments. To maintain and preserve the facilities and projects of the district, the board may levy a maintenance special assessment. These maintenance special assessments are a lien on the property against which assessed until paid and are enforceable in like manner as county taxes. The amount of the maintenance special assessment for the exercise of the district's powers must be determined by the board based upon a report by the district's engineer and assessed by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

Special Assessments. As an alternative method to the levy and imposition of special assessments pursuant to ch. 170, F.S., pursuant to the authority of s. 197.3631, F.S., or pursuant to other provisions of general law that provide a supplemental means or authority to impose, levy, and collect special assessments as otherwise authorized under this act, the board may levy and impose special assessments to finance the exercise of any its powers using the specified uniform procedures.

Fees, Charges, and Rentals. The district is authorized to prescribe, fix, establish, and collect rates, fees, rentals, or other charges for the systems, facilities, and services furnished by the district within the limits of the district, including, but not limited to, recreational facilities, water management and control facilities, and water and sewer systems; to recover the costs of making connection with any district service, facility, or system; and to provide for reasonable penalties against any user or property for any such rates, fees, rentals, or other charges that are delinquent.

Rates, fees, rentals, or other charges for any of the facilities or services of the district may not be fixed until after a public hearing at which all the users of the proposed facility or service or owners, tenants, or occupants served or to be served thereby and all other interested persons have an opportunity to be heard concerning the proposed rates, fees, rentals, or other charges. Rates, fees, rentals, and other charges adopted under the administrative rulemaking authority of the district do not apply to district leases.

Rates, fees, rentals, and charges must be just, equitable, and uniform for users of the same class and, when appropriate, may be based or computed either upon the amount of service furnished, upon the

number of average number of persons residing or working in or otherwise occupying the premises served, upon any other factor affecting the use of the facilities furnished, or upon any combination of the foregoing factors, as may be determined by the board on an equitable basis.

If any rates, fees, rentals, charges, or delinquent penalties are not paid as and when due and are in default for 60 days or more, the unpaid balance thereof and all interest accrued thereon, together with reasonable attorney's fees and costs, may be recovered by the district in a civil action.

If any fees, rentals, or other charges for water and sewer services, or either of them, are not paid when due, the board may, under such reasonable rules and regulations as the board may adopt, discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance of or restoration of such water and sewer services, or both, are fully paid; for such purposes, the board may enter on any lands, waters, or premises of any person, firm, corporation, or body, public or private, within the district limits. Delinquent fees, rentals, or other charges, together with interest, penalties, and charges for the shutting off and discontinuance of or restoration of such services and facilities, reasonable attorney's fees, and other expenses, may be recovered by the district, which may also enforce payment of such delinquent fees, rentals, or other charges by any other lawful method of enforcement.

Enforcement of Taxes and Assessments
The collection and enforcement of all taxes levied by the district is at the same time and in like manner as county taxes, and the provisions of the Florida Statutes relating to the sale of lands for unpaid and delinquent county taxes; the issuance, sale, and delivery of tax certificates for such unpaid and delinquent county taxes; the redemption thereof; the issuance to individuals of tax deeds based thereon; and all other procedures in connection therewith are applicable to the district. All taxes are subject to the same discounts as county taxes. All taxes provided for in this act become delinquent and bear penalties on the amount of such taxes in the same manner as county taxes.

Any and all assessments, including special assessments, benefit special assessments, and maintenance special assessments; special assessments; and maintenance taxes if authorized by general law, constitute a lien on the property against which assessed from the date of levy and imposition thereof until paid, coequal with the lien of state, county, municipal, and school board taxes.

Any lien in favor of the district arising under this act may be foreclosed by the district by foreclosure proceedings in the name of the district in a court of competent jurisdiction as provided by general law in like manner as is provided in ch. 173, F.S. The provisions of that chapter are applicable to such proceedings. Any act required or authorized to be done by or on behalf of a municipality in foreclosure proceedings under ch. 173, F.S., may be performed by such officer or agent of the district as the board may designate. Such foreclosure proceedings may be brought at any time after the expiration of 1 year from the date any tax, or installment thereof, becomes delinquent; however, no lien may be foreclosed against any political subdivision or agency of the state. Other legal remedies remain available.

Competitive Bidding and Public Notice Regarding District Purchases
The board may not execute any contract for goods, supplies, or materials to be purchased when the amount to be paid by the district exceeds $150,000, the amount provided in s. 287.017, F.S., for category four unless notice of bids are advertised once in a newspaper of general circulation in Okeechobee County. If the board seeks to construct or improve a public building or structure or other public works, it must comply with the bidding procedures of s. 255.20, F.S. and other applicable general law. In each case, the bid of the lowest responsive and responsible bidder must be accepted unless all bids are rejected because the bids are too high or because the board determines it is in the best interests of the district to reject all bids. The board may require the bidders to furnish bond with a responsible surety to be approved by the board. The board may undertake and perform the construction, operation, and maintenance of any project or facility authorized by this act by the employment of labor, material, and machinery.

The provisions of the Consultants' Competitive Negotiation Act in s. 287.055, F.S., apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services let by the board.

Contracts for maintenance services for any district facility or project must be subject to competitive bidding requirements when the amount thereof to be paid by the district exceeds $150,000, the amount provided in s. 287.017, F.S., for category four. The district must adopt rules, policies, or procedures establishing competitive bidding procedures for maintenance services. Contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts.

Notice to Purchasers of Property Within the District
Subsequent to the creation of this district, each contract for the initial sale of a parcel of real property and each contract for the initial sale of a residential unit within the district must include, immediately prior to the space reserved in the contract for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract: "THE GROVE COMMUNITY DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC SYSTEMS, FACILITIES, AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW."

Within 30 days after the election of the first board members, the district must cause to be recorded in the property records in the county in which it is located a "Notice of Creation and Establishment of the Grove Community District." The notice must, at a minimum, include the legal description of the property of the landowners who have consented to establishment of this district and a copy of the disclosure statement specified in subsection (30).

Public Access
Any system, facility, service, works, improvement, project, or other infrastructure owned by the district or funded by federal tax-exempt bonding issued by the district is public; the district by rule may regulate, and may impose reasonable charges or fees for, the use thereof but not to the extent that such regulation or imposition of such charges or fees constitutes denial of reasonable access.

C. SECTION DIRECTORY:

Section 1. Provides short title of the Act.
Section 2. Provides legislative intent and definitions.
Section 3. Provides minimum charter requirements.
Section 4. Sets forth district boundaries; grants powers; grants bonding authority; grants taxing authority; grants special assessment authority; grants authority to levy fees, rates, charges, and rentals; requires competitive procurement; requires public access;
Section 5. Provides for severability.
Section 6. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? February 2, 2006

WHERE? The Okeechobee News, Okeechobee County, Florida

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

IF YES, WHEN? This act takes effect upon becoming a law, except that the provisions of the bill that authorize the levy of ad valorem assessments only take effect upon express approval by a majority vote of those qualified electors of the district, as required by Section 9 of Article VII of the State Constitution, voting in a referendum to be called by the Supervisor of Elections of Okeechobee County and held by the Board of Supervisors of the Grove Community District. The election must be held in accordance with the provisions of law relating to elections in force at the time the referendum is held.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Separation of Powers

Sections 2 and 3 of this bill contain approximately 18 pages of legislative findings of fact, ascertainments, determinations, intent statements, and policy statements. On lines 966-968, the bill provides that "[s]ections 2 and 3 of this act are true and correct and are incorporated herein and made a part of this section as dispositive provisions of law."

Article II, section 3 of the State Constitutional provides that "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The Legislature has the authority to enact laws that are presumed to be constitutional. The judicial branch makes the dispositive determination that the presumption has or has not been overcome. An attempt by the Legislature to make a "dispositive" determination may be considered an unconstitutional exercise of judicial powers by the Legislature.

One-Acre, One-Vote Election Mechanism

It should be noted that the broad grants of power to the district 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 ch. 190, F.S., based on the decisions of the United States Supreme Court, the narrow purpose of such districts, and the disproportionate effect district operations have on landowners.

Following this case, the Fourth District Court of Appeal reached a similar conclusion with respect to water control districts which are governed by ch. 298, F.S. *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.

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, it seems more likely

that one-vote-per acre voting would be 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.

B. RULE-MAKING AUTHORITY: The bill authorizes the district to adopt rules under ch. 120, F.S., the Florida Administrative Procedure Act to provide for:

- The powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district.
- Any of the projects of the district and define the area to be included therein.
- The operation of guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board.
- The designation of phased units of development. The rule must set forth detailed procedures and authorizations for such phase unit processes. A committee, department, or agency of the board must be given express duty of oversight with monthly written reports to the board. No such phased units can begin or operate until or unless the required noticed rule has been promulgated.
- One or more its systems, facilities, services, projects, improvements, works, and infrastructure.
- Notice, levy, imposition, equalization, and collection of assessments.
- Competitive bidding procedures for maintenance services. Contracts for other services may not be subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts.
- Rates, fees, rentals, and other charges.
- Discontinuation of both water and sewer services until delinquent fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance of or restoration of such water and sewer services, or both, are fully paid.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Possible Exemptions from General Law

The bill includes the following provisions, all of which appear to be exemptions from general law:

- Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.
- Notwithstanding the provisions of any other law to the contrary, all bonds issued under the provisions of this act constitutes legal investments for savings banks, banks, trust companies, insurance companies, executors, administrators, trustees, guardians, and other fiduciaries and for any board, body, agency, instrumentality, county, municipality, or other political subdivision of the state and is a security which may be deposited by banks or trust companies as security for deposits of state, county, municipal, or other public funds or by insurance companies as required or voluntary statutory deposits.
- Notwithstanding any provision of this act or of ch. 170 or s. 170.09, F.S., which provide that assessments may be paid without interest at any time within 30 days after the improvement is

completed and a resolution accepting the same has been adopted by the governing authority, such provision is not applicable to any district assessments, whether imposed, levied, and collected pursuant to the provisions of this act or other provisions of Florida law, including, but not limited to, ch.170, F.S.

Broad Powers of the District

The "specialized functions and related prescribed powers," which are a defining characteristic for a special district, are extremely broad for this particular district, including the power to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, hardscaping, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the district; conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements; and provide buildings and structures for district offices, maintenance facilities, meeting facilities, town centers, or any other project authorized by this bill.

However, such broad powers, have been upheld by the courts as demonstrated by the leading case on this issue, *State v. Reedy Creek Imp. Dist.,* 216 So.2d 202 (Fla. 1968):

> So long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose. In the present case, the numerous and diverse powers granted to the District by the enabling act appear to be logically related and essential to the realization of the valid public purposes by the District. In reaching this conclusion, we reject the State's argument that the powers granted the District are commensurate in scope with those characteristic of a local municipal government rendering the enabling act a mere subterfuge to avoid the creation of a municipality.

Supremacy Clause

This bill includes the following supremacy clause:

> This single-purpose district is created for all public body corporate, politic, and local government authority and power limited by the charter and subject to the provisions of other general laws, including expressly chapter 189, Florida Statutes, except that an inconsistent provision in this act shall control and the district has jurisdiction to perform such acts and exercise such projects, functions, and powers as shall be necessary, convenient, incidental, proper, or reasonable for the implementation of its limited, single, and specialized purpose regarding the sound planning, provision, acquisition, development, operation, maintenance, and related financing of those public systems, facilities, services, improvements, projects, and infrastructure works as authorized herein including those necessary and incidental thereto.

Supremacy clauses are provisions that attempt to resolve conflicts between legislative enactments by assigning supremacy or prominence to one provision or set of provisions over another. If a bill includes a general supremacy clause, such as the one contained in this bill, the judiciary determines superiority between general and special law provisions, rather than the Legislature. In addition, general supremacy clauses do not inform interested persons or members of the Legislature of the specific laws containing potential conflicts. Unless the

specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

Extraterritorial Services and Projects
This bill provides authority for the district to exercise its powers outside the district boundaries as follows:

> The jurisdiction of this district, in the exercise of its general and special powers and in the carrying out of its single, narrow, and special purpose, is both within the external boundaries of the legal description of this district and extraterritorially, when limited to, and as authorized expressly elsewhere in, the charter of the district in this act or applicable general law.

The district is also authorized to, "[u]sing its general and special powers as set forth in this act, to provide for any other project within or without the boundaries of a district when the project is the subject of an agreement between the district and the Board of County Commissioners of Okeechobee County or with any applicable other public or private entity, including a homeowner association, and is not inconsistent with the Okeechobee County Comprehensive Plan and the Growth Management act which implement the single special purpose of the district."

The ability of the district to exercise its general and special powers outside its boundaries may raise questions regarding the levy of special assessments on property owners within the district if proceeds of the special assessments, fees, or non-ad valorem taxes are used to fund projects outside the district. The charter is unclear as to when and under what circumstances the district may exercise its powers extraterritorially or how assessments, taxes, and fees will be apportioned to fund projects outside district boundaries.

New Powers to Community Development Districts
Although the district is created pursuant to chapter 189, Florida Statutes, the bill attempts to give the district future powers that may be included in ch. 190, F.S., relating to Community Development Districts as follows:

> Any amendments to chapter 190, Florida Statutes, after January 1, 2006, which grant additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter, sections 190.006-190.041, Florida Statutes, shall constitute a general power, special power, authority, or function of the Grove Community District, except that as to any such additional powers, authorities, or projects, this act shall control if there are any related provisions in such additional powers, authorities, or projects inconsistent with the provisions of this act.

Therefore, if the Legislature amends ch. 190, F.S., to grant community development districts additional authority at any time in the future, that additional authority will be automatically granted to the district without further legislative review or enactment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the Grove Community District,
3 Okeechobee County; providing a short title; creating the
4 Grove Community District; providing for findings,
5 determinations, ascertainments, intent, purpose,
6 definitions, and policy; providing a charter; providing
7 jurisdiction; providing boundaries; providing powers of
8 the district; creating the district as a special, limited,
9 and single-purpose independent district, an independent
10 local government, and corporate body politic, to provide
11 community development infrastructure; providing for
12 authority, boundaries, jurisdiction, and charter
13 amendment; providing for a governing board and terms of
14 office and duties thereof; providing for elections;
15 providing for a district manager; providing for bonds;
16 providing for borrowing; providing for future transition
17 to ad valorem taxation; providing for special assessments;
18 providing for issuance of certificates of indebtedness;
19 providing for tax liens; providing minimum charter
20 requirements; providing for the applicability of and
21 compliance with provisions of chapter 189, Florida
22 Statutes, and other general laws; providing for
23 severability; providing for a referendum; providing an
24 effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Short title.--This act may be known as the
29 "Grove Community District Act."
30 Section 2. Legislative findings, ascertainments,
31 determinations, intent, purpose, definitions, and policy.--
32 (1) LEGISLATIVE FINDINGS.--
33 (a) The northeastern area of Okeechobee County is unique
34 and special.
35 (b) The land area of Okeechobee County is relatively
36 untouched and is predominantly used for agriculture or is
37 undeveloped.
38 (c) The economy of Okeechobee County is dominated by farm
39 and retirement industries and:
40 1. Okeechobee County is beginning to experience the
41 economic growth that substantially large parts of the remainder
42 of the state have already experienced.
43 2. While the influence of the farming industry continues
44 to decline, the retirement industry is a major and growing
45 industry.
46 3. Okeechobee County will experience rapid growth in
47 population over the next 20 years, as more retirees move to the
48 state and find coastal housing too expensive and as more
49 residents from coastal Florida counties move inland to
50 Okeechobee County, including northeastern Okeechobee County.
51 (d) In implementing protection of natural resources,
52 retention of viable agriculture, and promotion of a sound
53 economy, the Okeechobee County Comprehensive Plan promotes
54 compact, efficient, and self-sustaining mixed-use development.

55 (e) Evans Properties, Inc., own or have control over
56 approximately 5,683 acres for the development of an innovative
57 new self-sustaining community that fits the goals, aspirations,
58 and plans for northeastern Okeechobee County.
59 (f) Within and subject to the comprehensive plan and land
60 development regulations, such a community requires appropriate
61 compact, balanced, self-sustaining, and mixed-use development on
62 a human scale with the required innovative balance of such
63 importance to the northeastern Okeechobee County area.
64 (g) In particular:
65 1. Creating a new community in northeastern Okeechobee
66 County requires a critical coinciding of existing and future
67 land use with provision of capital facilities and related
68 systems and services, based upon timely, flexible, and
69 specialized management of critical factors and sequential
70 events, balancing among the interests of private enterprise,
71 agriculture, private citizens, taxpayers, consumers, the
72 environment, the economy, the initial landowners, and all
73 applicable levels of government.
74 2. All the applicable public and private persons and
75 entities have invested and expended substantial time and moneys
76 to generate the county comprehensive plan and the existing and
77 future consistent specific regulatory and comprehensive planning
78 entitlements and consistent land development regulations for the
79 identification, preparation, and development of a new community.
80 3. Creating such a new community using a single-purpose
81 special independent district to provide infrastructure
82 constitutes innovative planning and flexible development

83 strategies pursuant to section 163.3177(11), Florida Statutes,
84 and Rule 9J-5.006(5)(l), Florida Administrative Code, to
85 minimize the conversion of agricultural lands to other uses, to
86 discourage urban sprawl, and to protect environmentally
87 sensitive areas while maintaining the economic viability of
88 agricultural and other predominately rural land uses and
89 providing for the efficient use of public facilities and
90 services as provided expressly in objective L7 of the Okeechobee
91 County Comprehensive Plan, Future Land Use Element.
92 (h) There is in particular a special need to use a
93 specialized and limited single-purpose independent district unit
94 of local government for the new community:
95 1. To prevent urban sprawl by providing self-sustaining
96 and freestanding infrastructure and by preventing needless and
97 counterproductive community development when the existing urban
98 area is not yet developed.
99 2. To prevent the needless duplication, fragmentation, and
100 proliferation of local government services in a proposed land
101 use area.
102 (i) Management of public health, safety, welfare,
103 economic, natural, and historic resources in this area of
104 northeastern Okeechobee County transcends the boundaries and
105 responsibilities of both private landowners and individual units
106 of government, so that no one single public or private entity or
107 person can plan or implement policies to deal with the many
108 issues which attend the provision of basic systems, facilities,
109 and services to the area to be managed in northeastern

110 Okeechobee County in order to provide for a new community in the
111 area.
112 (j) It is the expressed set of findings of the Legislature
113 further that:
114 1. There is a considerably long period of time during
115 which there is an inordinate infrastructure burden on the
116 initial landowners of the agricultural land area for the new
117 community because of the innovative, special, and unique
118 requirements in the Okeechobee County Comprehensive Plan for the
119 northeastern Okeechobee County area, dealing specifically with
120 flexible management and related sequencing, timing, and
121 financing of the various systems, facilities, and services to be
122 provided to the new community, taking into consideration
123 absorption rates, commercial viability, and related factors.
124 2. Even as the community matures, there is continuing need
125 for landowners, both initial and subsequent, to bear burdens to
126 provide important infrastructure that remain relatively
127 inordinate in order to preserve such inordinate benefits for
128 northeastern Okeechobee County as the unique environmental and
129 economic purpose of the new community.
130 3. Longer involvement of the initial landowner with regard
131 to the provision of basic systems, facilities, and services in
132 the new community area, coupled with a severely limited and
133 highly specialized single purpose of the district, is in the
134 public interest.
135 4. Any public or private system to provide basic
136 infrastructure improvements, systems, facilities, and services
137 to this new community in northeastern Okeechobee County must be

138 focused on an unfettered, highly specialized, innovative,
139 responsive, accountable mechanism to provide the components of
140 infrastructure at sustained levels of high quality over the long
141 term only when and as needed for such a unique community in such
142 a unique area.
143 5. There is a critical need to maintain such provision of
144 such systems, facilities, and services to the new community
145 because of the unique location and attributes of the
146 northeastern Okeechobee County area, coupled with the unique
147 purpose and location of this new community, subject to,
148 complying with, and not inconsistent with the state, regional,
149 and local requirements which attend implementation of the state
150 plan and the county comprehensive plan.
151 6. This need is met by coinciding the use and special
152 attributes of various public and private alternatives for the
153 provision of infrastructure to such a community development,
154 including:
155 a. The public policy and related implementing zoning,
156 permitting, and planning expertise, interests, and capabilities
157 of state and regional government and of the Okeechobee County
158 general-purpose local government;
159 b. The flexible, limited, focused, and locally accountable
160 management and related financing capabilities of independent
161 special-purpose local government; and
162 c. The innovative development and marketing private-sector
163 expertise of the initial landowners, developers, and other
164 components of private enterprise.

165 7. The specialized financing and revenue procedures for
166 the levy and imposition of first-lien assessments, by a variety
167 of names, must be disclosed, followed, noticed, fair,
168 nonarbitrary, informed, reasonable, and accountable and must be
169 set forth dispositively.
170 (k) The existence and use of such a limited specialized
171 single-purpose local government for the new community, subject
172 to the Okeechobee County Comprehensive Plan, will result in a
173 high propensity:
174 1. To prevent urban sprawl, to protect and preserve
175 environmental, conservation, and agricultural uses and assets,
176 and to enhance the high-quality use of the applicable area of
177 northeastern Okeechobee County;
178 2. To enhance the market value for both present and future
179 landowners of the property consistent with the need to protect
180 private property rights in the northeastern Okeechobee area;
181 3. To enhance the net economic benefit to the Okeechobee
182 County area, including an enhanced and well-maintained tax base
183 to the benefit of all present and future taxpayers in Okeechobee
184 County; and
185 4. To share the costs for providing such basic systems,
186 facilities, and services in an innovative, sequential, and
187 flexible manner within the new community to be serviced by the
188 Grove Community District.
189 (2) ASCERTAINMENTS.--Based upon these findings, the
190 Legislature has learned and ascertains that:
191 (a) There are two public or governmental alternatives and
192 one private alternative available to plan, construct, maintain,

193 and finance the provision of systems, facilities, and services
194 in the intended new community area of northeastern Okeechobee
195 County:
196 1. One of the public or governmental alternatives for such
197 infrastructure provision is by the board of county commissioners
198 within the Okeechobee County political subdivision which can
199 provide certain basic systems, facilities, and services directly
200 or with management by its staff with financing through either a
201 municipal service taxing unit for ad valorem taxes or municipal
202 service benefit for assessments, or indirectly by nonemergency
203 ordinance use of a dependent district.
204 2. The second public alternative is use of an independent
205 special district.
206 3. The private alternative is the private landowner, a
207 private homeowner association, a private utility, a private
208 business corporation, or a partnership or combination of these
209 various private alternatives.
210 (b) Planning, permitting, and creating the new community
211 and using the independent specialized single-purpose Grove
212 Community District created by this act are consistent with and
213 implement both the Okeechobee County Comprehensive Plan and Land
214 Development Regulations and also the following long-standing and
215 expressed policies of the state:
216 1. To allow the creation of independent special taxing
217 districts which have uniform general law standards and
218 procedures and which do not overburden other local governments
219 and their taxpayers while preventing the proliferation of

220 independent special taxing districts which do not meet the
221 standards set forth in section 187.201(20), Florida Statutes.
222 a. There are two alternatives for the use of independent
223 special districts. One alternative is establishment on the
224 approximately 5,683 acres by rule of the Governor and Cabinet of
225 a uniform community development district; the other is a special
226 independent district meeting the minimum requirements of chapter
227 189, Florida Statutes, the applicable district accountability
228 general law.
229 b. Use of this special act, creating and establishing the
230 district on the approximately 5,683 acres in northeastern
231 Okeechobee County, is the better of the two independent district
232 alternatives because it updates the charter of a community
233 development district under chapter 190, Florida Statutes,
234 eliminates potential for its abuse, clarifies and sets forth
235 certain uniform procedures for liens on property and for access
236 by the public to the property, and makes other substantial
237 reforms to the benefit of the people of Okeechobee County and
238 future landowners, residents, and visitors.
239 2. To encourage the development of local water supplies,
240 pursuant to section 187.201(7)(b)3., Florida Statutes.
241 3. To recognize the existence of legitimate and often
242 competing public and private interests and land use regulations
243 and other government action, pursuant to section 187.201(14)(a),
244 Florida Statutes.
245 4. Consistent with the Okeechobee County Comprehensive
246 Plan, to recognize the importance of preserving natural
247 resources and enhancing quality of life by development in those

248 areas where land and water resources, fiscal abilities, and
249 service capacity can accommodate the land use and growth in a
250 manner that is environmentally acceptable, pursuant to section
251 187.201(15)(a), Florida Statutes.
252 5. To allocate costs of new public facilities on the basis
253 of benefits received by existing and future residents while
254 planning for the management and financing of new facilities to
255 serve residents in a timely, orderly, and efficient manner,
256 pursuant to section 187.201(17)(a) and (b)3., Florida Statutes.
257 6. To encourage local government financial self-
258 sufficiency in providing public facilities and to identify and
259 implement fiscally sound, innovative, and cost-effective
260 techniques to provide and finance public facilities while
261 encouraging development, use, and coordination of capital
262 improvement plans by all levels of government, pursuant to
263 section 187.201(17)(b)5., 6., and 7., Florida Statutes, as
264 provided also in the Okeechobee County Comprehensive Plan.
265 7. To increase, promote, and provide access to cultural,
266 historical, and educational resources and opportunities,
267 pursuant to section 187.201(18)(a) and (b)1., Florida Statutes.
268 8. To enhance and diversify the economy of the Okeechobee
269 County area by promoting partnerships among education, business,
270 industry, agriculture, and the arts, provide opportunities for
271 training skilled employees for new and expanding businesses, and
272 promote self-sufficiency through training and educational
273 programs that result in productive employment, pursuant to
274 section 187.201(21)(a) and (b)6., 7., and 8., Florida Statutes.

275 9. To encourage and enhance cooperation among communities
276 that have unique assets, irrespective of political boundaries,
277 to bring the private and public sectors together for
278 establishing an orderly, environmentally sound, and economically
279 sound plan for current and future needs and growth, pursuant to
280 section 187.201(25)(b)8., Florida Statutes.
281 10. To create independent special districts by or pursuant
282 to general law to ensure long-term management and related
283 financing, to meet the need in the state for timely, efficient,
284 effective, responsive, innovative, accountable, focused, and
285 economic ways to deliver basic services to new communities to
286 solve the state's planning, management, and financing needs for
287 delivery of capital infrastructure in order in turn to provide
288 for projected growth only and to do so without overburdening
289 other governments and their taxpayers, pursuant to section
290 189.402, Florida Statutes, so that providing to the new
291 community basic systems, facilities, and services by independent
292 special districts remains pursuant to uniform general law and
293 section 189.402(3)(a) and (c), Florida Statutes.
294 11. To ensure that those independent districts and the
295 exercise of their powers are consistent and comply with
296 applicable due process, disclosure, accountability, ethics, and
297 government-in-the-sunshine requirements of law, both to the
298 independent districts and to their elected and appointed
299 officials, pursuant to section 189.402(3)(b), Florida Statutes,
300 because independent special districts are a legitimate
301 alternative method available for use by both the public and
302 private sectors to manage, own, operate, construct, and finance

303 basic capital infrastructure systems, facilities, and services,
304 pursuant to section 189.402(4)(a), Florida Statutes.
305 12. To ensure that an independent special district is
306 created to serve a special purpose to cooperate and to
307 coordinate its activities with the applicable general-purpose
308 local government because aspects of growth and development
309 transcend boundaries and responsibilities of individual units of
310 government so that no single unit of government can plan or
311 implement policies to deal with these issues unilaterally as
312 effectively, pursuant to section 189.402(7) and (8), Florida
313 Statutes.
314 (c) Construction, operation, and development of the new
315 community and the use of the special and single-purpose
316 independent district are not inconsistent with the Okeechobee
317 County Comprehensive Plan.
318 (d) This land area for the new community requires an
319 independent, special, and single-purpose local government, in
320 the form of an independent special district as defined in
321 section 189.403(3), Florida Statutes, subject to all substantive
322 and procedural limitations under state law, including this act,
323 in order to constitute itself a highly specialized alternative
324 and viable growth management concurrency mechanism appropriate
325 for this unique area, available to both the private and public
326 sectors.
327 (e) Such a district requires timely, flexible, limited,
328 and specialized management and related financing capabilities
329 under its uniform state charter, created by this act pursuant to
330 general law, in order to produce those flexible, innovative, and

331 highly specialized benefits to the new community property in
332 northeastern Okeechobee County.
333 (f) Such a district must have management capabilities to
334 provide pinpointed, focused, accountable, responsive, limited,
335 specialized, and low-overhead-based capability, authority, and
336 power to provide basic systems, facilities, and services to the
337 new community development with economies of scale but at
338 sustained high levels of quality over the long term.
339 (g) In order to be responsive to the critical timing
340 required through the exercise of its special management
341 functions, an independent district requires financing of those
342 functions, including bondable lienable and nonlienable revenue,
343 with full and continuing public disclosure and accountability,
344 funded by landowners, both present and future, and funded also
345 by users of the systems, facilities, and services provided to
346 the land area by the district, without burdening the taxpayers
347 and citizens of the state or of Okeechobee County or any
348 municipality in Okeechobee County.
349 (h) The provision of services by this independent district
350 must implement, be subject to, and function not inconsistent
351 with any related permitting and planning requirements of
352 Okeechobee County and of the Okeechobee County Comprehensive
353 Plan and Land Development Regulations.
354 (i) The creation, existence, and operation of the Grove
355 Community District, as limited and specialized to its single
356 narrow purpose, will also:

357 1. Constitute a public mechanism to translate the anti-
358 urban-sprawl objective of the Okeechobee County Comprehensive
359 Plan Future Land Use Element into reality.
360 2. Constitute a disincentive for premature or
361 inappropriate municipal incorporation consistent with state law.
362 3. Result in self-contained and self-sustained high-
363 quality infrastructure over the long term.
364 4. Provide a mechanism for full and continuing disclosure
365 of how basic systems, facilities, and services are both managed
366 and financed, including full and continuing disclosure to both
367 prospective purchasers and all residents of public financing
368 related to any burdens of land ownership and any related burdens
369 on existing or future residents.
370 5. Implement the Okeechobee County Comprehensive Plan
371 Future Land Use Element because innovative land techniques that
372 use public facilities efficiently, that meet county needs, and
373 that promote a sense of pride and community for its residents
374 are encouraged where the new community is located.
375 (j) The district is also a mechanism to implement the
376 Okeechobee County Concurrency Management System designed to
377 coincide with, and to implement, both the Okeechobee County
378 future land use element and the capital improvements element for
379 basic systems, facilities, and services consistent with the best
380 interests of the new community.
381 (k) By serving its single specialized purpose and in
382 preventing urban sprawl, the district will not result in
383 needless proliferation, duplication, and fragmentation of local

384 government systems, facilities, and services in this area of
385 northeastern Okeechobee County.
386 (l) Subject to its substantive and procedural limitations,
387 the district will assist directly in public and combined public
388 and private planning and coordination in order to achieve
389 innovative solutions to the needs and requirements in this
390 unique new community located in northeastern Okeechobee County.
391 (m) Management of the timing and phasing of critical
392 sequential events, coordinated by the initial private landowner
393 and the Board of County Commissioners of Okeechobee County, is
394 of fundamental importance and is the basis of the inordinate
395 burden on the initial landowner developer and to enhance the
396 provision of sustained high-quality infrastructure over the long
397 term to enhance the intrinsic value of the new community in
398 order to implement its requirements.
399 (n) The critical single purpose of the district to provide
400 basic infrastructure systems, facilities, services, works,
401 infrastructure, and improvements to the private new community is
402 in the public interest because it:
403 1. Does not pass on taxes or profits to purchasers of
404 property or to landowners and residents within their
405 jurisdictions.
406 2. Results in less tendency for short-term planning,
407 construction, and management considerations because the
408 elections for members of the government board are staggered.
409 3. Is not influenced, guided, or limited by quarterly and
410 annual profit statements.
411 4. Does not have police or regulatory powers.

412 5. Does not have larger general-purpose overhead
413 responsibilities.
414 6. Is not subject to legitimate but counterveiling fiscal,
415 economic, policy, and political considerations to which large
416 general-purpose local governments and large landowners and
417 developers would be subject in the natural course of events.
418 7. Does not constitute needless duplication,
419 proliferation, or fragmentation of local government systems,
420 facilities, and services in Okeechobee County.
421 8. Shall operate and function subject to and not
422 inconsistent with the county comprehensive plan with least
423 overhead cost and with the highest amount of the public
424 disclosure, accountability, responsiveness, and productivity.
425 9. Coincides its functions with the authority and best
426 interests of local general-purpose government, the private
427 landowners, both present and future, the taxpayers, the future
428 residents, and the state in the provision of needed
429 infrastructure to the community at sustained levels of quality
430 over the long term.
431 10. Provides highly accountable innovative systems,
432 facilities, and services close to the land and close to the
433 people.
434 11. Serves a land area that is amenable to separate
435 special district government.
436 12. Serves a land area that is sufficiently compact and of
437 size sufficient for the functionally interrelated new community
438 development.

439 13. Serves a land area in which there is no existing local
440 or regional system, facility, or service with which creation and
441 operation of this district and the provision of its systems,
442 facilities, improvements, and infrastructure would be
443 incompatible.
444 14. Will enhance the intrinsic value of the property and
445 the new community development and be a sustaining source of
446 public revenue.
447 (o) The independent district charter created in this act
448 involves innovative general and special powers not otherwise
449 available for this unique and highly specialized first ever new
450 community in such a unique area.
451 (p) The minimum requirements of general law or creation of
452 this district by special act have been met as confirmed and set
453 forth expressly in section 3(1).
454 (3) DETERMINATIONS.--Based upon its findings and
455 ascertainments, the Legislature states expressly and determines
456 that:
457 (a) This act represents the findings, ascertainments, and
458 determinations of the Legislature that creating the Grove
459 Community District by special act pursuant to general law is the
460 best alternative as required by section 189.404(2)(e)3., Florida
461 Statutes, because it meets affirmatively the findings and
462 ascertainments of this Legislature set forth hereinabove.
463 (b) The creation by this act of the district in the area
464 of northeastern Okeechobee County is consistent affirmatively
465 with the Okeechobee County Comprehensive Plan.

466 (c) The authority for this act is pursuant to section
467 189.404, Florida Statutes, and the State Comprehensive Plan
468 pursuant to section 187.201, Florida Statutes.
469 (d) The Board of County Commissioners of Okeechobee
470 County, on January 12, 2006, adopted Resolution 2006-1,
471 expressing no objection to the creation and establishment of the
472 Grove Community District and finding it consistent with the
473 Okeechobee County Comprehensive Plan as provided in section
474 189.404(2)(e)4., Florida Statutes.
475 (4) INTENT.--Based upon its findings, ascertainments, and
476 determinations, the Legislature expresses its intent:
477 (a) To ensure that the creation and operation of the Grove
478 Community District by and pursuant to this act, exercising its
479 management and related financing powers to implement its
480 limited, single, and special purpose, is not a development order
481 and does not trigger or invoke any development provision within
482 the meaning of chapter 380, Florida Statutes, and all applicable
483 governmental planning, environmental, and land development laws,
484 regulations, rules, policies, and ordinances apply to all
485 development of the land within the jurisdiction of the district
486 created by this act.
487 (b) That the district operate and function subject to, and
488 not inconsistent with, the Okeechobee County Comprehensive Plan
489 and Land Development Regulations and any applicable development
490 orders, zoning regulations, or other land development
491 regulations.
492 (c) That under this act, this special and single-purpose
493 Grove Community District shall not have the power of a general-

494 purpose local government to adopt a comprehensive plan or
495 related land development regulations as those terms are defined
496 in the Local Government Comprehensive Planning and Land
497 Development Regulation Act.
498 (d) That the Grove Community District created by this act
499 constitute an innovative mechanism for long-term, sustained
500 quality public stewardship through the planning, implementation,
501 construction, management, and related financing of basic
502 systems, facilities, services, and infrastructure projects for
503 the self-contained and self-sustained mixed-use new community.
504 (e) That it is in the public interest that this limited,
505 independent, specialized, and single-purpose district local
506 government have perpetual existence subject only to legislative
507 review as provided in its charter in this act so that it is not
508 in a position to outlive its usefulness.
509 (f) That the exercise by this Grove Community District of
510 its powers to carry out its single purpose under its charter as
511 created by this act is consistent with applicable due process,
512 disclosure, accountability, ethics, conflict of interest,
513 government-in-the-sunshine, competitive procurement, including
514 its employees or consultants, competitive negotiation, and
515 competitive bidding requirements, both as to the government
516 entity itself and as to its appointed or elected officials as
517 required in this act.
518 (5) PURPOSE.--The limited, single, and specialized purpose
519 of the Grove Community District is to provide community
520 development systems, facilities, services, projects,
521 improvements, and infrastructure to the new community by

522 exercising its various management powers, with related financing
523 powers, both general and special, as set forth by and limited by
524 this act.
525 (6) DEFINITIONS.--As used in this act:
526 (a) "Ad valorem bonds" means bonds which are payable from
527 the proceeds of ad valorem taxes levied on real and tangible
528 personal property and which are generally referred to as general
529 obligation bonds.
530 (b) "Assessable improvements" means, without limitation,
531 any and all public improvements and community facilities that
532 the district is empowered to provide in accordance with this
533 act, which provide a special benefit to property within the
534 district.
535 (c) "Assessment bonds" means special obligations of the
536 district which are payable solely from proceeds of the special
537 assessments or benefit special assessments levied for assessable
538 improvements; however, in lieu of issuing assessment bonds to
539 fund the costs of assessable improvements, the district may
540 issue revenue bonds for such purposes payable from special
541 assessments.
542 (d) "Assessments" means those nonmillage district
543 assessments which include special assessments, benefit special
544 assessments, and maintenance special assessments and a
545 nonmillage, non-ad valorem maintenance tax if authorized by
546 general law.
547 (e) "Benefit special assessments" are district assessments
548 imposed, levied, and collected pursuant to the provisions of
549 section 4(14)(b).

550 (f) "Board" means the governing board of the district or,
551 if such board has been abolished, the board, body, or commission
552 succeeding to the principal functions thereof or to whom the
553 powers given to the board by this act have been given by law.
554 (g) "Bond" includes "certificate," and the provisions
555 which are applicable to bonds are equally applicable to
556 certificates. The term "bond" includes any general obligation
557 bond, assessment bond, refunding bond, revenue bond, and other
558 such obligation in the nature of a bond as is provided for in
559 this act, as the case may be.
560 (h) "Cost" or "costs," when used with reference to any
561 project, include, but are not limited to:
562 1. The expense of determining the feasibility or
563 practicability of acquisition, construction, or reconstruction.
564 2. The cost of surveys, estimates, plans, and
565 specifications.
566 3. The cost of improvements.
567 4. Engineering, fiscal, and legal expenses and charges.
568 5. The cost of all labor, materials, machinery, and
569 equipment.
570 6. The cost of all lands, properties, rights, easements,
571 and franchises acquired.
572 7. Financing charges.
573 8. The creation of initial reserve and debt service funds.
574 9. Working capital.
575 10. Interest charges incurred or estimated to be incurred
576 on money borrowed prior to and during construction and
577 acquisition and for such reasonable period of time after

578 completion of construction or acquisition as the board may
579 determine.
580 11. The cost of issuance of bonds pursuant to this act,
581 including advertisements and printing.
582 12. The cost of any bond or tax referendum held pursuant
583 to this act and all other expenses of issuance of bonds.
584 13. The discount, if any, on the sale or exchange of
585 bonds.
586 14. Administrative expenses.
587 15. Such other expenses as may be necessary or incidental
588 to the acquisition, construction, or reconstruction of any
589 project or to the financing thereof or to the development of any
590 lands within the district.
591 16. Payments, contributions, dedications, and any other
592 exactions required as a condition to receive any government
593 approval or permit necessary to accomplish any district purpose.
594 (i) "Developed urban area" means any reasonably compact
595 urban area.
596 (j) "District" or "Grove Community District" means the
597 unit of special and single-purpose local government created and
598 chartered by this act, including the creation of its charter,
599 and limited to the performance, in implementing its single
600 purpose, of those general and special powers authorized by its
601 charter under this act; the boundaries of which are set forth by
602 the act; and the governing head of which is created and
603 authorized to operate with legal existence by this act and the
604 purpose of which is as set forth in this act.
605 (k) "District manager" means the manager of the district.

606 (l) "District roads" means highways, streets, roads,
607 alleys, sidewalks, landscaping, storm drains, bridges, and
608 thoroughfares of all kinds of descriptions.
609 (m) "General obligation bonds" means bonds which are
610 secured by, or provide for their payment by, the pledge, in
611 addition to those special taxes levied for their discharge and
612 such other sources as may be provided for their payment or
613 pledged as security under the resolution authorizing their
614 issuance, of the full faith and credit and taxing power of the
615 district and for payment of which recourse may be had against
616 the general fund of the district.
617 (n) "Governing board member" means any member of the
618 board.
619 (o) "Land development regulations" means those regulations
620 of general-purpose local government, adopted under the Local
621 Government Comprehensive Planning and Land Development
622 Regulations Act, the Growth Management Act, and chapter 163,
623 Florida Statutes, to which the district is subject and as to
624 which the district may not doing anything that is inconsistent;
625 but this term does not mean specific management engineering,
626 planning, and other criteria and standards needed in the daily
627 management and implementation by the district of its provision
628 of basic systems, facilities, services, works, improvements,
629 projects, or infrastructure, including design criteria and
630 standards, so long as they remain subject to and are not
631 inconsistent with the Okeechobee County Comprehensive Plan and
632 the applicable land development regulations.

633 (p) "Landowner" means the owner of a freehold estate as
634 appears by the deed record, including a trustee, a private
635 corporation, and an owner of a condominium unit; it does not
636 include a reversioner, remainderman, mortgagee, or any
637 governmental entity, who shall not be counted and need not be
638 notified of proceedings under this act. "Landowner" also means
639 the owner of a ground lease from a governmental entity, which
640 leasehold interest has a remaining term, excluding all renewal
641 options, in excess of 50 years.
642 (q) "Local general-purpose government" means a county,
643 municipality, or consolidated city-county government.
644 (r) "Maintenance special assessments" means assessments
645 imposed, levied, and collected pursuant to the provisions of
646 section 4(14)(d).
647 (s) "Non-ad valorem assessments" means those assessments
648 levied and imposed by the board which are not based upon millage
649 and which constitute, pursuant to the provisions hereof, first
650 liens on the properties subject thereto, coequal with the liens
651 of state, county, municipal, and school board taxes:
652 1. If and when pursuant to general law, those nonmillage
653 and non-ad valorem taxes, limited expressly and only to those
654 certain maintenance taxes provided for expressly in the district
655 charter in this act which are not ad valorem taxes and are not
656 special assessments.
657 2. Assessments which are not taxes and are special
658 assessments levied and imposed by the board pursuant to an
659 informed and nonarbitrary determination by the board that the
660 systems, facilities, and services will provide, as a logical

661 connection to the applicable parcels of property, special
662 benefits peculiar to the property, different in kind and degree
663 than general benefits and that the duty to pay per parcel will
664 be apportioned in a manner that is fair and reasonable; and
665 which may be known and referred to as "assessments," "special
666 assessments," "maintenance assessments," or "benefit
667 assessments" as defined by and as may be applicable in the
668 context of this charter. The levy of maintenance assessments to
669 maintain a system or facility constructed and financed by
670 special assessments levied by the district may be based on the
671 assessment methodology by which the construction special
672 assessments are levied but upon a determination that the
673 maintenance special assessments also provide a special and
674 peculiar benefit to the property and are apportioned in a manner
675 that is fair and reasonable.
676 3. Any assessments which may be levied, imposed, and
677 equalized by the board by rule of the district.
678 (t) "Powers" means powers as used and exercised by the
679 board to accomplish the single, limited, and special purpose of
680 the district, including:
681 1. "General powers," as provided in the act for the
682 district charter, which means those organizational and
683 administrative powers of the district as provided in this act in
684 its charter in order to carry out its single special purpose as
685 a local government public corporate body politic.
686 2. "Special powers," means those powers enumerated by the
687 act in the charter of the district to carry out its specialized
688 systems, facilities, services, projects, improvements, and

689 infrastructure and related functions in order to carry out its
690 single specialized purpose.
691 3. Any other powers, authority, and functions set forth in
692 this act.
693 (u) "Project" means any development, improvement,
694 property, power, utility, facility enterprise, service, system,
695 facility, works, or infrastructure now existing or hereafter
696 undertaken or established under the provisions of this act.
697 (v) "Qualified elector" means any person at least 18 years
698 of age who is a citizen of the United States, is a legal
699 resident of the state and the district, and registers to vote
700 with the supervisor of elections in the county in which the
701 district land is located.
702 (w) "Refunding bonds" means bonds issued to refinance
703 outstanding bonds of any type of the interest and redemption
704 premium thereon. Refunding bonds shall be issuable and payable
705 in the same manner as the refinanced bonds except that no
706 approval by the electorate shall be required unless required by
707 the State Constitution.
708 (x) "Revenue bonds" means obligations of the district
709 which are payable from revenues, including, but not limited to,
710 special assessments and benefit special assessments, derived
711 from sources other than ad valorem taxes on real or tangible
712 personal property and which do not pledge the property, credit,
713 or general tax revenue of the district.
714 (y) "Sewer system" means any plant, system, facility, or
715 property and additions, extensions, and improvements thereto at
716 any future time constructed or acquired as part thereof useful

717 or necessary or having the present capacity for future use in
718 connection with the collection, treatment, purification, or
719 disposal of sewage, including, without limitation, industrial
720 wastes resulting from any process of industry, manufacture,
721 trade, or business or from the development of any natural
722 resource. Without limiting the generality of the foregoing, the
723 term "sewer system" includes treatment plants, pumping stations,
724 lift stations, valves, force mains, intercepting sewers,
725 laterals, pressure lines, mains, and all necessary appurtenances
726 and equipment; all sewer mains, laterals, and other devices for
727 the reception and collection of sewage from premises connected
728 therewith; and all real and personal property and any interest
729 therein, rights, easements, and franchises of any nature
730 relating to any such system and necessary or convenient for
731 operation thereof.
732 (z) "Special assessments" means assessments as imposed,
733 levied, and collected by the district for the costs of
734 assessable improvements pursuant to the provisions of this act,
735 chapter 170, Florida Statutes, the additional authority under
736 section 197.3631, Florida Statutes, or other provisions of
737 general law now or hereinafter enacted which provide or
738 authorize a supplemental means to impose, levy, and collect
739 special assessments.
740 (aa) "Taxes" or "tax" means those levies and impositions
741 by the board which support and pay for government and the
742 administration of law and which may be:

743 1. "Ad valorem" or "property" taxes based upon both the
744 appraised value of property and millage, at a rate uniform
745 within the jurisdiction.
746 2. If and when authorized by general law, "non-ad valorem
747 maintenance taxes" not based on millage which are used to
748 maintain district systems, facilities, and services.
749 (bb) "Urban area" means a developed and inhabited urban
750 area within the district within a minimum acreage resident
751 population density of least 1.5 persons per acre as defined by
752 the latest official census, special census, or population
753 estimate or a minimum density of one single-family home per 2.5
754 acres with access to improved roads or a minimum density of one
755 single-family home per 5 acres within a recorded plat
756 subdivision. Urban areas shall be designated by the board of the
757 district with the assistance of all local general-purpose
758 governments having jurisdiction over the area within the
759 jurisdiction of the district.
760 (cc) "Water system" means any plant, system, facility, or
761 property and additions, extensions, and improvements thereto at
762 any future time constructed or acquired as part thereof useful
763 or necessary or having the present capacity for future use in
764 connection with the development of sources, treatment, or
765 purification and distribution of water. Without limiting the
766 generality of the foregoing, the term "water system" includes
767 dams, reservoirs, storage, tanks, mains, lines, valves, pumping
768 stations, laterals, and pipes for the purpose of carrying water
769 to the premises connected with such system and all rights,

770 easements, and franchises of any nature relating to any such
771 system and necessary or convenient for the operation thereof.
772 (7) POLICY.--Based upon its findings, ascertainments,
773 determinations, intent, purpose, and definitions, the
774 Legislature states its policy expressly:
775 (a) The district and district charter, with its general
776 and special powers, created in this act are essential and the
777 best alternative for the unique location and nature of the new
778 community for residential, commercial, academic, and other
779 community uses, projects, or functions in northeastern
780 Okeechobee County consistent with and designed to enhance the
781 Okeechobee County Comprehensive Plan and to serve a lawful
782 public purpose.
783 (b) This district, a local government and corporate body
784 politic, is limited to its single, narrow, and special
785 legislative purpose herein expressed, with the power to provide,
786 plan, implement, construct, maintain, and finance as a local
787 government management entity its basic systems, facilities,
788 services, improvements, infrastructure, and projects and
789 possessing financing powers to fund its management purpose over
790 the long term.
791 (c) This act may be amended only by special act of the
792 Legislature in whole or in part.
793 Section 3. Minimum general law requirements; creation and
794 establishment; boundaries; jurisdiction; construction; charter
795 with legal description.--
796 (1) MINIMUM CHARTER REQUIREMENTS.--Pursuant to section
797 189.404(3), Florida Statutes, the Legislature sets forth that

798 the minimum requirements in paragraphs (a) through (o) have been
799 met in the identified provisions of the act as follows:
800 (a) The purpose of the district is stated in the act in
801 section 2, subsection (5).
802 (b) The powers, functions, and duties of the district are
803 set forth generally in section 4, subsection (3), paragraphs (g)
804 and (h) and subsections (5)-(16), (18), (19), (21), (25), and
805 (32) as to which:
806 1. Taxation provisions are set forth in section 2,
807 subsection (6), paragraph (aa); section 4, subsection (3),
808 paragraph (h); subsection (14), paragraphs (a), (c), (f), (g),
809 and (i); and subsections (17), (18), and (19).
810 2. Bond issuance provisions are set forth generally in
811 section 2; section 4, subsection (8), paragraph (d); subsections
812 (10)-(13), and subsection (16), paragraphs (b) and (c).
813 3. Provisions regarding the other revenue-raising
814 capabilities are set forth in section 2, subsection (6),
815 paragraphs (b), (d), (r), (s), and (z); and section 4,
816 subsections (10) and (11); subsection (14), paragraphs (b), (d),
817 (e), (h), (i), and (j); and subsections (15) and (16).
818 4. Provisions regarding fees, rentals, and charges are set
819 forth in section 2, subsection (6); section 4, subsection (8),
820 paragraph (i); and subsections (22)-(25).
821 5. Provisions regarding budget preparation and approval
822 are set forth in section 4, subsections (5), (6), and (9).
823 6. Provisions regarding liens and foreclosures of liens
824 are set forth in section 4, subsection (14), paragraphs (f),
825 (g), (h), and (i); and subsections (15), (17), (18), and (19).

826 7. Provisions regarding the use of tax deeds and tax
827 certificates as appropriate for non-ad valorem assessments are
828 set forth in section 4, subsection (8), paragraph (o);
829 subsection (14), paragraphs (b), (c), (d), (e), (f), (h), and
830 (i); and subsection (15).
831 8. Provisions regarding contractual agreements are set
832 forth in section 4, subsection (8), paragraphs (c), (l), (p),
833 (r), and (s); and subsection (9), paragraphs (k), (o), (p), (s),
834 (t), (v), and (w).
835 (c) Provisions for methods for establishing the district
836 are set forth in section 2, subsection (6), paragraph (j) and
837 this section and are effective as provided in section 6.
838 (d) Provisions regarding methods for amending the charter
839 of the district are set forth in section 2 of subsection (7),
840 paragraph (c); subsection (4) of this section; and section 4 of
841 subsection (28).
842 (e) Provisions regarding aspects of the governing board
843 are set forth as follows:
844 1. Provisions regarding the membership of the governing
845 board are set forth in section 4, subsection (3), paragraph (b)
846 and subsection (4), paragraph (c).
847 2. Provisions regarding the organization of the governing
848 board are set forth in section 4, subsection (3), paragraphs
849 (b)-(d) and subsection (4), paragraph (c).
850 3. Provisions regarding the requirement of five board
851 members are set forth in section 4, subsection (3), paragraph
852 (b) and subsection (4), paragraph (c), subparagraph 1.

853 4. Provisions regarding the quorum of the governing board
854 are set forth in section 4, subsection (3), paragraph (b) and
855 subsection (4), paragraph (c), subparagraph 1., sub-subparagraph
856 e.
857 (f) Provisions regarding maximum compensation of each
858 board member are set forth in section 4, subsection (4),
859 paragraph (c), and in particular in subparagraph 1., sub-
860 subparagraph h.
861 (g) Provisions regarding the administrative duties of the
862 governing board are set forth in section 4, subsections (5)-(8).
863 (h) Provisions applicable to financial disclosure,
864 noticing, and reporting requirements for:
865 1. Financial disclosure are set forth in section 4,
866 subsections (6) and (7).
867 2. Voting are set forth in section 4, subsections (3) and
868 (4).
869 3. Reporting requirements are set forth in section 4,
870 subsections (5)-(7) and (31).
871 (i) Provisions regarding procedures and requirements for
872 issuing bonds are set forth in section 4, subsection (12),
873 paragraphs (a)-(q), and subsection (13).
874 (j) Provisions regarding elections or referenda are:
875 1. For procedures for elections, set forth in section 4,
876 subsections (3) and (4), and regarding referenda, set forth in
877 section 4, subsection (14), paragraph (a).
878 2. For qualifications of an elector of the district, a
879 qualified elector, set forth in section 2, subsection (6),

880 paragraph (v) and section 4, subsection (3), paragraphs (b) and
881 (c).
882 3. For referenda, set forth in section 4, subsection (4),
883 paragraph (b).
884 (k) Provisions regarding methods for financing the
885 district are set forth generally in section 4, subsections (10),
886 (11), (14), (15), (16), (17), (18), and (19).
887 (l) Other than taxes levied for the payment of bonds and
888 taxes levied for periods not longer than 2 years when authorized
889 by vote of the electors of the district, provisions for:
890 1. The authority to levy ad valorem taxes are set forth in
891 section 4, subsection (3), paragraph (h) and subsection (14),
892 paragraph (a); and section 2, subsection (6), paragraph (aa),
893 subparagraph 1.
894 2. The authorized millage rate are set forth in section 4,
895 subsection (14), paragraph (a).
896 (m) Provisions for the method or methods of collecting
897 non-ad valorem assessments, fees, or service charges are:
898 1. For collecting non-ad valorem assessments, set forth in
899 section 4, subsection (14), paragraphs (b), (c), (d), (e), (h)
900 and, (i), and subsection (15).
901 2. For collecting fees and service charges, set forth in
902 section 4, subsection (22).
903 (n) Provisions for planning requirements are as limited by
904 the provisions of section 2 and this section and as limited
905 further by section 4, subsections (8) and (9).

906 (o) Provisions for geographic boundary limitations of the
907 district are set forth in subsections (2)-(4) of this section
908 and section 4, subsection (2).
909 (2) CREATION AND ESTABLISHMENT.--The Grove Community
910 District is created and incorporated hereby as a public body,
911 corporate and politic, a political subdivision, an independent,
912 limited, special, and single-purpose local government, and an
913 independent special district under section 189.404, Florida
914 Statutes, and as defined in this act and in section 189.403(3),
915 Florida Statutes, in and for northeastern Okeechobee County. Any
916 amendments to chapter 190, Florida Statutes, after January 1,
917 2006, which grant additional general powers, special powers,
918 authorities, or projects to a community development district by
919 amendment to its uniform charter, sections 190.006-190.041,
920 Florida Statutes, shall constitute a general power, special
921 power, authority, or function of the Grove Community District,
922 except that as to any such additional powers, authorities, or
923 projects, this act shall control if there are any related
924 provisions in such additional powers, authorities, or projects
925 inconsistent with the provisions of this act. Because all
926 notices for the enactment by the Legislature of this special act
927 have been provided pursuant to the State Constitution, the laws
928 of Florida, and the rules of the House of Representatives and
929 the Senate, and because Okeechobee County is not a charter
930 county, no referendum subsequent to the effective date of this
931 act is required. The district, as created by this act, is
932 established on the property pursuant to sections 4(2) and 6.

933 (3) TERRITORIAL BOUNDARIES.--The territorial boundary of
934 the district shall embrace and include, without reservation or
935 enclave, all of that certain real property described legally in
936 section 4(2).
937 (4) JURISDICTION.--The jurisdiction of this district, in
938 the exercise of its general and special powers and in the
939 carrying out of its single, narrow, and special purpose, is both
940 within the external boundaries of the legal description of this
941 district and extraterritorially, when limited to, and as
942 authorized expressly elsewhere in, the charter of the district
943 in this act or applicable general law. This single-purpose
944 district is created for all public body corporate, politic, and
945 local government authority and power limited by the charter and
946 subject to the provisions of other general laws, including
947 expressly chapter 189, Florida Statutes, except that an
948 inconsistent provision in this act shall control and the
949 district has jurisdiction to perform such acts and exercise such
950 projects, functions, and powers as shall be necessary,
951 convenient, incidental, proper, or reasonable for the
952 implementation of its limited, single, and specialized purpose
953 regarding the sound planning, provision, acquisition,
954 development, operation, maintenance, and related financing of
955 those public systems, facilities, services, improvements,
956 projects, and infrastructure works as authorized herein
957 including those necessary and incidental thereto.
958 (5) EXCLUSIVE CHARTER.--The charter of the Grove Community
959 District is this act and may be amended, terminated, or repealed

960 only by special act of the Legislature amending or repealing
961 this act.
962 Section 4. Disposition of sections 2 and 3; legal
963 description; exclusive charter of the Grove Community
964 District.--
965 (1) INCORPORATION AND DISPOSITION OF SECTIONS 2 AND
966 3.--Sections 2 and 3 of this act are true and correct and are
967 incorporated herein and made a part of this section as
968 dispositive provisions of law. This act constitutes the
969 exclusive charter of the Grove Community District.
970 (2) LEGAL DESCRIPTION.--The metes and bounds legal
971 description of the district, within which there are no enclaves
972 or parcels of property owned by those who do not wish their
973 property to be included within the district, is as follows:
974 METES AND BOUNDS DESCRIPTION
975 Grove Community District
976
977 LEGAL DESCRIPTION:
978 (OFFICIAL RECORDS BOOK 230, PAGE 571, PUBLIC RECORDS,
979 OKEECHOBEE COUNTY, FLORIDA)
980
981 ALL OF SECTIONS 1, 2, 3, 10, 11, 12, 13, 14, AND 15,
982 IN TOWNSHIP 34 SOUTH, RANGE 36 EAST, OKEECHOBEE
983 COUNTY, FLORIDA, LESS AND EXCEPT THE FOLLOWING
984 DESCRIBED LANDS:
985
986 BEGINNING AT A CONCRETE MONUMENT MARKING THE SOUTHEAST
987 CORNER OF SAID SECTION 13, RUN NORTH 89°26'05" WEST A

988 DISTANCE OF 5284.42 FEET TO AN IRON PIPE MARKING THE
989 SOUHWEST CORNER OF SAID SECTION 13; THENCE RUN SOUTH
990 89°42'28" WEST A DISTANCE OF 5114.05 FEET ALONG THE
991 SOUTH LINE OF SECTION 14 TO AN IRON PIPE AT THE SW
992 CORNER THEREOF; THENCE RUN NORTH 89°31'14" WEST ALONG
993 THE SOUTH LINE OF SECTION 15 A DISTANCE OF 5302.02
994 FEET TO A CONCRETE MONUMENT MARKING THE SOUTHWEST
995 CORNER OF SAID SECTION 15; THENCE RUN NORTH 00°00'14"
996 EAST ALONG THE WEST LINE OF SECTION 15 A DISTANCE OF
997 174.49 FEET; THENCE RUN SOUTH 89°12'07" EAST ALONG A
998 FENCE LINE A DISTANCE OF 5302.87 FEET TO A POINT WHICH
999 IS 145 FEET NORTH OF THE SOUTHWEST CORNER OF SAID
1000 SECTION 14; THENCE RUN SOUTH 00°12'46" WEST A DISTANCE
1001 OF 20.0 FEET; THENCE RUN NORTH 89°42'28" EAST ALONG A
1002 LINE LYING PARALLEL TO AND 125 FEET NORTH OF THE SOUTH
1003 LINE OF SECTION 14 A DISTANCE OF 5113.88 FEET TO A
1004 POINT WHICH IS 125 FEET NORTH OF THE SOUTHWEST CORNER
1005 OF SECTION 13; THENCE RUN SOUTH 89°26'05" EAST ALONG A
1006 LINE PARALLEL TO AND 125 FEET NORTH OF THE SOUTH LINE
1007 OF SECTION 13 A DISTANCE OF 5149.10 FEET TO A POINT
1008 WHICH IS 135 FEET WEST AND 125 FEET NORTH OF THE
1009 SOUTHEAST CORNER OF SECTION 13; THENCE RUN NORTH
1010 00°00'22" WEST A DISTANCE OF 100 FEET; THENCE RUN
1011 SOUTH 89°26'05" EAST A DISTANCE OF 135 FEET TO THE
1012 EAST LINE OF SAID SECTION 13; THENCE RUN SOUTH
1013 00°00'22" EAST A DISTANCE OF 225 FEET TO THE POINT OF
1014 BEGINNING AT THE SOUTHEAST CORNER OF SECTION 13,

1015 TOWNSHIP 34 SOUTH, RANGE 36 EAST, OKEECHOBEE COUNTY,
1016 FLORIDA, CONTAINING 5683.29 ACRES, MORE OR LESS.
1017
1018 (3) BOARD; MEMBERS AND MEETINGS; ORGANIZATION; POWERS;
1019 DUTIES; TERMS OF OFFICE; RELATED ELECTION REQUIREMENTS.--
1020 (a) The board shall exercise the powers granted to the
1021 district pursuant to this act in order to implement its
1022 specialized single purpose.
1023 (b) There is created the Board of Supervisors of the Grove
1024 Community District, which is the governing board and body of the
1025 district. Except as otherwise provided herein, each member shall
1026 hold office for a term of 4 years and until his or her successor
1027 is chosen and qualifies. There shall be five members of the
1028 board who shall, in order to be eligible, be residents of the
1029 state and citizens of the United States. Three members shall
1030 constitute a quorum.
1031 (c) Within 45 days after the effective date of this act, a
1032 specially noticed meeting of the landowners of the district
1033 shall be held for the purpose of electing the members to the
1034 first board as herein provided. Notice of such special meeting
1035 of the landowners shall be given by causing publication thereof
1036 to be made once a week for 2 consecutive weeks prior to such
1037 meeting in a newspaper of general paid subscription and
1038 circulation in Okeechobee County, the last day of such
1039 publication not to be fewer than 14 or more than 28 days before
1040 the day of the election. Such special meeting of the landowners
1041 shall be held in a public place in Okeechobee County, and the
1042 place, date, and hour of holding such meeting and the purpose

1043 thereof shall be stated expressly in the notice. The landowners,
1044 when assembled, shall organize by electing a chair who shall
1045 preside at the meeting of the landowners and a secretary who
1046 shall record the proceedings. At such meeting, for the election
1047 of each person to be elected, each and every acre of land, or
1048 any fraction thereof, within the boundary of the district shall
1049 represent one vote and each owner of that acre or fraction
1050 thereof shall be entitled to one vote for every such acre or
1051 fraction thereof. Persons who qualify to serve as board members
1052 shall be nominated at the noticed meeting and prior to the
1053 initial election at the noticed meeting. A landowner may vote in
1054 person or by proxy in writing. A landowner who sells land to a
1055 bona fide purchaser may by written lawful instrument retain the
1056 voting rights for that acreage.
1057 (d) At the landowners' meeting for the election of the
1058 members of the board on a one-acre, one-vote basis, the two
1059 candidates receiving the highest number of votes shall be
1060 elected for terms expiring November 30, 2008, and the three
1061 candidates receiving the next highest number of votes shall be
1062 elected for terms expiring November 30, 2010. The members of the
1063 first board elected by the landowners shall serve their
1064 respective 4-year or 2-year terms; however, the next election by
1065 the landowners shall be held on the first Tuesday in November
1066 2008 to elect members to fill those vacancies to 4-year terms.
1067 Thereafter, there shall be an election of supervisors for the
1068 district every 2 years in November on a date established by the
1069 board and noticed pursuant to paragraph (c).

1070 (e) The landowners present at the meeting shall constitute
1071 a quorum.
1072 (f) All vacancies or expirations on the board shall be
1073 filled as provided by this act.
1074 (g) In case of a vacancy in the office of any member of
1075 the board, the remaining members of the board shall by majority
1076 vote elect a person to serve as a member of the board for the
1077 unexpired portion of the term.
1078 (h) If the board proposes to exercise its limited ad
1079 valorem taxing power as provided elsewhere in this charter, the
1080 provisions of section 4(14)(a) shall apply.
1081 (4) ELECTION; POPULAR ELECTIONS, REFERENDUM; DESIGNATION
1082 OF URBAN AREAS.--
1083 (a) Elections of the members of the board shall be
1084 conducted on a one-acre, one-vote basis as provided in paragraph
1085 (3)(c), until and unless the provisions of paragraph (b) apply.
1086 When applicable and required, the appropriate provisions of
1087 section 189.405, Florida Statutes, apply.
1088 (b) A referendum shall be called by the board, each member
1089 elected on a one-acre, one-vote basis, on the question of
1090 whether certain members of the board should be elected by
1091 qualified electors, providing each of the following conditions
1092 has been satisfied at least 60 days prior to the general or
1093 special election at which the referendum is to be held:
1094 1. The district has at least 500 qualified electors based
1095 on the most recent state population estimate.
1096 2. A petition signed by 10 percent of the qualified
1097 electors of the district has been filed with the board. The

1098 petition shall be submitted to the Supervisor of Elections of
1099 Okeechobee County who shall, within 30 days after receipt of the
1100 petition, certify to the board the percentage of signatures of
1101 qualified electors contained in the petition.
1102 (c) Upon verification by the supervisor of elections that
1103 10 percent of the qualified electors of the district have
1104 petitioned the board, a referendum election shall be called by
1105 the board at the next regularly scheduled election of governing
1106 board members occurring at least 60 days after verification.
1107 (d) If the qualified electors approve the election
1108 procedure described in this section, the governing board of the
1109 district shall remain five members and elections shall be held
1110 pursuant to the criteria described in this paragraph, beginning
1111 with the next regularly scheduled election of governing board
1112 members or at a special election called within 6 months after
1113 the referendum and final unappealed approval of district urban
1114 area maps as provided in this section, whichever is earlier.
1115 (e) If the qualified electors of the district reject the
1116 election procedure described in this section, elections of the
1117 members of the board shall continue as described in this act on
1118 a one-acre, one-vote basis. No further referendum on the
1119 question shall be held for a minimum period of 2 years after the
1120 referendum.
1121 (f) Within 30 days after approval of the election process
1122 described in this section by qualified electors of the district,
1123 the board shall direct the district staff to prepare and to
1124 present maps of the district describing the extent and location
1125 of all urban areas within the district. Such determination shall

1126 be based upon the criteria contained in the definition of urban
1127 area in this act.
1128 (g) Within 60 days after approval of the election process
1129 described in this subsection by qualified electors of the
1130 district, the maps describing urban areas within the district
1131 shall be presented to the board.
1132 (h) Any district landowner or elector may contest the
1133 accuracy of the urban area maps prepared by the staff of the
1134 district within 30 days after submission to the board. Upon
1135 notice of objection to the maps, the governing board shall
1136 request the county engineer to prepare and present maps of the
1137 district describing the extent and location of all urban areas
1138 within the district. Such determination shall be based limitedly
1139 and exclusively upon the criteria contained in the definition in
1140 this act of urban area. Within 30 days after the governing board
1141 requests, the county engineer shall present the maps to the
1142 governing board.
1143 (i) Upon presentation of the maps by the county engineer,
1144 the governing board shall compare the maps submitted by both the
1145 district staff and the county engineer and make a determination
1146 as to which set of maps to adopt. Within 60 days after
1147 presentation of all such maps, the governing board may amend and
1148 shall adopt the official maps at a regularly scheduled board
1149 meeting.
1150 (j) Any district landowner or qualified elector may
1151 contest the accuracy of the urban area maps adopted by the board
1152 after adoption in accordance with the provision for judicial
1153 review as provided in the Administrative Procedure Act. Accuracy

1154 shall be determined pursuant to the definition of urban area in
1155 section 2(6)(bb).
1156 (k) Upon adoption by the board or certification by the
1157 court, the district urban area maps shall serve as the official
1158 maps for determination of the extent of urban area within the
1159 district and the number of members of the board to be elected by
1160 qualified electors and by one-acre, one-vote at the next
1161 regularly scheduled election of governing board members.
1162 (l) Upon a determination of the percentage of urban area
1163 within the district as compared with total area within the
1164 district, the governing board shall determine the number of
1165 electors in accordance with the percentages pursuant to this
1166 paragraph. The landowners' meeting date shall be designated by
1167 the board.
1168 (m) The map shall be updated and readopted every 5 years
1169 or sooner at the discretion of the board.
1170 (n)1. The five members of the governing board of the
1171 district shall be elected in accordance with the following
1172 determinations of urban area:
1173 a. If urban areas constitute 25 percent or less of the
1174 district, one governing board member shall be elected by the
1175 qualified electors and four governing board members shall be
1176 elected in accordance with the one-acre, one-vote principle
1177 contained within subsection (3).
1178 b. If urban areas constitute more than 25 percent but less
1179 than 50 percent of the district, two governing board members
1180 shall be elected by the qualified electors and three governing

1181 board members shall be elected in accordance with the one-acre,
1182 one-vote principle contained in subsection (3).
1183 c. If urban areas constitute at least 50 percent but less
1184 than 70 percent of the district, three governing board members
1185 shall be elected by the qualified electors and two governing
1186 board members shall be elected in accordance with the one-acre,
1187 one-vote principle contained in subsection (3).
1188 d. If urban areas constitute at least 70 percent but less
1189 than 90 percent of the district, four governing board members
1190 shall be elected by the qualified electors and one governing
1191 board member shall be elected in accordance with the one-acre,
1192 one-vote principle contained in subsection (3).
1193 e. If urban areas constitute at least 90 percent or more
1194 of the district, all governing board members shall be elected by
1195 the qualified electors.
1196 2. All members of the board, regardless of how elected,
1197 shall be public officers, known as supervisors, and, upon
1198 entering into office, shall take and subscribe to the oath of
1199 office as prescribed by section 876.05, Florida Statutes. All
1200 members of the board, regardless of how elected, and regardless
1201 of whether they are qualified electors themselves, shall be
1202 public officials and subject to ethics and conflict of interest
1203 laws of the state that apply to all public officers. They shall
1204 hold office for the terms for which they were elected and until
1205 their successors are chosen and qualified.
1206 3. Any elected member of the board may be removed by the
1207 Governor for malfeasance, misfeasance, dishonesty, incompetency,
1208 or failure to perform the duties imposed upon him or her by this

1209 act. Any vacancies which may occur in such office shall be
1210 filled by the Governor, as soon as practicable, unless filled by
1211 the board as provided in this act.
1212 4. All governing board members elected by qualified
1213 electors shall be qualified electors elected at large.
1214 Candidates seeking election as qualified electors shall conduct
1215 their campaigns in accordance with the provisions of chapter
1216 106, Florida Statutes, and shall file petitions as required in
1217 section 99.021, Florida Statutes, and take the oath therein
1218 prescribed.
1219 5. All governing board members elected by qualified
1220 electors shall have a term of 4 years each except for governing
1221 board members elected at the first election and the first
1222 landowners' meeting following the referendum prescribed in
1223 paragraph (b). Governing board members elected at the first
1224 election and the first landowners' meeting following the
1225 referendum shall serve as follows:
1226 a. If one governing board member is elected by the
1227 qualified electors and four are elected on a one-acre, one-vote
1228 basis, the governing board members elected by the qualified
1229 electors shall be elected for a term of 4 years each. Governing
1230 board members elected on a one-acre, one-vote basis shall be
1231 elected for terms as prescribed by subsection (3).
1232 b. If two governing board members are elected by the
1233 qualified electors and three are elected on a one-acre, one-vote
1234 basis, the governing board members elected by the qualified
1235 electors shall be elected for a term period of 4 years each.
1236 Governing board members elected on a one-acre, one-vote basis

1237 shall be elected for terms of 1, 2, and 3 years, respectively,
1238 as prescribed by subsection (3).
1239 c. If three governing board members are elected by the
1240 qualified electors and two are elected on a one-acre, one-vote
1241 basis, two of the governing board members elected by the
1242 qualified electors shall be elected for a term of 4 years and
1243 the other governing board member elected by the electors shall
1244 be elected for a term of 2 years. Governing board members
1245 elected on a one-acre, one-vote basis shall be elected for
1246 periods of 1 year and 2 years, respectively, as prescribed by
1247 subsection (3).
1248 d. If four governing board members are elected by the
1249 qualified electors and one is elected on a one-acre, one-vote
1250 basis, two of the governing board members elected by the
1251 electors shall be elected for terms of 2 years each and the
1252 other two for term of 4 years each. The governing board member
1253 elected on a one-acre, one-vote basis shall be elected for a
1254 term of 1 year as prescribed by subsection (3).
1255 e. If five governing board members are elected by the
1256 qualified electors, three shall be elected for terms of 4 years
1257 each and two for terms of 2 years each.
1258 6. If any vacancy occurs in a seat occupied by a governing
1259 board member elected by the qualified electors, the remaining
1260 members of the governing board shall, within 45 days after the
1261 vacancy occurs, appoint a person who would be eligible to hold
1262 the office for the unexpired term.
1263 7. Each and every election by qualified electors of
1264 members of the board pursuant to this act shall be conducted in

1265 the manner and at a time prescribed by law for holding general
1266 elections or prescribed by the Supervisor of Elections in and
1267 for the Okeechobee County political subdivision.
1268 8.a. An annual landowners' meeting shall be held pursuant
1269 to subsection (3) and at least one governing board member shall
1270 be elected on a one-acre, one-vote basis pursuant to subsection
1271 (3) for so long as 10 percent or more of the district is not
1272 contained in an urban area. In the event all district governing
1273 board members are elected by qualified electors, there shall be
1274 no further landowners' meetings.
1275 b. At any landowners' meeting called pursuant to this
1276 section, 50 percent of the district acreage shall not be
1277 required to constitute a quorum and each governing board member
1278 shall be elected by a majority of the acreage represented either
1279 by owner or proxy present and voting at said meeting.
1280 c. All landowners' meetings of districts operating
1281 pursuant to this section shall be set by the board within the
1282 month preceding the month of the election of the governing board
1283 members by the electors.
1284 d. Vacancies on the board shall be filled pursuant to
1285 subsection (3) and this subsection except as otherwise provided
1286 in this section.
1287 9. Three board members shall constitute a quorum for the
1288 purpose of conducting its business and exercising its powers and
1289 for all other related purposes. Action taken by the board
1290 members present shall be upon a vote of the majority of the
1291 members present, unless general law or rule of the district
1292 subsequently promulgated requires a greater number.

1293 10. As soon as practicable after each election or
1294 appointment, the board shall elect one of its members as chair,
1295 elect a secretary who need not be a member of the board, and
1296 elect such other officers as the board may deem necessary.
1297 11. The board shall keep a permanent record book entitled
1298 "Record of Proceedings of Grove Community District," in which
1299 shall be recorded minutes of all meetings, resolutions,
1300 proceedings, certificates, bonds given by all employees, and any
1301 and all corporate acts. The record book shall at reasonable
1302 times be opened to inspection in the same manner as state,
1303 county, and municipal records pursuant to chapter 119, Florida
1304 Statutes. The record book shall be kept at the office or other
1305 regular place of business maintained by the board within
1306 Okeechobee County.
1307 12. Each supervisor shall be entitled to receive for his
1308 or her services an amount not to exceed $200 per meeting of the
1309 board, not to exceed $4,800 per year per supervisor, or an
1310 amount established by the electors at referendum. In addition,
1311 each supervisor shall receive travel and per diem expenses as
1312 set forth in section 112.061, Florida Statutes.
1313 13. All meetings of the board shall be open to the public
1314 and governed by the provisions of chapter 286, Florida Statutes.
1315 (o) The members of the board, whether elected on a one-
1316 acre, one-vote basis or a qualified-elector basis, shall
1317 constitute the members of the governing board of the district
1318 subject to the requirements of this act.
1319 (5) BOARD OF SUPERVISORS; GENERAL DUTIES.--

1320 (a) The board shall employ and fix the compensation of a
1321 district manager. The district manager shall have charge and
1322 supervision of the works of the district and shall be
1323 responsible for preserving and maintaining any improvement or
1324 facility constructed or erected pursuant to the provisions of
1325 this act, for maintaining and operating the equipment owned by
1326 the district, and for performing such other duties as may be
1327 prescribed by the board. It shall not be a conflict of interest
1328 under chapter 112, Florida Statutes, for a board member or the
1329 district manager or another employee of the district to be a
1330 stockholder, officer, or employee of a landowner. The district
1331 manager may hire or otherwise employ and terminate the
1332 employment of such other persons, including, without limitation,
1333 professional, supervisory, and clerical employees, as may be
1334 necessary and authorized by the board. The compensation and
1335 other conditions of employment of the officers and employees of
1336 the district shall be as provided by the board.
1337 (b) The board shall designate a person who is a resident
1338 of the state as treasurer of the district, who shall have charge
1339 of the funds of the district. Such funds shall be disbursed only
1340 upon the order, or pursuant to the resolution, of the board by
1341 warrant or check countersigned by the treasurer and by such
1342 other person as may be authorized by the board. The board may
1343 give the treasurer such other or additional powers and duties as
1344 the board may deem appropriate and may fix his or her
1345 compensation. The board may require the treasurer to give a bond
1346 in such amount, on such terms, and with such sureties as may be
1347 deemed satisfactory to the board to secure the performance by

1348 the treasurer of his or her powers and duties. The financial
1349 records of the board shall be audited by an independent
1350 certified public accountant at least once a year.
1351 (c) The board is authorized to select as a depository for
1352 its funds any qualified public depository as defined in section
1353 280.02, Florida Statutes, which meets all the requirements of
1354 chapter 280, Florida Statutes, and has been designated by the
1355 treasurer as a qualified public depository, upon such terms and
1356 conditions as to the payment of interest by such depository upon
1357 the funds so deposited as the board may deem just and
1358 reasonable.
1359 (6) BUDGET; REPORTS AND REVIEWS.--
1360 (a) The district shall provide financial reports in such
1361 form and such manner as prescribed pursuant to this act and
1362 chapter 218, Florida Statutes.
1363 (b) On or before each July 15, the district manager shall
1364 prepare a proposed budget for the ensuing fiscal year to be
1365 submitted to the board for board approval. The proposed budget
1366 shall include at the direction of the board an estimate of all
1367 necessary expenditures of the district for the ensuing fiscal
1368 year and an estimate of income to the district from the taxes
1369 and assessments provided in this act. The board shall consider
1370 the proposed budget item by item and may either approve the
1371 budget as proposed by the district manager or modify the same in
1372 part or in whole. The board shall indicate its approval of the
1373 budget by resolution, which resolution shall provide for a
1374 hearing on the budget as approved. Notice of the hearing on the
1375 budget shall be published in a newspaper of general circulation

1376 in the area of the district once a week for 2 consecutive weeks,
1377 except that the first publication shall be not fewer than 15
1378 days prior to the date of the hearing. The notice shall further
1379 contain a designation of the day, time, and place of the public
1380 hearing. At the time and place designated in the notice, the
1381 board shall hear all objections to the budget as proposed and
1382 may make such changes as the board deems necessary. At the
1383 conclusion of the budget hearing, the board shall, by
1384 resolution, adopt the budget as finally approved by the board.
1385 The budget shall be adopted prior to October 1 of each year.
1386 (c) At least 60 days prior to adoption, the board shall
1387 submit to the Okeechobee County Board of County Commissioners,
1388 for purposes of disclosure and information only, the proposed
1389 annual budget for the ensuing fiscal year, and the board of
1390 county commissioners may submit written comments to the board
1391 solely for the assistance and information of the board of the
1392 district in adopting its annual district budget.
1393 (d) The board shall submit annually, to the Board of
1394 County Commissioners of Okeechobee County, its district public
1395 facilities report under section 189.415(2), Florida Statutes,
1396 addressing specifically short-term and long-term innovative
1397 systems, facilities, and services consistent with the unique
1398 nature of the new community. The Board of County Commissioners
1399 of Okeechobee County shall use and rely on the district public
1400 facilities report in the preparation or revision of the
1401 Okeechobee County Comprehensive Plan specifically under section
1402 189.415(6), Florida Statutes.

1403 (7) DISCLOSURE OF PUBLIC FINANCING.--The district shall
1404 take affirmative steps to provide for the full disclosure of
1405 information relating to the public financing and maintenance of
1406 improvements to real property undertaken by the district. Such
1407 information shall be made available to all current residents,
1408 and to all prospective residents, of the district. The district
1409 shall furnish each developer of a residential development within
1410 the district with sufficient copies of that information to
1411 provide each prospective initial purchaser of property in that
1412 development with a copy, and any developer of a residential
1413 development within the district, when required by law to provide
1414 a public offering statement, shall include a copy of such
1415 information relating to the public financing and maintenance of
1416 improvements in the public offering statement. The Division of
1417 Florida Land Sales, Condominiums, and Mobile Homes of the
1418 Department of Business and Professional Regulation shall ensure
1419 that disclosures are made by developers pursuant to chapter 498,
1420 Florida Statutes.
1421 (8) GENERAL POWERS.--The district shall have, and the
1422 board may exercise, the following general powers:
1423 (a) To sue and be sued in the name of the district; to
1424 adopt and use a seal and authorize the use of a facsimile
1425 thereof; to acquire by purchase, gift, devise, or otherwise, and
1426 to dispose of, real and personal property or any estate therein;
1427 and to make and execute contracts and other instruments
1428 necessary or convenient to the exercise of its powers.
1429 (b) To apply for coverage of its employees under the state
1430 retirement system in the same manner as if such employees were

1431 state employees, subject to necessary action by the district to
1432 pay employer contributions into the state retirement fund.
1433 (c) To contract for the services of consultants to perform
1434 planning, engineering, legal, or other appropriate services of a
1435 professional nature. Such contracts shall be subject to public
1436 bidding or competitive negotiation requirements as set forth in
1437 section 4(21).
1438 (d) To borrow money and accept gifts; to apply for and use
1439 grants or loans of money or other property from the United
1440 States, the state, a unit of local government, or any person for
1441 any district purposes and enter into agreements required in
1442 connection therewith; and to hold, use, and dispose of such
1443 moneys or property for any district purposes in accordance with
1444 the terms of the gift, grant, loan, or agreement relating
1445 thereto.
1446 (e) To adopt rules and orders pursuant to the provisions
1447 of chapter 120, Florida Statutes, prescribing the powers,
1448 duties, and functions of the officers of the district; the
1449 conduct of the business of the district; the maintenance of
1450 records; and the form of certificates evidencing tax liens and
1451 all other documents and records of the district. The board may
1452 also adopt administrative rules with respect to any of the
1453 projects of the district and define the area to be included
1454 therein. The board may also adopt resolutions which may be
1455 necessary for the conduct of district business.
1456 (f) To maintain an office at such place or places as the
1457 board designates in Okeechobee County and within the district
1458 when facilities are available.

1459 (g) To hold, control, and acquire by donation, purchase,
1460 or condemnation, and to dispose of, any public easements,
1461 dedications to public use, platted reservations for public
1462 purposes, or any reservations for those purposes authorized by
1463 this act other than public easements conveyed to or accepted by
1464 Okeechobee County and to make use of such easements,
1465 dedications, or reservations for the purpose mandated by this
1466 act.
1467 (h) To lease as lessor or lessee to or from any person,
1468 firm, corporation, association, or body, public or private, any
1469 projects of the type that the district is authorized to
1470 undertake and facilities or property of any nature for the use
1471 of the district to carry out the purposes mandated by this act.
1472 (i) To borrow money and issue bonds, certificates,
1473 warrants, notes, or other evidences of indebtedness as
1474 hereinafter provided; to levy such tax and assessments as may be
1475 authorized; and to charge, collect, and enforce fees and other
1476 user charges subject as applicable to section 4(10)-(13).
1477 (j) To raise, by user charges or fees authorized by
1478 resolution of the board, amounts of money which are necessary
1479 for the conduct of the district activities and services and to
1480 enforce their receipt and collection in the manner prescribed by
1481 resolution not inconsistent with law.
1482 (k) To exercise within the district, or beyond the
1483 district with prior approval by majority vote of a resolution of
1484 the governing body of the county if the taking will occur in an
1485 unincorporated area, the right and power of eminent domain,
1486 pursuant to the provisions of chapters 73 and 74, Florida

1487 Statutes, over any property within the state, except municipal,
1488 county, state, and federal property, for the uses and purpose of
1489 the district relating solely to water, sewer, district roads,
1490 and water management, specifically including, without
1491 limitation, the power for the taking of easements for the
1492 drainage of the land of one person over and through the land of
1493 another.
1494 (l) To cooperate with, or contract with, other
1495 governmental agencies as may be necessary, convenient,
1496 incidental, or proper in connection with any of the powers,
1497 duties, or purposes authorized by this act.
1498 (m) To assess and impose upon lands in the district ad
1499 valorem taxes as provided and limited by this act.
1500 (n) If and when authorized by general law, to determine,
1501 order, levy, impose, collect, and enforce maintenance taxes.
1502 (o) To determine, order, levy, impose, collect, and
1503 enforce assessments pursuant to this act, which sets forth a
1504 detailed uniform procedure to implement chapter 170, Florida
1505 Statutes, and as an alternative to determine, order, levy,
1506 impose, collect, and enforce assessments under and pursuant to
1507 chapter 170, Florida Statutes, pursuant to authority granted in
1508 section 197.3631, Florida Statutes, or pursuant to other
1509 provisions of general law, now or hereinafter enacted, which
1510 provide or authorize a supplemental means to impose, levy, and
1511 collect special assessments. Such special assessments, in the
1512 discretion of the district, as provided in section 197.3631,
1513 Florida Statutes, may be collected and enforced pursuant to the
1514 provisions of sections 197.3632 and 197.3635, Florida Statutes,

1515 and chapters 170 and 173, Florida Statutes, or as provided by
1516 this act.
1517 (p) To exercise such special powers and other express
1518 powers as may be authorized and granted by this act in the
1519 charter of the district, including powers as provided in any
1520 interlocal agreement entered into pursuant to chapter 163,
1521 Florida Statutes, or which shall be required or permitted to be
1522 undertaken by the district pursuant to any development order or
1523 development of regional impact, including any interlocal service
1524 agreement with Okeechobee County for fair-share capital
1525 construction funding for any capital facilities or systems
1526 required of the developer pursuant to any applicable development
1527 order or agreement.
1528 (q) To exercise all of the powers necessary, convenient,
1529 incidental, or proper in connection with any other powers or
1530 duties or the single purpose of the district authorized by this
1531 act.
1532
1533 The provisions of this subsection shall be construed liberally
1534 in order to carry out effectively the single specialized purpose
1535 of this act and to secure for the district its ability to be
1536 innovative.
1537 (9) SPECIAL POWERS.--The district shall have the following
1538 special powers to implement its lawful, single, and special
1539 purpose and to provide pursuant to that purpose basic systems,
1540 facilities, services, improvements, projects, works, and
1541 infrastructure in the new community, each of which constitutes a
1542 lawful public purpose when exercised pursuant to this charter,

1543 subject to, and not inconsistent with, the regulatory
1544 jurisdiction and permitting authority of all other applicable
1545 governmental bodies, agencies, and any special districts having
1546 authority with respect to any area included therein, and to
1547 plan, establish, acquire, construct or reconstruct, enlarge or
1548 extend, equip, operate, finance, fund, and maintain
1549 improvements, systems, facilities, services, works, projects,
1550 and infrastructure any or all of the following special powers
1551 granted by this act in order to implement the special
1552 requirements of this new community within the single special
1553 purpose of the district:
1554 (a) To provide for water management and control for the
1555 lands within the district and to connect some or any of such
1556 facilities with roads and bridges. In the event that the board
1557 assumes the responsibility for providing water management and
1558 control for the district which is to be financed by benefit
1559 special assessments, the board shall adapt plans and assessments
1560 pursuant to law or may adopt water management and control plans,
1561 assess for benefits, and apportion and levy special assessments
1562 as follows:
1563 1. The board shall cause to be made by the district's
1564 engineer, or such other engineer or engineers as the board may
1565 employ for that purpose, complete and comprehensive water
1566 management and control plans for the lands located within the
1567 district that will be improved in part or in whole by any system
1568 of facilities that may be outlined and adopted, and the engineer
1569 shall make a report in writing to the board with maps and

1570 profiles of said surveys and an estimate of the cost of carrying
1571 out and completing the plans.
1572 2. Upon the completion of such plans, the board shall hold
1573 a hearing thereon to hear objections thereto, shall give notice
1574 of the time and place fixed for such hearing by publication once
1575 each week for 2 consecutive weeks in a newspaper of general
1576 circulation in the general area of the district, and shall
1577 permit the inspection of the plan at the office of the district
1578 by all persons interested. All objections to the plan shall be
1579 filed at or before the time fixed in the notice for the hearing
1580 and shall be in writing.
1581 3. After the hearing, the board shall consider the
1582 proposed plan and any objections thereto and may modify, reject,
1583 or adopt the plan or continue the hearing to a day certain for
1584 further consideration of the proposed plan or modifications
1585 thereof.
1586 4. When the board approves a plan, a resolution shall be
1587 adopted and a certified copy thereof shall be filed in the
1588 office of the secretary and incorporated by him or her into the
1589 records of the district.
1590 5. The water management and control plan may be altered in
1591 detail from time to time until the appraisal record herein
1592 provided is filed, but not in such manner as to affect
1593 materially the conditions of its adoption. After the appraisal
1594 record has been filed, no alteration of the plan shall be made,
1595 except as provided by this act.

1596 6. Within 20 days after the final adoption of the plan by
1597 the board, the board shall proceed pursuant to section 298.301,
1598 Florida Statutes.
1599 (b) To provide for water supply, sewer, and wastewater
1600 management, reclamation, and reuse or any combination thereof
1601 and any irrigation systems, facilities, and services; to
1602 construct and operate connecting intercepting or outlet sewers
1603 and sewer mains and pipes and water mains, conduits, or
1604 pipelines in, along, and under any street, alley, highway, or
1605 other public place or way; and to dispose of any effluent,
1606 residue, or other byproducts of such system or sewer system.
1607 1. The district may not purchase or sell a water, sewer,
1608 or wastewater reuse utility that provides service to the public
1609 for compensation, or enter into a wastewater facility
1610 privatization contract for a wastewater facility, until the
1611 governing body of the new community district has held a public
1612 hearing on the purchase, sale, or wastewater facility
1613 privatization contract and made a determination that the
1614 purchase, sale, or wastewater facility privatization contract is
1615 in the public interest.
1616 2. In determining if the purchase, sale, or wastewater
1617 facility privatization contract is in the public interest, the
1618 district shall consider, at a minimum, the following:
1619 a. The most recent available income and expense statement
1620 for the utility.
1621 b. The most recent available balance sheet for the
1622 utility, listing assets and liabilities and clearly showing the

1623 amount of contributions in aid of construction and the
1624 accumulated depreciation thereon.
1625 c. A statement of the existing rate base of the utility
1626 for regulatory purposes.
1627 d. The physical condition of the utility facilities being
1628 purchased, sold, or subject to a wastewater facility
1629 privatization contract.
1630 e. The reasonableness of the purchase, sale, or wastewater
1631 facility privatization contract price and terms.
1632 f. The impacts of the purchase, sale, or wastewater
1633 facility privatization contract on utility customers, both
1634 positive and negative.
1635 g. Any additional investment required and the ability and
1636 willingness of the purchaser or the private firm under a
1637 wastewater facility privatization contract to make that
1638 investment, whether the purchaser is the district or the entity
1639 purchasing the utility from the district.
1640 h. In the case of a wastewater facility privatization
1641 contract, the terms and conditions on which the private firm
1642 will provide capital investment and financing or a combination
1643 thereof for contemplated capital replacements, additions,
1644 expansions, and repairs. The district shall give significant
1645 weight to this criterion.
1646 i. The alternatives to the purchase, sale, or wastewater
1647 facility privatization contract and the potential impact on
1648 utility customers if the purchase, sale, or wastewater facility
1649 privatization contract is not made.

1650 j. The ability of the purchaser or the private firm under
1651 a wastewater facility privatization contract to provide and
1652 maintain high-quality and cost-effective utility service,
1653 whether the purchaser is the district or the entity purchasing
1654 the utility from the district.
1655 k. In the case of a wastewater facility privatization
1656 contract, the technical expertise and experience of the private
1657 firm in carrying out the obligations specified in the wastewater
1658 facility privatization contract. The district shall give
1659 significant weight to this criterion.
1660 3. All moneys paid by a private firm to a district
1661 pursuant to a wastewater facility privatization contract shall
1662 be used for the purpose of reducing or offsetting property
1663 taxes, wastewater service rates, or debt reduction or making
1664 infrastructure improvements or capital asset expenditures or
1665 other public purpose; however, nothing herein shall preclude the
1666 district from using all or part of the moneys for the purpose of
1667 the district's qualification for relief from the repayment of
1668 federal grant awards associated with the wastewater system as
1669 may be required by federal law or regulation. The district shall
1670 prepare a statement showing that the purchase, sale, or
1671 wastewater facility privatization contract is in the public
1672 interest, including a summary of the purchaser's or private
1673 firm's experience in water, sewer, or wastewater reuse utility
1674 operation and a showing of financial ability to provide the
1675 service, whether the purchaser or private firm is the district
1676 or the entity purchasing the utility from the district.

1677 (c) To provide for bridges or culverts that may be needed
1678 across any drain, ditch, canal, floodway, holding basin,
1679 excavation, public highway, tract, grade, fill, or cut and
1680 roadways over levees and embankments, and to construct any and
1681 all of such works and improvements across, through, or over any
1682 public right-of-way, highway, grade, fill, or cut.
1683 (d) To provide for district roads equal to or exceeding
1684 the specifications of the county in which such district roads
1685 are located, and streetlights, including conditions of
1686 development approval which sometimes may be different
1687 specifications than the normal specifications of the county.
1688 This special power includes construction, improvement, pavement,
1689 and maintenance of roadways and roads necessary and convenient
1690 for the exercise of the powers or duties of the district to:
1691 1. Implement its single purpose.
1692 2. Include as a component thereof roads, parkways,
1693 bridges, landscaping, irrigation, bicycle and jogging paths,
1694 street lighting, traffic signals, road striping, and all other
1695 customary elements of a modern road system in general or as tied
1696 to the conditions of development approval for the specific
1697 district.
1698 3. Plan, implement, construct or reconstruct, enlarge or
1699 extend, finance, fund, equip, operate, and maintain parking
1700 facilities freestanding or as may be related to any innovative
1701 strategic intermodal system of transportation pursuant to
1702 applicable federal, state, and local laws and ordinances.

1703 (e) To provide for buses, trolleys, transit shelters,
1704 ride-sharing facilities and services, parking improvements, and
1705 related signage.
1706 (f) To cover investigation and remediation costs
1707 associated with the cleanup of actual or perceived environmental
1708 contamination within the district under the supervision or
1709 direction of a competent governmental authority unless the
1710 covered costs benefit any person who is a landowner within the
1711 district who caused or contributed to the contamination.
1712 (g) To provide for conservation areas, mitigation areas,
1713 and wildlife habitat, including the maintenance of any plant or
1714 animal species, and any related interest in real or personal
1715 property.
1716 (h) Using its general and special powers as set forth in
1717 this act, to provide for any other project within or without the
1718 boundaries of a district when the project is the subject of an
1719 agreement between the district and the Board of County
1720 Commissioners of Okeechobee County or with any applicable other
1721 public or private entity, including a homeowner association, and
1722 is not inconsistent with the Okeechobee County Comprehensive
1723 Plan and the Growth Management act which implement the single
1724 special purpose of the district.
1725 (i) To provide for parks and facilities for indoor and
1726 outdoor recreational, cultural, and educational uses.
1727 (j) To provide for fire prevention and control, including
1728 fire stations and buildings, water mains and plugs, fire trucks,
1729 and other vehicles and equipment, and for emergency medical

1730 services, including stations and buildings, vehicles, and
1731 equipment.
1732 (k) To provide for school buildings and related
1733 structures, which may be leased, sold, or donated to the school
1734 district, for use in the educational system when authorized by
1735 the district school board. The district is granted the special
1736 power to contract with the Okeechobee County School Board and,
1737 as applicable, the Board of County Commissioners of Okeechobee
1738 County, and with the applicable landowner developer of the lands
1739 within the jurisdiction of the district, to assess the school
1740 district educational facilities plan, and to implement a
1741 management and financing plan for timely construction,
1742 maintenance, and acquisition, at the option of the district, of
1743 school facilities, including facilities identified in the
1744 facilities work programs or those proposed by charter schools.
1745 The district is granted the special power to determine, order,
1746 levy, impose, collect, or arrange for the collection and
1747 enforcement of assessments, as defined in and pursuant to this
1748 act, for such school facilities. The district is eligible for
1749 the financial enhancements available to educational facility
1750 benefit districts to provide for financing the construction and
1751 maintenance of educational facilities pursuant to section
1752 1013.356, Florida Statutes, and, if and when authorized by
1753 general law, to acquire such educational facilities. This act,
1754 in the place of an educational facilities benefit district,
1755 authorizes the Okeechobee County School Board to designate the
1756 district. The district is authorized to enter into an interlocal
1757 agreement with the Okeechobee County School Board and, as

1758 applicable, the Board of County Commissioners of Okeechobee
1759 County, and applicable private landowners and developers in
1760 order to provide for such construction, maintenance, and
1761 acquisition and in order to receive the applicable financial
1762 enhancements provided by section 1013.356, Florida Statutes. The
1763 interlocal agreement shall consider, among other things,
1764 absorption rates, sales rates, and related data of existing and
1765 projected schools; racial, ethnic, social, and economic balance
1766 within the Okeechobee County School District under applicable
1767 state and federal law; and the provision of school attendance
1768 zones to allow students residing within a reasonable distance of
1769 the facilities constructed and financed through the interlocal
1770 agreement to attend such facilities. Because these facilities
1771 are funded by assessments and not by taxes of any type, the
1772 provision of these facilities may be multiuse and, consistent
1773 with the provisions of this act, shall be first liens on the
1774 property upon a showing of special and peculiar benefits that
1775 flow to the property within the jurisdiction of the district as
1776 a logical connection from the systems, facilities, and services,
1777 resulting in added use, enhanced enjoyment, decreased insurance
1778 premiums, or enhanced value in marketability so that the
1779 Legislature finds that the provisions of the Florida
1780 Constitution for free public schools is implemented and
1781 enhanced.
1782 (l) To provide for security, including, but not limited
1783 to, guardhouses, fences and gates, electronic intrusion
1784 detection systems, and patrol cars, when authorized by proper
1785 governmental agencies, except that the district may not exercise

1786 any powers of a law enforcement agency but may contract with the
1787 appropriate local general-purpose government agencies for an
1788 increased level of such services within the district boundaries.
1789 Notwithstanding any provision of general law, the district may
1790 operate guardhouses for the limited purpose of providing
1791 security for the residents of the district and which serve a
1792 predominate public, as opposed to private, purpose. Such
1793 guardhouses shall be operated by the district or other unit of
1794 local government pursuant to procedures designed to serve such
1795 security purposes as set forth in rules adopted by the board,
1796 from time to time, following the procedures set forth in chapter
1797 120, Florida Statutes.
1798 (m) To provide for control and elimination of mosquitoes
1799 and other arthropods of public health importance.
1800 (n) To provide for waste collection and disposal.
1801 (o) To enter into impact fee credit agreements with
1802 Okeechobee County and the Okeechobee County School Board. Under
1803 such agreements, where the district constructs or makes
1804 contributions for public systems, facilities, services,
1805 projects, improvements, works, and infrastructures for which
1806 impact fee credits would be available to the landowner developer
1807 under the Okeechobee County and Okeechobee County School Board
1808 applicable impact fee ordinance, the agreement authorized by
1809 this act shall provide that such impact fee credit shall inure
1810 to the landowners within the district in portion to assessments
1811 or other burdens levied and imposed upon the landowners with
1812 respect to assessable improvements giving rise to such impact
1813 fee credits, and the district shall, from time to time, execute

1814 such instruments, such as assignments of impact fee credits, as
1815 may be necessary, appropriate, or desirable to accomplish or to
1816 confirm the foregoing.
1817 (p) To establish and create, at noticed meetings, such
1818 government departments of the board of the district, as well as
1819 committees, task forces, boards, commissions, or other agencies
1820 under the supervision and control of the district, as from time
1821 to time the members of the board may deem necessary or desirable
1822 in the performance of the acts or other things necessary to
1823 exercise its general or special powers to implement an
1824 innovative project to carry out the special purpose of the
1825 district as provided in this act and to delegate to such
1826 departments, boards, task forces, committees, or other agencies
1827 such administrative duties and other powers as the board may
1828 deem necessary or desirable, but only if there is a set of
1829 expressed limitations for accountability, notice, and periodic
1830 written reporting to the board, which shall retain its powers.
1831 (q) So long as not inconsistent with the applicable local
1832 government comprehensive plan and development entitlements, to
1833 coordinate with the landowner developer on the phasing of the
1834 delivery of infrastructure and to create phase entities or units
1835 for its charter purpose. Toward this end, and so long as it
1836 implements the purpose of the district under this act, the board
1837 may designate, therefore, units of development and adopt systems
1838 of progressive phased development by units with related
1839 management planning, implementation, construction, maintenance,
1840 and financing within its phased unit. If the board proceeds to
1841 designate such phased units of development, it must adopt at a

1842 noticed meeting pursuant to chapter 120, Florida Statutes, a
1843 rule setting forth detailed procedures and authorizations for
1844 such phase unit processes. A committee, department, or agency of
1845 the board shall be given express duty of oversight with monthly
1846 written reports to the board. No such phased units can begin or
1847 operate until or unless the required noticed rule has been
1848 promulgated. With regard to any phased unit, there shall be no
1849 bonded indebtedness and no levy of any lienable or nonlienable
1850 revenue, whether to amortize bonds or not, within the boundary
1851 of a phased unit other than by the board and pursuant to the
1852 powers, procedures, and provisions of this act and other
1853 applicable laws.
1854 (r) To plan, establish, acquire, construct or reconstruct,
1855 enlarge or extend, equip, operate, maintain, finance, and fund
1856 buildings and structures for district offices, maintenance
1857 facilities, meeting facilities, town centers, or any other
1858 project authorized or granted by this act upon a showing at a
1859 noticed meeting of its efficacy to the specialized single
1860 purpose of this district for the new community.
1861 (s) To plan, establish, acquire, construct or reconstruct,
1862 enlarge or extend, equip, operate, maintain, finance, and fund
1863 edifices and facilities for the provision of health care when
1864 authorized by applicable public or private agencies providing
1865 health care and upon a showing of efficacy to carry out the
1866 purpose of the district.
1867 (t) To coordinate, work with, and, as the board deems
1868 appropriate, enter into interlocal agreements subject to the
1869 provisions of this charter with any public or private

1870 institution of higher education, including the Indian River
1871 Community College and any public or private university. The
1872 purpose of such coordination and agreements is to help sustain
1873 high-quality infrastructure in, around, and for the universities
1874 as may be appropriate under the law on the basis that the
1875 provision of such systems, facilities, and services, including
1876 classrooms or other buildings for such institutions, constitutes
1877 enhancement of the intrinsic value and marketability of property
1878 within the new community and also provides for increased
1879 enjoyment and enhanced use of the property. These systems,
1880 facilities, and services, including buildings, shall be first
1881 liens on the property within the community and serve a lawful
1882 public purpose upon a showing by the board in a nonarbitrary and
1883 informed manner of special and peculiar benefits that flow to
1884 the property within the community as a logical connection from
1885 the systems, facilities, and services, resulting in added use,
1886 enhanced enjoyment, decreased insurance premiums on, or enhanced
1887 value in the marketability of the property.
1888 (u) To adopt and enforce appropriate rules following the
1889 procedures of chapter 120, Florida Statutes, in connection with
1890 the provisions of one or more its systems, facilities, services,
1891 projects, improvements, works, and infrastructure.
1892
1893 The enumeration of special powers in this subsection shall not
1894 be deemed exclusive or restrictive but shall be deemed to
1895 incorporate all powers, express or implied, necessary or
1896 incident to carrying out such enumerated special powers,
1897 including also the general powers provided by this special act

1898 charter to the district to implement its single purpose. The
1899 provisions of this subsection shall be construed liberally in
1900 order to carry out effectively the single purpose of this
1901 district under this act and to secure for the district its
1902 ability to be innovative.
1903 (10) ISSUANCE OF BOND ANTICIPATION NOTES.--In addition to
1904 the other powers provided for in this act, and not in limitation
1905 thereof, the district shall have the power, at any time, and
1906 from time to time after the issuance of any bonds of the
1907 district shall have been authorized, to borrow money for the
1908 purposes for which such bonds are to be issued in anticipation
1909 of the receipt of the proceeds of the sale of such bonds and to
1910 issue bond anticipation notes in a principal sum not in excess
1911 of the authorized maximum amount of such bond issue. Such notes
1912 shall be in such denomination or denominations; bear interest at
1913 such rate, not to exceed the maximum rate allowed by general
1914 law; mature at such time or times not later than 5 years from
1915 the date of issuance; and be in such form and executed in such
1916 manner as the board shall prescribe. Such notes may be sold at
1917 either public or private sale or, if such notes are renewal
1918 notes, may be exchanged for notes then outstanding on such terms
1919 as the board shall determine. Such notes shall be paid from the
1920 proceeds of such bonds when issued. The board may, in its
1921 discretion, in lieu of retiring the notes by means of bonds,
1922 retire them by means of current revenues or from any taxes or
1923 assessments levied for the payment of such bonds, but in such
1924 event, a like amount of the bonds authorized shall not be
1925 issued.

1926 (11) SHORT-TERM BORROWING.--The district may at any time
1927 obtain loans, in such amount and on such terms and conditions as
1928 the board may approve, for the purpose of paying any of the
1929 expenses of the district or any costs incurred or that may be
1930 incurred in connection with any of the projects of the district,
1931 which loans shall bear interest as the board determines as not
1932 to exceed the maximum rate allowed by general law and may be
1933 payable from and secured by a pledge of such funds, revenues,
1934 taxes, and assessments as the board may determine, subject,
1935 however, to the provisions contained in any proceeding under
1936 which bonds were theretofore issued and are then outstanding.
1937 For the purpose of defraying such costs and expenses, the
1938 district may issue negotiable notes, warrants, or other
1939 evidences of debt to be payable at such times and to bear such
1940 interest, not to exceed the maximum rate allowed by general law,
1941 as the board may determine and to be sold or discounted at such
1942 price or prices not less than 95 percent of par value and on
1943 such terms as the board may deem advisable. The board shall have
1944 the right to provide for the payment thereof by pledging the
1945 whole or any part of the funds, revenues, taxes, and assessments
1946 of the district. The approval of the electors residing in the
1947 district shall not be necessary except when required by the
1948 State Constitution.
1949 (12) BONDS.--
1950 (a) Bonds may be sold in blocks or installments at
1951 different times, or an entire issue or series may be sold at one
1952 time. Bonds may be sold at public or private sale after such
1953 advertisement, if any, as the board may deem advisable, but not

1954 in any event at less than 90 percent of the par value thereof,
1955 together with accrued interest thereon. Bonds may be sold or
1956 exchanged for refunding bonds. Special assessment and revenue
1957 bonds may be delivered by the district as payment of the
1958 purchase price of any project or part thereof, or a combination
1959 of projects or parts thereof, or as the purchase price or
1960 exchange for any property, real, personal, or mixed, including
1961 franchises or services rendered by any contractor, engineer, or
1962 other person, all at one time or in blocks from time to time, in
1963 such manner and upon such terms as the board in its discretion
1964 shall determine. The price or prices for any bonds sold,
1965 exchanged, or delivered may be:
1966 1. The money paid for the bonds.
1967 2. The principal amount, plus accrued interest to the date
1968 of redemption or exchange, or outstanding obligations exchanged
1969 for refunding bonds.
1970 3. In the case of special assessment or revenue bonds, the
1971 amount of any indebtedness to contractors or other persons paid
1972 with such bonds, or the fair value of any properties exchanged
1973 for the bonds, as determined by the board.
1974 (b) Any general obligation bonds, special assessment
1975 bonds, or revenue bonds may be authorized by resolution or
1976 resolutions of the board, which shall be adopted by a majority
1977 of all the members thereof then in office. Such resolution or
1978 resolutions may be adopted at the same meeting at which they are
1979 introduced and need not be published or posted. The board may,
1980 by resolution, authorize the issuance of bonds and fix the
1981 aggregate amount of bonds to be issued; the purpose or purposes

1982 for which the moneys derived therefrom shall be expended,
1983 including, but not limited to, payment of costs as defined in
1984 section 2(6)(h); the rate or rates of interest, not to exceed
1985 the maximum rate allowed by general law; the denomination of the
1986 bonds; whether or not the bonds are to be issued in one or more
1987 series; the date or dates of maturity, which shall not exceed 40
1988 years from their respective dates of issuance; the medium of
1989 payment; the place or places within or without the state where
1990 payment shall be made; registration privileges; redemption terms
1991 and privileges, whether with or without premium; the manner of
1992 execution; the form of the bonds, including any interest coupons
1993 to be attached thereto; the manner of execution of bonds and
1994 coupons; and any and all other terms, covenants, and conditions
1995 thereof and the establishment of revenue or other funds. Such
1996 authorizing resolution or resolutions may further provide for
1997 the contracts authorized by section 159.825(1)(f) and (g),
1998 Florida Statutes, regardless of the tax treatment of such bonds
1999 being authorized, subject to the finding by the board of a net
2000 savings to the district resulting by reason thereof. Such
2001 authorizing resolution may further provide that such bonds may
2002 be executed in accordance with the Registered Public Obligations
2003 Act, except that bonds not issued in registered form shall be
2004 valid if manually countersigned by an officer designated by
2005 appropriate resolution of the board. The seal of the district
2006 may be affixed, lithographed, engraved, or otherwise reproduced
2007 in facsimile on such bonds. In case any officer whose signature
2008 appears on any bonds or coupons ceases to be such officer before
2009 the delivery of such bonds, such signature or facsimile shall

2010 nevertheless be valid and sufficient for all purposes as if he
2011 or she had remained in office until such delivery.
2012 (c) Pending the preparation of definitive bonds, the board
2013 may issue interim certificates or receipts or temporary bonds,
2014 in such form and with such provisions as the board may
2015 determine, exchangeable for definitive bonds when such bonds
2016 have been executed and are available for delivery. The board may
2017 also provide for the replacement of any bonds which become
2018 mutilated, lost, or destroyed.
2019 (d) Any bond issued under this act or any temporary bond,
2020 in the absence of an express recital on the face thereof that it
2021 is nonnegotiable, shall be fully negotiable and shall be and
2022 constitute a negotiable instrument within the meaning and for
2023 all purposes of the law merchant and the laws of the state.
2024 (e) The board may make such provision with respect to the
2025 defeasance of the right, title, and interest of the holders of
2026 any of the bonds and obligations of the district in any
2027 revenues, funds, or other properties by which such bonds are
2028 secured as the board deems appropriate and, without limitation
2029 on the foregoing, may provide that when such bonds or
2030 obligations become due and payable or are called for redemption
2031 and the whole amount of the principal and interest and premium,
2032 if any, due and payable upon the bonds or obligations then
2033 outstanding is held in trust for such purpose and provision is
2034 also made for paying all other sums payable in connection with
2035 such bonds or other obligations, then the right, title, and
2036 interest of the holders of the bonds in any revenues, funds, or
2037 other properties by which such bonds are secured shall thereupon

2038 cease, terminate, and become void; and the board may apply any
2039 surplus in any sinking fund established in connection with such
2040 bonds or obligations and all balances remaining in all other
2041 funds or accounts other than money held for the redemption or
2042 payment of the bonds or other obligations to any lawful purpose
2043 of the district as the board shall determine.
2044 (f) If the proceeds of any bonds are less than the cost of
2045 completing the project in connection with which such bonds were
2046 issued, the board may authorize the issuance of additional bonds
2047 upon such terms and conditions as the board may provide in the
2048 resolution authorizing the issuance thereof, but only in
2049 compliance with the resolution or other proceedings authorizing
2050 the issuance of the original bonds.
2051 (g) The district shall have the power to issue bonds to
2052 provide for the retirement or refunding of any bonds or
2053 obligations of the district that, at the time of such issuance,
2054 are or subsequently thereto become due and payable, or that at
2055 the time of issuance have been called or are or will be subject
2056 to call for redemption within 10 years thereafter, or the
2057 surrender of which can be procured from the holders thereof at
2058 prices satisfactory to the board. Refunding bonds may be issued
2059 at any time when, in the judgment of the board, such issuance
2060 will be advantageous to the district. No approval of the
2061 qualified electors residing in the district shall be required
2062 for the issuance of refunding bonds except in cases in which
2063 such approval is required by the State Constitution. The board
2064 may by resolution confer upon the holders of such refunding
2065 bonds all rights, powers, and remedies to which the holders

2066 would be entitled if they continued to be the owners and had
2067 possession of the bonds for the refinancing of which such
2068 refunding bonds are issued, including, but not limited to, the
2069 preservation of the lien of such bonds on the revenues of any
2070 project or on pledged funds, without extinguishment, impairment,
2071 or diminution thereof. The provisions of this act pertaining to
2072 bonds of the district shall, unless the context otherwise
2073 requires, govern the issuance of refunding bonds, the form and
2074 other details thereof, the rights of the holders thereof, and
2075 the duties of the board with respect thereto.
2076 (h)1. The district shall have the power to issue revenue
2077 bonds from time to time without limitation as to amount. Such
2078 revenue bonds may be secured by, or payable from, the gross or
2079 net pledge of the revenues to be derived from any project or
2080 combination of projects; from the rates, fees, or other charges
2081 to be collected from the users of any project or projects; from
2082 any revenue-producing undertaking or activity of the district;
2083 from special assessments; from benefit special assessments; or
2084 from any other source or pledged security. Such bonds shall not
2085 constitute an indebtedness of the district, and the approval of
2086 the qualified electors shall not be required unless such bonds
2087 are additionally secured by the full faith and credit and taxing
2088 power of the district.
2089 2. Any two or more projects may be combined and
2090 consolidated into a single project and may be operated and
2091 maintained as a single project. The revenue bonds authorized
2092 herein may be issued to finance any one or more of such
2093 projects, regardless of whether such projects have been combined

2094 and consolidated into a single project. If the board deems it
2095 advisable, the proceedings authorizing such revenue bonds may
2096 provide that the district may combine the projects then being
2097 financed or theretofore financed with other projects to be
2098 subsequently financed by the district and that revenue bonds to
2099 be thereafter issued by the district shall be on parity with the
2100 revenue bonds then being issued, all on such terms, conditions,
2101 and limitations provided in the proceeding which authorized the
2102 original bonds.
2103 (i)1. Subject to the limitations of this charter, the
2104 district shall have the power from time to time to issue general
2105 obligation bonds to finance or refinance capital projects or to
2106 refund outstanding bonds in an aggregate principal amount of
2107 bonds outstanding at any one time not in excess of 35 percent of
2108 the assessed value of the taxable property within the district
2109 as shown on the pertinent tax records at the time of the
2110 authorization of the general obligation bonds for which the full
2111 faith and credit of the district is pledged. Except for
2112 refunding bonds, no general obligation bonds shall be issued
2113 unless the bonds are issued to finance or refinance a capital
2114 project and the issuance has been approved at an election held
2115 in accordance with the requirements for such election as
2116 prescribed by the State Constitution. Such elections shall be
2117 called to be held in the district by the board of county
2118 commissioners of the county upon the request of the board of the
2119 district. The expenses of calling and holding an election shall
2120 be at the expense of the district, and the district shall

2121 reimburse the county for any expenses incurred in calling or
2122 holding such election.
2123 2. The district may pledge its full faith and credit for
2124 the payment of the principal and interest on such general
2125 obligation bonds and for any reserve funds provided therefor and
2126 may unconditionally and irrevocably pledge itself to levy ad
2127 valorem taxes on all taxable property in the district, to the
2128 extent necessary for the payment thereof, without limitations as
2129 to rate or amount.
2130 3. If the board determines to issue general obligation
2131 bonds for more than one capital project, the approval of the
2132 issuance of the bonds for each and all such projects may be
2133 submitted to the electors on one and the same ballot. The
2134 failure of the electors to approve the issuance of bonds for any
2135 one or more capital projects shall not defeat the approval of
2136 bonds for any capital project which has been approved by the
2137 electors.
2138 4. In arriving at the amount of general obligation bonds
2139 permitted to be outstanding at any one time pursuant to
2140 subparagraph 1., there shall not be included any general
2141 obligation bonds which are additionally secured by the pledge
2142 of:
2143 a. Any assessments levied in an amount sufficient to pay
2144 the principal and interest on the general obligation bonds so
2145 additionally secured, which assessments have been equalized and
2146 confirmed by resolution of the board pursuant to this act or
2147 section 170.08, Florida Statutes.

2148 b. Water revenues, sewer revenues, or water and sewer
2149 revenues of the district to be derived from user fees in an
2150 amount sufficient to pay the principal and interest on the
2151 general obligation bonds so additionally secured.
2152 c. Any combination of assessments and revenues described
2153 in subparagraphs a. and b.
2154 (j)1. Notwithstanding the provisions of any other law to
2155 the contrary, all bonds issued under the provisions of this act
2156 shall constitute legal investments for savings banks, banks,
2157 trust companies, insurance companies, executors, administrators,
2158 trustees, guardians, and other fiduciaries and for any board,
2159 body, agency, instrumentality, county, municipality, or other
2160 political subdivision of the state and shall be and constitute
2161 security which may be deposited by banks or trust companies as
2162 security for deposits of state, county, municipal, or other
2163 public funds or by insurance companies as required or voluntary
2164 statutory deposits.
2165 2. Any bonds issued by the district shall be incontestable
2166 in the hands of bona fide purchasers or holders for value and
2167 shall not be invalid because of any irregularity or defect in
2168 the proceedings for the issue and sale thereof.
2169 (k) Any resolution authorizing the issuance of bonds may
2170 contain such covenants as the board may deem advisable, and all
2171 such covenants shall constitute valid and legally binding and
2172 enforceable contracts between the district and the bondholders,
2173 regardless of the time of issuance thereof. Such covenants may
2174 include, without limitation, covenants concerning the
2175 disposition of the bond proceeds; the use and disposition of

2176 project revenues; the pledging of revenues, taxes, and
2177 assessments; the obligations of the district with respect to the
2178 operation of the project and the maintenance of adequate project
2179 revenues; the issuance of additional bonds; the appointment,
2180 powers, and duties of trustees and receivers; the acquisition of
2181 outstanding bonds and obligations; restrictions on the
2182 establishing of competing projects or facilities; restrictions
2183 on the sale or disposal of the assets and property of the
2184 district; the priority of assessment liens; the priority of
2185 claims by bondholders on the taxing power of the district; the
2186 maintenance of deposits to ensure the payment of revenues by
2187 users of district facilities and services; the discontinuance of
2188 district services by reason of delinquent payments; acceleration
2189 upon default; the execution of necessary instruments; the
2190 procedure for amending or abrogating covenants with the
2191 bondholders; and such other covenants as may be deemed necessary
2192 or desirable for the security of the bondholders.
2193 (l) The power of the district to issue bonds under the
2194 provisions of this act may be determined, and any of the bonds
2195 of the district maturing over a period of more than 5 years
2196 shall be validated and confirmed, by court decree, under the
2197 provisions of chapter 75, Florida Statutes.
2198 (m) To the extent allowed by general law, all bonds issued
2199 hereunder and interest paid thereon and all fees, charges, and
2200 other revenues derived by the district from the projects
2201 provided by this act are exempt from all taxes by the state or
2202 by any political subdivision, agency, or instrumentality
2203 thereof; however, any interest, income, or profits on debt

2204 obligations issued hereunder are not exempt from the tax imposed
2205 by chapter 220, Florida Statutes. Further, the district is not
2206 exempt from the provisions of chapter 212, Florida Statutes.
2207 (n) Bonds issued by the district shall meet the criteria
2208 set forth in section 189.4085, Florida Statutes.
2209 (o) This act constitutes full and complete authority for
2210 the issuance of bonds and the exercise of the powers of the
2211 district provided herein. No procedures or proceedings,
2212 publications, notices, consents, approvals, orders, acts, or
2213 things by the board, or any board, officers, commission,
2214 department, agency, or instrumentality of the district, other
2215 than those required by this act, shall be required to perform
2216 anything under this act, except that the issuance or sale of
2217 bonds pursuant to the provisions of this act shall comply with
2218 the general law requirements applicable to the issuance or sale
2219 of bonds by the district. Nothing in this act shall be construed
2220 to authorize the district to utilize bond proceeds to fund the
2221 ongoing operations of the district.
2222 (p) The state pledges to the holders of any bonds issued
2223 under this act that it will not limit or alter the rights of the
2224 district to own, acquire, construct, reconstruct, improve,
2225 maintain, operate, or furnish the projects or to levy and
2226 collect the taxes, assessments, rentals, rates, fees, and other
2227 charges provided for herein or to fulfill the terms of any
2228 agreement made with the holders of such bonds or other
2229 obligations and that it will not in any way impair the rights or
2230 remedies of such holders.

2231 (q) A default on the bonds or obligations of a district
2232 shall not constitute a debt or obligation of the state or any
2233 local general-purpose government or the state.
2234 (13) TRUST AGREEMENTS.--Any issue of bonds shall be
2235 secured by a trust agreement by and between the district and a
2236 corporate trustee or trustees, which may be any trust company or
2237 bank having the powers of a trust company within or without the
2238 state. The resolution authorizing the issuance of the bonds or
2239 such trust agreement may pledge the revenues to be received from
2240 any projects of the district and may contain such provisions for
2241 protecting and enforcing the rights and remedies of the
2242 bondholders as the board may approve, including, without
2243 limitation, covenants setting forth the duties of the district
2244 in relation to the acquisition, construction, reconstruction,
2245 improvement, maintenance, repair, operation, and insurance of
2246 any projects; the fixing and revising of the rates, fees, and
2247 charges; and the custody, safeguarding, and application of all
2248 moneys and for the employment of consulting engineers in
2249 connection with such acquisition, construction, reconstruction,
2250 improvement, maintenance, repair, or operation. It shall be
2251 lawful for any bank or trust company within or without the state
2252 which may act as a depository of the proceeds of bonds or of
2253 revenues to furnish such indemnifying bonds or to pledge such
2254 securities as may be required by the district. Such resolution
2255 or trust agreement may set forth the rights and remedies of the
2256 bondholders and of the trustee, if any, and may restrict the
2257 individual right of action by bondholders. The board may provide
2258 for the payment of proceeds of the sale of the bonds and the

2259 revenues of any project to such officer, board, or depository as
2260 it may designate for the custody thereof and may provide for the
2261 method of disbursement thereof with such safeguards and
2262 restrictions as it may determine. All expenses incurred in
2263 carrying out the provisions of such resolution or trust
2264 agreement may be treated as part of the cost of operation of the
2265 project to which such trust agreement pertains.
2266 (14) AD VALOREM TAXES; ASSESSMENTS, BENEFIT SPECIAL
2267 ASSESSMENTS, MAINTENANCE SPECIAL ASSESSMENTS, AND SPECIAL
2268 ASSESSMENTS; MAINTENANCE TAXES.--
2269 (a) A board elected by and consisting of qualified
2270 electors shall have the power to levy and assess an ad valorem
2271 tax on all the taxable property in the district to construct,
2272 operate, and maintain assessable improvements; to pay the
2273 principal of, and interest on, any general obligation bonds of
2274 the district; and to provide for any sinking or other funds
2275 established in connection with any such bonds. An ad valorem tax
2276 levied by the board for operating purposes, exclusive of debt
2277 service on bonds, shall not exceed 3 mills. The ad valorem tax
2278 provided for herein shall be in addition to county and all other
2279 ad valorem taxes provided for by law. Such tax shall be
2280 assessed, levied, and collected in the same manner and at the
2281 same time as county taxes. The levy of ad valorem taxes shall be
2282 approved by referendum when required by the State Constitution.
2283 (b) The board annually shall determine, order, and levy
2284 the annual installment of the total benefit special assessments
2285 for bonds issued for and expenses related to financing
2286 assessable improvements. These assessments may be due and

2287 collected during each year that county taxes are due and
2288 collected, in which case such annual installment and levy shall
2289 be evidenced and certified to the property appraiser by the
2290 board not later than August 31 of each year. Such assessment
2291 shall be entered by the property appraiser on the county tax
2292 rolls and shall be collected and enforced by the tax collector
2293 in the same manner and at the same time as county taxes, and the
2294 proceeds thereof shall be paid to the district. However, this
2295 subsection shall not prohibit the district in its discretion
2296 from using the method prescribed in either section 197.3632,
2297 Florida Statutes, or chapter 173, Florida Statutes, for
2298 collecting and enforcing these assessments. Each annual
2299 installment of benefit special assessments shall be a lien on
2300 the property against which assessed until paid and shall be
2301 enforceable in a like manner as county taxes. The amount of the
2302 assessment for the exercise of the district's powers under
2303 subsections (8) and (9) shall be determined by the board based
2304 upon a report by the district's engineer and assessed by the
2305 board upon such lands, which may be part or all of the lands
2306 within the district benefited by the improvement, apportioned
2307 between benefited lands in proportion to the benefits received
2308 by each tract of land. The board may, if it determines it is in
2309 the best interests of the district, set forth in the proceedings
2310 initially levying such benefit special assessments or in
2311 subsequent proceedings a formula for the determination of an
2312 amount, which, when paid by a taxpayer with respect to any tax
2313 parcel, shall constitute a prepayment of all future annual
2314 installments of such benefit special assessments and the payment

2315 of which amount with respect to such tax parcel shall relieve
2316 and discharge such tax parcel of the lien of such benefit
2317 special assessments and any subsequent annual installment
2318 thereof. The board may provide further that upon delinquency in
2319 the payment of any annual installment of benefit special
2320 assessments, the prepayment amount of all future annual
2321 installments of benefit special assessments as determined in
2322 this paragraph shall be and become immediately due and payable
2323 together with such delinquent annual installment.
2324 (c) If and when authorized by general law, to maintain and
2325 preserve the physical facilities and services constituting the
2326 works, improvements, or infrastructure provided by the district
2327 pursuant to this act, and to repair and restore any one or more
2328 of them, when needed, and for the purpose of defraying the
2329 current expenses of the district, including any sum which may be
2330 required to pay state and county ad valorem taxes on any lands
2331 which may have been purchased and which are held by the district
2332 under the provisions of this act, the board may, upon the
2333 completion of said systems, facilities, services, works,
2334 improvements, or infrastructure, in whole or in part, as may be
2335 certified to the board by the engineer of the board, levy
2336 annually a non-ad valorem and nonmillage tax upon each tract or
2337 parcel of land within the district, to be known as a
2338 "maintenance tax." This non-ad valorem maintenance tax shall be
2339 apportioned upon the basis of the net assessments of benefits
2340 assessed as accruing from the original construction and shall be
2341 evidenced and certified to the property appraiser by the board
2342 not later than June 1 of each year and shall be entered by the

2343 property appraiser on the tax roll of the property appraiser, as
2344 certified by the property appraiser to the tax collector, and
2345 collected by the tax collector on the merged collection roll of
2346 the tax collector in the same manner and at the same time as
2347 county ad valorem taxes, and the proceeds therefrom shall be
2348 paid to the district. This non-ad valorem maintenance tax shall
2349 be a lien until paid on the property against which assessed and
2350 enforceable in like manner and of the same dignity as county ad
2351 valorem taxes.
2352 (d) To maintain and preserve the facilities and projects
2353 of the district, the board may levy a maintenance special
2354 assessment. This assessment may be evidenced to and certified to
2355 the property appraiser by the board not later than August 31 of
2356 each year and shall be entered by the property appraiser on the
2357 county tax rolls and shall be collected and enforced by the tax
2358 collector in the same manner and at the same time as county
2359 taxes, and the proceeds therefrom shall be paid to the district.
2360 However, this subsection shall not prohibit the district in its
2361 discretion from using the method prescribed in section 197.363,
2362 section 197.3631, or section 197.3632, Florida Statutes, for
2363 collecting and enforcing these assessments. These maintenance
2364 special assessments shall be a lien on the property against
2365 which assessed until paid and shall be enforceable in like
2366 manner as county taxes. The amount of the maintenance special
2367 assessment for the exercise of the district's powers under this
2368 section shall be determined by the board based upon a report by
2369 the district's engineer and assessed by the board upon such
2370 lands, which may be all of the lands within the district

2371 benefited by the maintenance thereof, apportioned between the
2372 benefited lands in proportion to the benefits received by each
2373 tract of land.
2374 (e) The board shall have the power to levy and impose any
2375 special assessments pursuant to subsection (15).
2376 (f) The collection and enforcement of all taxes levied by
2377 the district shall be at the same time and in like manner as
2378 county taxes, and the provisions of the Florida Statutes
2379 relating to the sale of lands for unpaid and delinquent county
2380 taxes; the issuance, sale, and delivery of tax certificates for
2381 such unpaid and delinquent county taxes; the redemption thereof;
2382 the issuance to individuals of tax deeds based thereon; and all
2383 other procedures in connection therewith shall be applicable to
2384 the district to the same extent as if such statutory provisions
2385 were expressly set forth herein. All taxes shall be subject to
2386 the same discounts as county taxes.
2387 (g) All taxes provided for in this act shall become
2388 delinquent and bear penalties on the amount of such taxes in the
2389 same manner as county taxes.
2390 (h) Benefit special assessments, maintenance special
2391 assessments, and special assessments are hereby found and
2392 determined to be non-ad valorem assessments as defined by
2393 section 197.3632, Florida Statutes. Maintenance taxes are non-ad
2394 valorem taxes and are not special assessments.
2395 (i) Any and all assessments, including special
2396 assessments, benefit special assessments, and maintenance
2397 special assessments authorized by this section; special
2398 assessments as defined by section 2(6)(z) and granted and

2399 authorized by this subsection; and maintenance taxes if
2400 authorized by general law, shall constitute a lien on the
2401 property against which assessed from the date of levy and
2402 imposition thereof until paid, coequal with the lien of state,
2403 county, municipal, and school board taxes. These assessments may
2404 be collected, at the district's discretion, under authority of
2405 section 197.3631, Florida Statutes, by the tax collector
2406 pursuant to the provisions of sections 197.3632 and 197.3635,
2407 Florida Statutes, or in accordance with other collection
2408 measures provided by law. In addition to, and not in limitation
2409 of, any powers otherwise set forth herein or in general law,
2410 these assessments may also be enforced pursuant to the
2411 provisions of chapter 173, Florida Statutes.
2412 (j) Except as otherwise provided by law, no levy of ad
2413 valorem taxes or non-ad valorem assessments under this act or
2414 chapter 170 or chapter 197, Florida Statutes, or otherwise by a
2415 board of a district on property of a governmental entity that is
2416 subject to a ground lease as described in section 190.003(13),
2417 Florida Statutes, shall constitute a lien or encumbrance on the
2418 underlying fee interest of such governmental entity.
2419 (15) SPECIAL ASSESSMENTS.--
2420 (a) As an alternative method to the levy and imposition of
2421 special assessments pursuant to chapter 170, Florida Statutes,
2422 pursuant to the authority of section 197.3631, Florida Statutes,
2423 or pursuant to other provisions of general law that provide a
2424 supplemental means or authority to impose, levy, and collect
2425 special assessments as otherwise authorized under this act, the
2426 board may levy and impose special assessments to finance the

2427 exercise of any its powers permitted under this act using the
2428 following uniform procedures:
2429 1. At a noticed meeting, the board shall consider and
2430 review an engineer's report on the costs of the systems,
2431 facilities, and services to be provided, a preliminary
2432 assessment methodology, and a preliminary roll based on acreage
2433 or platted lands, depending upon whether platting has occurred.
2434 2. The assessment methodology shall address and discuss,
2435 and the board shall consider, whether the systems, facilities,
2436 and services being contemplated will result in special benefits
2437 peculiar to the property, different in kind and degree than
2438 general benefits, as a logical connection between the property
2439 and the systems, facilities, and services themselves, and
2440 whether the duty to pay the assessments by the property owners
2441 is apportioned in a manner that is fair and equitable and not in
2442 excess of the special benefit received. It shall be fair and
2443 equitable to designate a fixed proportion of the annual debt
2444 service, together with interest thereon, on the aggregate
2445 principal amount of bonds issued to finance such systems,
2446 facilities, and services which give rise to unique, special, and
2447 peculiar benefits to property of the same or similar
2448 characteristics under the assessment methodology so long as such
2449 fixed proportion does not exceed the unique, special, and
2450 peculiar benefits enjoyed by such property from such systems,
2451 facilities, and services.
2452 3. The engineer's cost report shall identify the nature of
2453 the proposed systems, facilities, and services, their location,
2454 and a cost breakdown plus a total estimated cost, including cost

2455 of construction or reconstruction, labor and materials, lands,
2456 property, rights, easements, franchises or systems, facilities
2457 and services to be acquired, cost of plans and specifications,
2458 surveys of estimates of costs and of revenues, cost of
2459 engineering, legal, and other professional consultation
2460 services, and other expenses or costs necessary or incident to
2461 determining the feasibility or practicability of such
2462 construction, reconstruction, or acquisition, administrative
2463 expenses, relationship to the authority and power of the
2464 district in its charter, and such other expense or costs as may
2465 be necessary or incident to the financing to be authorized by
2466 the board.
2467 4. The preliminary assessment roll will be prepared in
2468 accordance with the method of assessment provided for in the
2469 assessment methodology and as may be adopted by the board. The
2470 assessment roll shall be completed as promptly as possible and
2471 shall show the acreage, lots, lands, or plats assessed and the
2472 amount of the fairly and reasonably apportioned assessment based
2473 on special and peculiar benefit to the property, lot, parcel, or
2474 acreage of land, and if the assessment against each such lot,
2475 parcel, acreage, or portion of land is to be paid in
2476 installments, the number of annual installments in which the
2477 assessment is divided shall be entered into and shown upon the
2478 assessment roll.
2479 5. The board may determine and declare by an initial
2480 assessment resolution to levy and assess the assessments with
2481 respect to assessable improvements stating the nature of the
2482 systems, facilities, and services; improvements, projects, or

2483 infrastructure constituting such assessable improvements; the
2484 information in the engineer's cost report; and the information
2485 in the assessment methodology as determined by the board at the
2486 noticed meeting and referencing and incorporating as part of the
2487 resolution the engineer's cost report, the preliminary
2488 assessment methodology, and the preliminary assessment roll as
2489 referenced exhibits to the resolution by reference. If the board
2490 determines to declare and levy the special assessments by the
2491 initial assessment resolution, the board shall also adopt and
2492 declare a notice resolution, which shall provide and cause the
2493 initial assessment resolution to be published once a week for a
2494 period of 2 weeks in a newspaper of general circulation
2495 published in Okeechobee County. The board shall, by the notice
2496 resolution, fix a time and place at which the owner or owners of
2497 the property to be assessed or any other persons interested
2498 therein may appear before the board and be heard as to the
2499 propriety and advisability of making such improvements, as to
2500 the costs thereof, as to the manner of payment therefor, and as
2501 to the amount thereof to be assessed against each property so
2502 improved. Thirty days' notice in writing of such time and place
2503 shall be given to such property owners. The notice shall include
2504 the amount of the assessment and shall be served by mailing a
2505 copy to each assessed property owner at his or her last known
2506 address, the names and addresses of such property owners to be
2507 obtained from the record of the property appraiser of the county
2508 political subdivision where the land is located or from such
2509 other sources as the district manager or engineer deems
2510 reliable. Proof of such mailing shall be made by the affidavit

2511 of the manager of the district or by the engineer, said proof to
2512 be filed with the manager of the district, provided that failure
2513 to mail said notice or notices shall not invalidate any of the
2514 proceedings hereunder. It is provided further that the last
2515 publication shall be at least 1 week prior to the date of the
2516 hearing on the final assessment resolution. Said notice shall
2517 describe the general areas to be improved and advise all persons
2518 interested that the description of each property to be assessed
2519 and the amount to be assessed to each piece, parcel, lot, or
2520 acre of property may be ascertained at the office of the manager
2521 of the district. Such service by publication shall be verified
2522 by the affidavit of the publisher and filed with the manager of
2523 the district. Moreover, the initial assessment resolution with
2524 its attached, referenced, and incorporated engineer's cost
2525 report, preliminary assessment methodology, and preliminary
2526 assessment roll, along with the notice resolution, shall be
2527 available for public inspection at the office of the manager and
2528 the office of the engineer or any other office designated by the
2529 board in the notice resolution. Notwithstanding the foregoing,
2530 the landowners of all of the property which is proposed to be
2531 assessed may give the district written notice of waiver of any
2532 notice and publication provided for in this subparagraph, and
2533 such notice and publication shall not be required; however, any
2534 meeting of the board to consider such resolution shall be a
2535 publicly noticed meeting.
2536 6. At the time and place named in the noticed resolution
2537 as provided for in subparagraph 5., the board shall meet and
2538 hear testimony from affected property owners as to the propriety

2539 and advisability of providing the systems, facilities, services,
2540 projects, works, improvements, or infrastructure and funding
2541 them with assessments referenced in the initial assessment
2542 resolution on the property. Following the testimony and
2543 questions from the members of the board or any professional
2544 advisors to the district or the preparers of the engineer's cost
2545 report, the assessment methodology, and the assessment roll, the
2546 board shall make a final decision on whether to levy and assess
2547 the particular assessments. Thereafter, the board shall meet as
2548 an equalizing board to hear and consider any and all complaints
2549 as to the particular assessments and shall adjust and equalize
2550 the assessments on the basis of justice and right.
2551 7. When so equalized and approved by resolution or
2552 ordinance by the board, to be called the final assessment
2553 resolution, a final assessment roll shall be filed with the
2554 manager of the board, and such assessment shall stand confirmed
2555 and remain legal, valid, and binding first liens on the property
2556 against which such assessments are made until paid, equal in
2557 dignity to the first liens of ad valorem taxation of county
2558 governments and school boards; however, upon completion of the
2559 systems, facilities, services, projects, improvements, works, or
2560 infrastructure, the district shall credit to each assessment the
2561 difference in the assessment as originally made, approved,
2562 levied, assessed, and confirmed and the proportionate part of
2563 the actual cost of the improvement to be paid by the particular
2564 special assessments as finally determined upon the completion of
2565 the improvement, but in no event shall the final assessment
2566 exceed the amount of the special and peculiar benefits as

2567 apportioned fairly and reasonably to the property from the
2568 system, facility, or service being provided as originally
2569 assessed. Promptly after such confirmation, the assessment shall
2570 be recorded by the manager of the board in the minutes of the
2571 proceedings of the district, and the record of the lien in this
2572 set of minutes shall constitute prima facie evidence of its
2573 validity. The board, in its sole discretion, may by resolution
2574 grant a discount equal to all or a part of the payee's
2575 proportionate share of the cost of the project consisting of
2576 bond financing cost, such as capitalized interest, funded
2577 reserves, and bond discounts included in the estimated cost of
2578 the project, upon payment in full of any assessments during such
2579 period prior to the time such financing costs are incurred as
2580 may be specified by the board in such resolution.
2581 8. District assessments may be made payable in
2582 installments over no more than 30 years from the date of the
2583 payment of the first installment thereof and may bear interest
2584 at fixed or variable rates.
2585 (b) Notwithstanding any provision of this act or of
2586 chapter 170 or section 170.09, Florida Statutes, which provide
2587 that assessments may be paid without interest at any time within
2588 30 days after the improvement is completed and a resolution
2589 accepting the same has been adopted by the governing authority,
2590 such provision shall not be applicable to any district
2591 assessments, whether imposed, levied, and collected pursuant to
2592 the provisions of this act or other provisions of Florida law,
2593 including, but not limited to, chapter 170, Florida Statutes.

2594 (c) In addition, the district is authorized expressly in
2595 the exercise of its rulemaking power to promulgate a rule or
2596 rules providing for notice, levy, imposition, equalization, and
2597 collection of assessments.
2598 (16) ISSUANCE OF CERTIFICATES OF INDEBTEDNESS BASED ON
2599 ASSESSMENTS FOR ASSESSABLE IMPROVEMENTS; ASSESSMENT BONDS.--
2600 (a) The board may, after any special assessments or
2601 benefit special assessments for assessable improvements are
2602 made, determined, and confirmed as provided in this act, issue
2603 certificates of indebtedness for the amount so assessed against
2604 the abutting property or property otherwise benefited, as the
2605 case may be. Separate certificates shall be issued against each
2606 part or parcel of land or property assessed, which certificates
2607 shall state the general nature of the improvement for which the
2608 assessment is made. The certificates shall be payable in annual
2609 installments in accordance with the installments of the special
2610 assessment for which they are issued. The board may determine
2611 the interest to be borne by such certificates, not to exceed the
2612 maximum rate allowed by general law, and may sell such
2613 certificates at either private or public sale and determine the
2614 form, manner of execution, and other details of such
2615 certificates. The certificates shall recite that they are
2616 payable only from the special assessments levied and collected
2617 from the part or parcel of land or property against which they
2618 are issued. The proceeds of such certificates may be pledged for
2619 the payment of principal of and interest on any revenue bonds or
2620 general obligation bonds issued to finance in whole or in part
2621 such assessable improvements, or, if not so pledged, may be used

2622 to pay the cost or part of the cost of such assessable
2623 improvements.
2624 (b) The district may also issue assessment bonds, revenue
2625 bonds, or other obligations payable from a special fund into
2626 which such certificates of indebtedness referred to in the
2627 preceding paragraph may be deposited; or, if such certificates
2628 of indebtedness have not been issued, the district may assign to
2629 such special fund for the benefit of the holders of such
2630 assessment bonds or other obligations, or to a trustee for such
2631 bondholders, the assessment liens provided for in this act
2632 unless such certificates of indebtedness or assessment liens
2633 have been theretofore pledged for any bonds or other obligations
2634 authorized hereunder. In the event of the creation of such
2635 special fund and the issuance of such assessment bonds or other
2636 obligations, the proceeds of such certificates of indebtedness
2637 or assessment liens deposited therein shall be used only for the
2638 payment of the assessment bonds or other obligations issued as
2639 provided in this section. The district is authorized to covenant
2640 with the holders of such assessment bonds, revenue bonds, or
2641 other obligations that it will diligently and faithfully enforce
2642 and collect all the special assessments and interest and
2643 penalties thereon for which such certificates of indebtedness or
2644 assessment liens have been deposited in or assigned to such
2645 fund; to foreclose such assessment liens so assigned to such
2646 special fund or represented by the certificates of indebtedness
2647 deposited in the special fund, after such assessment liens have
2648 become delinquent, and deposit the proceeds derived from such
2649 foreclosure, including interest and penalties, in such special

2650 fund; and to make any other covenants deemed necessary or
2651 advisable in order to properly secure the holders of such
2652 assessment bonds or other obligations.
2653 (c) The assessment bonds, revenue bonds, or other
2654 obligations issued pursuant to this section shall have such
2655 dates of issue and maturity as shall be deemed advisable by the
2656 board; however, the maturities of such assessment bonds or other
2657 obligations shall not be more than 2 years after the due date of
2658 the last installment which will be payable on any of the special
2659 assessments for which such assessment liens, or the certificates
2660 of indebtedness representing such assessment liens, are assigned
2661 to or deposited in such special fund.
2662 (d) Such assessment bonds, revenue bonds, or other
2663 obligations issued under this section shall bear such interest
2664 as the board may determine, not to exceed the maximum rate
2665 allowed by general law, and shall be executed, shall have such
2666 provisions for redemption prior to maturity, and shall be sold
2667 in the manner of and be subject to all of the applicable
2668 provisions contained in this act for revenue bonds, except as
2669 the same may be inconsistent with the provisions of this
2670 section.
2671 (e) All assessment bonds, revenue bonds, or other
2672 obligations issued under the provisions of this section shall be
2673 and constitute and shall have all the qualities and incidents of
2674 negotiable instruments under the law merchant and the laws of
2675 the state.
2676 (17) TAX LIENS.--All taxes of the district provided for in
2677 this act, except together with all penalties for default in the

2678 payment of the same and all costs in collecting the same,
2679 including a reasonable attorney's fee fixed by the court and
2680 taxed as a cost in the action brought to enforce payment, shall,
2681 from January 1 for each year the property is liable to
2682 assessment and until paid, constitute a lien of equal dignity
2683 with the liens for state and county taxes and other taxes of
2684 equal dignity with state and county taxes upon all the lands
2685 against which such taxes shall be levied. A sale of any of the
2686 real property within the district for state and county or other
2687 taxes shall not operate to relieve or release the property so
2688 sold from the lien for subsequent district taxes or installments
2689 of district taxes, which lien may be enforced against such
2690 property as though no such sale thereof had been made. In
2691 addition to, and not in limitation of, the preceding sentence,
2692 for purposes of section 197.552, Florida Statutes, the lien of
2693 all special assessments levied by the district shall constitute
2694 a lien of record held by a municipal or county governmental
2695 unit. The provisions of sections 194.171, 197.122, 197.333, and
2696 197.432, Florida Statutes, as each may be amended from time to
2697 time, shall be applicable to district taxes with the same force
2698 and effect as if such provisions were expressly set forth in
2699 this act.
2700 (18) PAYMENT OF TAXES AND REDEMPTION OF TAX LIENS BY THE
2701 DISTRICT; SHARING IN PROCEEDS OF TAX SALE.--
2702 (a) The district shall have the power and right to:
2703 1. Pay any delinquent state, county, district, municipal,
2704 or other tax or assessment upon lands located wholly or
2705 partially within the boundaries of the district; and

2706 2. Redeem or purchase any tax sales certificates issued or
2707 sold on account of any state, county, district, municipal, or
2708 other taxes or assessments upon lands located wholly or
2709 partially within the boundaries of the district.
2710 (b) Delinquent taxes paid, or tax sales certificates
2711 redeemed or purchased, by the district, together with all
2712 penalties for the default in payment of the same, all costs in
2713 collecting the same, and a reasonable attorney's fee, shall
2714 constitute a lien in favor of the district of equal dignity with
2715 the liens of state and county taxes and other taxes of equal
2716 dignity with state and county taxes upon all the real property
2717 against which the taxes were levied. The lien of the district
2718 may be foreclosed in the manner provided in this act.
2719 (c) In any sale of land pursuant to section 197.542,
2720 Florida Statutes, as may be amended from time to time, the
2721 district may certify to the clerk of the circuit court of the
2722 county holding such sale the amount of taxes due to the district
2723 upon the lands sought to be sold, and the district shall share
2724 in the disbursement of the sales proceeds in accordance with the
2725 provisions of this act and under the laws of the state.
2726 (19) FORECLOSURE OF LIENS.--Any lien in favor of the
2727 district arising under this act may be foreclosed by the
2728 district by foreclosure proceedings in the name of the district
2729 in a court of competent jurisdiction as provided by general law
2730 in like manner as is provided in chapter 173, Florida Statutes,
2731 and amendments thereto; the provisions of that chapter shall be
2732 applicable to such proceedings with the same force and effect as
2733 if those provisions were expressly set forth in this act. Any

2734 act required or authorized to be done by or on behalf of a
2735 municipality in foreclosure proceedings under chapter 173,
2736 Florida Statutes, may be performed by such officer or agent of
2737 the district as the board may designate. Such foreclosure
2738 proceedings may be brought at any time after the expiration of 1
2739 year from the date any tax, or installment thereof, becomes
2740 delinquent; however, no lien shall be foreclosed against any
2741 political subdivision or agency of the state. Other legal
2742 remedies shall remain available.
2743 (20) MANDATORY USE OF CERTAIN DISTRICT SYSTEMS,
2744 FACILITIES, AND SERVICES.--To the full extent permitted by law,
2745 the district shall require all lands, buildings, premises,
2746 persons, firms, and corporations within the district to use the
2747 water management and control facilities and water and sewer
2748 facilities of the district.
2749 (21) COMPETITIVE PROCUREMENT; BIDS; NEGOTIATIONS; RELATED
2750 PROVISIONS REQUIRED.--
2751 (a) No contract shall be let by the board for any goods,
2752 supplies, or materials to be purchased when the amount thereof
2753 to be paid by the district shall exceed the amount provided in
2754 section 287.017, Florida Statutes, for category four unless
2755 notice of bids shall be advertised once in a newspaper of
2756 general circulation in Okeechobee County. Any board seeking to
2757 construct or improve a public building or structure or other
2758 public works shall comply with the bidding procedures of section
2759 255.20, Florida Statutes, and other applicable general law. In
2760 each case, the bid of the lowest responsive and responsible
2761 bidder shall be accepted unless all bids are rejected because

2762 the bids are too high or because the board determines it is in
2763 the best interests of the district to reject all bids. The board
2764 may require the bidders to furnish bond with a responsible
2765 surety to be approved by the board. Nothing in this section
2766 shall prevent the board from undertaking and performing the
2767 construction, operation, and maintenance of any project or
2768 facility authorized by this act by the employment of labor,
2769 material, and machinery.
2770 (b) The provisions of the Consultants' Competitive
2771 Negotiation Act, section 287.055, Florida Statutes, apply to
2772 contracts for engineering, architecture, landscape architecture,
2773 or registered surveying and mapping services let by the board.
2774 (c) Contracts for maintenance services for any district
2775 facility or project shall be subject to competitive bidding
2776 requirements when the amount thereof to be paid by the district
2777 exceeds the amount provided in section 287.017, Florida
2778 Statutes, for category four. The district shall adopt rules,
2779 policies, or procedures establishing competitive bidding
2780 procedures for maintenance services. Contracts for other
2781 services shall not be subject to competitive bidding unless the
2782 district adopts a rule, policy, or procedure applying
2783 competitive bidding procedures to said contracts.
2784 (22) FEES, RENTALS, AND CHARGES; PROCEDURE FOR ADOPTION
2785 AND MODIFICATIONS; MINIMUM REVENUE REQUIREMENTS.--
2786 (a) The district is authorized to prescribe, fix,
2787 establish, and collect rates, fees, rentals, or other charges,
2788 hereinafter sometimes referred to as "revenues," and to revise
2789 the same from time to time, for the systems, facilities, and

2790 services furnished by the district within the limits of the
2791 district, including, but not limited to, recreational
2792 facilities, water management and control facilities, and water
2793 and sewer systems; to recover the costs of making connection
2794 with any district service, facility, or system; and to provide
2795 for reasonable penalties against any user or property for any
2796 such rates, fees, rentals, or other charges that are delinquent.
2797 (b) No such rates, fees, rentals, or other charges for any
2798 of the facilities or services of the district shall be fixed
2799 until after a public hearing at which all the users of the
2800 proposed facility or service or owners, tenants, or occupants
2801 served or to be served thereby and all other interested persons
2802 shall have an opportunity to be heard concerning the proposed
2803 rates, fees, rentals, or other charges. Rates, fees, rentals,
2804 and other charges shall be adopted under the administrative
2805 rulemaking authority of the district but shall not apply to
2806 district leases. Notice of such public hearing setting forth the
2807 proposed schedule or schedules of rates, fees, rentals, and
2808 other charges shall have been published in a newspaper of
2809 general circulation in Okeechobee County at least once and at
2810 least 10 days prior to such public hearing. The rulemaking
2811 hearing may be adjourned from time to time. After such hearing,
2812 such schedule or schedules, either as initially proposed or as
2813 modified or amended, may be finally adopted. A copy of the
2814 schedule or schedules of such rates, fees, rentals, or charges
2815 as finally adopted shall be kept on file in an office designated
2816 by the board and shall be open at all reasonable times to public
2817 inspection. The rates, fees, rentals, or charges so fixed for

2818 any class of users or property served shall be extended to cover
2819 any additional users or properties thereafter served which shall
2820 fall in the same class, without the necessity of any notice or
2821 hearing.
2822 (c) Such rates, fees, rentals, and charges shall be just,
2823 equitable, and uniform for users of the same class and, when
2824 appropriate, may be based or computed either upon the amount of
2825 service furnished, upon the number of average number of persons
2826 residing or working in or otherwise occupying the premises
2827 served, upon any other factor affecting the use of the
2828 facilities furnished, or upon any combination of the foregoing
2829 factors, as may be determined by the board on an equitable
2830 basis.
2831 (d) The rates, fees, rentals, or other charges prescribed
2832 shall be such as will produce revenues, together with any other
2833 assessments, taxes, revenues, or funds available or pledged for
2834 such purpose, at least sufficient to provide for the following
2835 items, but not necessarily in the order stated:
2836 1. All expenses of operation and maintenance of such
2837 facility or service;
2838 2. Payment, when due, of all bonds and interest thereon
2839 for the payment of which such revenues are, or shall have been,
2840 pledged or encumbered, including reserves for such purpose; and
2841 3. Any other funds which may be required under the
2842 resolution or resolutions authorizing the issuance of bonds
2843 pursuant to this act.
2844 (e) The board shall have the power to enter into contracts
2845 for the use of the projects of the district and with respect to

2846 the services, systems, and facilities furnished or to be
2847 furnished by the district.
2848 (23) RECOVERY OF DELINQUENT CHARGES.--In the event that
2849 any rates, fees, rentals, charges, or delinquent penalties are
2850 not paid as and when due and are in default for 60 days or more,
2851 the unpaid balance thereof and all interest accrued thereon,
2852 together with reasonable attorney's fees and costs, may be
2853 recovered by the district in a civil action.
2854 (24) DISCONTINUANCE OF SERVICE.--In the event the fees,
2855 rentals, or other charges for water and sewer services, or
2856 either of them, are not paid when due, the board shall have the
2857 power, under such reasonable rules and regulations as the board
2858 may adopt, to discontinue and shut off both water and sewer
2859 services until such fees, rentals, or other charges, including
2860 interest, penalties, and charges for the shutting off and
2861 discontinuance of or restoration of such water and sewer
2862 services, or both, are fully paid; for such purposes, the board
2863 may enter on any lands, waters, or premises of any person, firm,
2864 corporation, or body, public or private, within the district
2865 limits. Such delinquent fees, rentals, or other charges,
2866 together with interest, penalties, and charges for the shutting
2867 off and discontinuance of or restoration of such services and
2868 facilities, reasonable attorney's fees, and other expenses, may
2869 be recovered by the district, which may also enforce payment of
2870 such delinquent fees, rentals, or other charges by any other
2871 lawful method of enforcement.
2872 (25) ENFORCEMENT AND PENALTIES.--The board or any
2873 aggrieved person may have recourse to such remedies in law and

2874 at equity as may be necessary to ensure compliance with the
2875 provisions of this act, including injunctive relief to enjoin or
2876 restrain any person violating the provisions of this act or any
2877 bylaws, resolutions, regulations, rules, codes, or orders
2878 adopted under this act. In case any building or structure is
2879 erected, constructed, reconstructed, altered, repaired,
2880 converted, or maintained, or any building, structure, land, or
2881 water is used, in violation of this act or of any code, order,
2882 resolution, or other regulation made under authority conferred
2883 by this act or under law, the board or any citizen residing in
2884 the district may institute any appropriate action or proceeding
2885 to prevent such unlawful erection, construction, reconstruction,
2886 alteration, repair, conversion, maintenance, or use; to
2887 restrain, correct, or avoid such violation; to prevent the
2888 occupancy of such building, structure, land, or water; and to
2889 prevent any illegal act, conduct, business, or use in or about
2890 such premises, land, or water.
2891 (26) SUITS AGAINST THE DISTRICT.--Any suit or action
2892 brought or maintained against the district for damages arising
2893 out of tort, including, without limitation, any claim arising
2894 upon account of an act causing an injury or loss of property,
2895 personal injury, or death, shall be subject to the limitations
2896 provided in section 768.28, Florida Statutes.
2897 (27) EXEMPTION OF DISTRICT PROPERTY FROM EXECUTION.--All
2898 district property shall be exempt from levy and sale by virtue
2899 of an execution, and no execution or other judicial process
2900 shall issue against such property, nor shall any judgment
2901 against the district be a charge or lien on its property or

2902 revenues; however, nothing contained herein shall apply to or
2903 limit the rights of bondholders to pursue any remedy for the
2904 enforcement of any lien or pledge given by the district in
2905 connection with any of the bonds or obligations of the district.
2906 (28) TERMINATION, CONTRACTION, OR EXPANSION OF DISTRICT.--
2907 (a) The board may ask the Legislature through its local
2908 legislative delegation in and for Okeechobee County to amend
2909 this act to contract or expand the boundaries of the district by
2910 amendment of subsection (2).
2911 (b) The district shall remain in existence until:
2912 1. The district is terminated and dissolved pursuant to
2913 amendment to this act by the Legislature; or
2914 2. The district has become inactive pursuant to section
2915 189.4044, Florida Statutes.
2916 (29) INCLUSION OF TERRITORY.--The inclusion of any or all
2917 territory of the district within a municipality does not change,
2918 alter, or affect the boundary, territory, existence, or
2919 jurisdiction of the district.
2920 (30) SALE OF REAL ESTATE WITHIN A DISTRICT; REQUIRED
2921 DISCLOSURE TO PURCHASER.--Subsequent to the creation of this
2922 district under this act, each contract for the initial sale of a
2923 parcel of real property and each contract for the initial sale
2924 of a residential unit within the district shall include,
2925 immediately prior to the space reserved in the contract for the
2926 signature of the purchaser, the following disclosure statement
2927 in boldfaced and conspicuous type which is larger than the type
2928 in the remaining text of the contract: "THE GROVE COMMUNITY
2929 DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES

2930 AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS
2931 PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF
2932 CERTAIN PUBLIC SYSTEMS, FACILITIES, AND SERVICES OF THE DISTRICT
2933 AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT.
2934 THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER
2935 LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND
2936 ASSESSMENTS PROVIDED FOR BY LAW."
2937 (31) NOTICE OF CREATION AND ESTABLISHMENT.--Within 30 days
2938 after the election of the first board members, the district
2939 shall cause to be recorded in the property records in the county
2940 in which it is located a "Notice of Creation and Establishment
2941 of the Grove Community District." The notice shall, at a
2942 minimum, include the legal description of the property of the
2943 landowners who have consented to establishment of this district
2944 and a copy of the disclosure statement specified in subsection
2945 (30).
2946 (32) PUBLIC ACCESS.--Any system, facility, service, works,
2947 improvement, project, or other infrastructure owned by the
2948 district or funded by federal tax-exempt bonding issued by the
2949 district is public; the district by rule may regulate, and may
2950 impose reasonable charges or fees for, the use thereof but not
2951 to the extent that such regulation or imposition of such charges
2952 or fees constitutes denial of reasonable access.
2953 Section 5. Severability.--If any provision of this act is
2954 determined unconstitutional or otherwise determined invalid by a
2955 court of law, all the rest and remainder of the act shall remain
2956 in full force and effect as the law of Florida.

2957 Section 6. This act shall take effect upon becoming a law,
2958 except that the provisions of paragraph (a) of subsection (14)
2959 of section 4 which authorize the levy of ad valorem assessments
2960 shall only take effect upon express approval by a majority vote
2961 of those qualified electors of the district, as required by
2962 Section 9 of Article VII of the State Constitution, voting in a
2963 referendum to be called by the Supervisor of Elections of
2964 Okeechobee County and held by the Board of Supervisors of the
2965 Grove Community District. Such election shall be held in
2966 accordance with the provisions of law relating to elections in
2967 force at the time the referendum is held.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Remove line(s) 939-943 and insert:
6
7 carrying out of its single, narrow, and special purpose, is
8 within the external boundaries of the district and
9 extraterritorially when authorized expressly by this act or
10 general law and subject to the limitations of law on the
11 applicable source of revenue granted by this act to finance the
12 exercise of district powers. This single-purpose
13
14

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. **1483 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Delete line 957 and insert:
6
7 including those necessary and incidental thereto. Such
8 inconsistent provisions in Chapter 189, F.S., are 189.4042,
9 189.4045, 189.405, 189.4051, 189.408, and 189.423, F.S.
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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (3)

Bill No. **1483 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Remove line 966 and insert:
6
7 3.--Sections 2 and 3 of this act are

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COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Remove line 967-968 and insert:
6
7 incorporated herein and made a part of this section. This
8 act constitutes the
9

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1483 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5
6 Remove line 1789 and insert:
7
8 The district may
9
10

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (6)

Bill No. **1483 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Remove line(s) 2154-2155 and insert:
6
7 (j) 1. All bonds issued under the provisions of this act
8

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (7)

Bill No. **1483 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Attkisson offered the following:
3
4 **Amendment**
5 Delete line 2604 and insert:
6
7 the abutting property or property otherwise benefited within the
8 external boundaries of the District, as the
9

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CS/HB 1559

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1559 CS Brevard County
SPONSOR(S): Poppell
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	Camechis	Hamby
2) Finance & Tax Committee		Monroe KDSM	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates the Viera Stewardship District (district), which encompasses approximately 14,000 undeveloped acres within Brevard County, for the purpose of providing community development systems, facilities, services, projects, improvements, and infrastructure to the area. The bill provides the minimum requirements that must be included in the charter when creating an independent special district. The bill authorizes the district to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, hardscaping, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the district; conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements; buildings and structures for district offices, maintenance facilities, meeting facilities, community centers, or any other project authorized by this bill

The bill creates a five-member Board of Supervisors to govern the district. The Board is initially elected on a one-acre/one-vote basis, however, as population in the district increases, members are elected by qualified electors of the district. Five years after creation, one board member will be elected by qualified electors, and ten years after creation a second board member is elected by qualified electors. When the district is populated by 60 percent of the projected total qualified electors, the third governing board member is elected by qualified electors. Five years later, all five board members are elected by qualified electors. It is not known when the district will be populated by 60 percent of the projected total qualified electors.

The district may levy user charges and fees; non-ad valorem maintenance taxes as authorized by general law; and special assessments. The district may impose ad valorem taxes not to exceed 3 mills upon voter approval at referendum conducted after the entire board is elected by electors of the district. The attached Economic Impact Statement does not project any fiscal impact in FY 05-06 and FY 06-07; however, the district is authorized to levy special assessments, fees, non ad-valorem assessments, and ad valorem taxes (upon approval at referendum) but the amount of revenues generated is indeterminate.

This bill appears to provide exemptions from the provisions of general 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. [Please see p. 20 of this analysis.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill creates an independent special district that is authorized to perform a wide range of functions within its jurisdictional boundaries and extraterritorially, and that may adopt a wide range of administrative rules pursuant to ch. 120, F.S.

Provide for Lower Taxes: The district is authorized to raise revenues by levying ad valorem taxes up to 3 mills, if approved at referendum; non-ad valorem maintenance taxes; non-ad valorem assessments; benefit special assessments; maintenance special assessments; special assessments; and fees, or service charges.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Special Districts Generally

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; rather, they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter.

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s.189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and Board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

Election Procedure for Independent Special Districts Generally

The bill specifies that "[t]he transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes." 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 of the district. That section 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, provided that all of the following conditions are satisfied at least 60 days prior to the referendum:

1. The district has a total population of at least 500 qualified electors; and
2. A petition signed by 10 percent of the qualified electors is filed with the governing board and certified by the supervisor of elections.

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. After approval, the board must prepare maps of the district describing the "urban areas"[1] within the district. A process is provided in statute for landowners or qualified electors to contest the accuracy of the urban area maps. Upon adoption of the urban area maps by the board, the maps are used to determine the extent of urban area within the district and the number of governing board members to be elected by qualified electors and those elected on a one-acre/one-vote basis.

If the electors disapprove the election procedure, elections of board members continue as described by general law or enabling legislation of the district.

Community Development Districts

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance infrastructure for planned developments. Community Development Districts (CDDs) must be contained within the boundaries of a single county. CDDs consisting of 1,000 acres or more must be created by rule adopted by the Florida Land and Water Adjudicatory Commission granting a petition for the establishment of the CDD, whereas CDDs with less than 1,000 acres must be created pursuant to county ordinance.

Initial financing is typically through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges. Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district -- not on the other taxpayers of the county or municipality in which the district is located. As of November 2003, there were 210 active CDDs in Florida.

Section 190.012, F.S., specifies the types of infrastructure CDDs are authorized to provide, including infrastructure relating to water management and control; water supply, sewer and waste water management, reclamation, and reuse; bridges or culverts; roads; street lights; parks and other outdoor recreational, cultural, and educational facilities; fire prevention and control; school buildings; security; mosquito control; and waste collection and disposal. CDDs are governed by an elected five-member board of supervisors, who possess the general managerial authority provided to other special districts in the state. This includes the authority to hire and fix the compensation of a general manager; the right

[1] Section 189.4051(1)(b), F.S., defines "urban area" as "a contiguous developed and inhabited urban area within a district with a minimum average resident population density of at least 1.5 persons per acre as defined by the latest official census, special census, or population estimate or a minimum density of one single-family home per 2.5 acres with access to improved roads or a minimum density of one single-family home per 5 acres within a recorded plat subdivision. Urban areas must be designated by the governing board of the district with the assistance of all local general-purpose governments having jurisdiction over the area within the district."

to contract; to borrow money; to adopt administrative rules pursuant to ch. 120, F.S.; and the power of eminent domain.[2]

Election Procedures for Community Development Districts Generally

Section 190.006(3), F.S., provides for the transition of Community Development District (CDD) boards that are elected by landowners to boards elected by qualified electors of the districts. If a CDD wishes to exercise ad valorem taxing power, the district board must call an election at which the members of the board of supervisors will be elected by qualified electors. Each member must be elected by the qualified electors of the district for a term of 4 years, except that, at the first such election, three members are elected for a period of 4 years and two members for a period of 2 years. All elected board members must be qualified electors of the district.

Regardless of whether a district has proposed to levy ad valorem taxes, commencing 10 years after the initial appointment of members, the position of each member whose term has expired must be filled by a qualified elector of the district, elected by the qualified electors of the district. However, if, in the 10th year after initial appointment for districts exceeding 5,000 acres in area, there are not at least 500 qualified electors, members of the board continue to be elected by landowners.

If a district has less than 50 qualified electors when the District is created, after the 10th year and, once a district reaches 250 or 500 qualified electors, respectively, then the positions of two board members whose terms are expiring must be filled by qualified electors of the district, elected by the qualified electors of the district for 4-year terms. The remaining board member whose term is expiring must be elected for a 4-year term by the landowners and is not required to be a qualified elector. Thereafter, as terms expire, board members must be qualified electors elected by qualified electors of the district for a term of 4 years.

Once a district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district must be held at the general election in November.

EFFECT OF PROPOSED CHANGES

This bill creates the Viera Stewardship District (district), a "public body corporate and politic, an independent, limited, special purpose local government, an independent special district." The general purpose of the district is to provide, through a special purpose governmental entity, certain capital infrastructure, facilities and services which benefit the residents of the district. The boundaries of the district encompass approximately 14,000 undeveloped contiguous acres in Brevard County.

According to the findings in the bill, "[w]hile chapter 190, F.S., provides an opportunity for community development services and facilities to be provided by the establishment of community development districts in a manner that furthers the public interest, given the vast nature of the lands covered by this act and the potentially long-term nature of its development, establishing multiple community development districts over these lands would result in an inefficient, duplicative, and needless proliferation of local special purpose government, contrary to the public interest and the Legislature's findings in chapter 190, Florida Statutes."

The district is not authorized to exercise any comprehensive planning, zoning, or development permitting power; the establishment of the district is not be considered a development order; and all applicable planning and permitting laws, rules, regulations, and policies of Brevard County control the development of the land to be serviced by the district.

[2] *Community Development Districts*, The Florida Senate, Committee on Comprehensive Planning, Interim Project Report 2004-121, Nov. 2003.

The jurisdiction of the district, in the exercise of its general and special powers, and in the carrying out of its special purposes, is both within the external boundaries of the legal description of this district and extraterritorially when limited to, and as authorized expressly elsewhere in, the charter of the district as created in this act or applicable general law.

Referendum Requirements
The substantive provisions of the bill take effect upon approval by a majority vote of the owners of land within the district who are not exempt from ad valorem taxes or non-ad valorem assessments and who are present in person or by proxy at a landowners' meeting to be held within 90 days after the effective date of this act. Such landowners' meeting must be noticed as required for the initial landowners' meeting and may be combined with such meeting. At the time of the initial referendum, there is expected to be one landowner within the district, the Viera Company.

The provisions of this bill that authorize the levy of ad valorem taxation and issuance of general obligation bonds take effect only upon express approval by a majority vote of those qualified electors of the Viera Stewardship District voting in a referendum election held at such time as all members of the board are qualified electors who are elected by qualified electors of the district.

Modification of District Boundaries and Charter
The bill specifies that the charter of the district, as created in this bill, may only be amended by special act of the Legislature. The bill provides that the Legislature may not consider an amendment of the district boundaries or the general or special powers of the district unless it is accompanied by a resolution or official statement as provided for in s. 189.404(2)(e)4., F.S.

The board may ask the Legislature through its local legislative delegation in and for Brevard County to amend this act to contract, to expand or to contract, or to expand the boundaries of the district by amendment of this section.

The district remains in existence until:
- The district is terminated and dissolved pursuant to amendment to this act by the Legislature.
- The district has become inactive pursuant to s. 189.4044, F.S.

Provided, however, if, within 5 years after the effective date of this act establishing the district, the primary landowner has not received a development permit, as defined in ch. 380, F.S., on some part or all of the area covered by the district, then the district will be automatically dissolved and a judge of the circuit court must cause a statement to that effect to be filed in the public records.

The inclusion of any or all territory of the district within a municipality does not change, alter, or affect the boundary, territory, existence, or jurisdiction of the district.

Election of the District Board

a. Election of Board by Landowners

The district is governed by a Board of Supervisors (Board) consisting of 5 members. Board members must be residents of the state and citizens of the United States. Initial Board members are elected by landowners of the district voting at an election held within 90 days following the effective date of this bill. The landowners present at the meeting, in person or by proxy, constitute a quorum. At any landowners' meeting, 50 percent of the district acreage is not required to constitute a quorum, and each governing board member elected by landowners is to be elected by a majority of the acreage represented either by owner or proxy present and voting at said meeting. Each landowner is entitled to cast one vote per acre of land owned by him or her and located within the district for each person to be elected. A landowner may vote in person or by proxy in writing. A fraction of an acre is treated as 1 acre, entitling the landowner to one vote with respect thereto.

With respect to the elections of initial board members, the two candidates receiving the highest number of votes must be elected for a term expiring November 18, 2008, and the three candidates receiving the next largest number of votes are elected for a term expiring November 7, 2006, with the 4-year term of office for each successful candidate commencing upon election. The members of the first Board elected by landowners serve their respective terms; however, the next election of Board members must be held on the first Tuesday after the first Monday in November 2006. Thereafter, elections by landowners for the district must be conducted every 2 years on the first Tuesday after the first Monday in November.

The Board may not exercise the ad valorem taxing power authorized by this bill until such time as all members of the Board are qualified electors who are elected by qualified electors of the district.

Lastly, the bill provides that it is not a conflict of interest under ch. 112, F.S., for a Board member, the district manager, or another employee of the district to be a stockholder, officer, or employee of a landowner.

b. Election of Board by Qualified Electors

Regardless of whether the district has proposed to levy ad valorem taxes or issue general obligation bonds, board members must begin being elected by qualified electors of the district as the district becomes populated with qualified electors. The transition must occur such that the composition of the board, after the first general election following a trigger as set forth below, must be as follows:

(I) Five years following the creation of the district, one governing board member must be a person who was elected by the qualified electors and four governing board members must be persons who were elected by the landowners.
(II) Ten years following the creation of the district, two governing board members must be persons who were elected by the qualified electors and three governing board members must be persons elected by the landowners.
(III) When the district is populated by 60 percent of the projected total qualified electors, three governing board members must be persons who were elected by the qualified electors and two governing members must be persons who were elected by the landowners.
(IV) Three years following the trigger in sub-sub-subparagraph (III), four governing board members must be persons who were elected by the qualified electors and one governing board member must be a person who was elected by the landowners.
(V) Five years following the trigger in subparagraph (III), all five governing board members must be persons who were elected by the qualified electors.

The term "projected total qualified electors" means the product of:

(The total number of single-family and multi-family units approved within the district by a development order issued by Brevard County and in effect in the tenth year following creation of the district)

multiplied by

(The average number of persons residing within a household located within Brevard County based on the 2010 U.S. Census)

multiplied by

(The percentage of Brevard County's general population registered to vote as reported by the Brevard County Supervisor of Elections as of the general election occurring November 2014).

On or before June 1, 2016, the board must determine the number of projected qualified electors in the district as of the immediately preceding April 15. Additionally, on or before June 1, 2016, and each year thereafter until the trigger in subparagraph (III) is met, the board must determine the actual number of

qualified electors in the district as of the immediately preceding April 15. The board must use and rely upon the official records maintained by the supervisor of elections and property appraiser or tax collector in each county in making this determination. Such determination must be made at a properly noticed meeting of the board and become a part of the official minutes of the district.

Once the district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district must be held at the general election in November. The board must adopt a resolution if necessary to this requirement. The transition process described herein is intended to be in lieu of the process set forth in s.189.4051, F.S. If, during the term of office, a vacancy occurs, the remainder of the unexpired term must be filled as follows:

- If the vacancy arises with respect to a supervisor that was elected by landowners, the vacancy must be filled by a supervisor elected by the landowners; and
- If the vacancy arises with respect to a supervisor that was elected by the qualified electors of the district, the vacancy must be filled by a supervisor elected by the qualified electors of the district, in which case the district must be responsible for paying the expenses associated with any special election that is required to be conducted.

Elections of board members by qualified electors held pursuant to this subsection must be nonpartisan and must be conducted in the manner prescribed by law for holding general elections. Candidates seeking election to office by qualified electors must conduct their campaigns in accordance with the provisions of ch. 106, F.S., and file qualifying papers and qualify for individual seats in accordance with general law.

General Board Administration

Members of the board, regardless of how elected, are public officers, and, upon entering into office, must take and subscribe to the oath of office as prescribed by general law. Members of the board are subject to ethics and conflict of interest laws of the state that apply to all local public officers.

Any elected board member may be removed by the Governor for malfeasance, misfeasance, dishonesty, incompetency, or failure to perform the duties imposed upon him or her by this act, and any vacancies that may occur in such office for such reasons must be filled by the Governor as soon as practicable.

Each supervisor is entitled to receive for his or her services an amount not to exceed $200 per board meeting, not to exceed $4,800 per year per supervisor, or an amount established by the electors at a referendum. In addition, each supervisor must receive travel and per diem expenses as set forth in s. 112.061, F.S.

All meetings of the board must be open to the public and governed by the provisions of ch. 286, F.S. The record book of the district and all other district records must at reasonable times be opened to inspection in the same manner as state, county, and municipal records pursuant to ch. 119, F.S.

District Budget

On an annual basis, the district manager must prepare a proposed budget for the ensuing fiscal year to be submitted to the Board for approval. The Board must consider the proposed budget item by item and may either approve the budget as proposed by the district manager or modify the same in part or in whole. The Board must indicate approval of the budget by resolution, which must provide for a hearing on the budget as approved. At the time and place designated in the public notice of the hearing, the Board must hear all objections to the budget as proposed and may make such changes as the Board deems necessary. At the conclusion of the budget hearing, the Board must, by resolution, adopt the budget as finally approved by the Board.

At least 60 days prior to adoption, the Board must submit to the Brevard County Board of County Commissioners, for purposes of disclosure and information only, the proposed annual budget for the ensuing fiscal year, and the Board of County Commissioners may submit written comments to the Board solely for the assistance and information of the Board of the district in adopting its annual district budget.

The Board must annually submit its district public facilities report or the most recent development of regional impact report to the Brevard County Board of County Commissioners. The Board of County Commissioners must use and rely on the district public facilities report in the preparation or revision of its comprehensive plan.

The district must take affirmative steps to provide for the full disclosure of information relating to the public financing and maintenance of improvements to real property undertaken by the district. Such information must be made available to all existing residents and all prospective residents of the district. The district must furnish each developer of a residential development within the district with sufficient copies of that information to provide each prospective initial purchaser of property in that development with a copy. Any developer of a residential property within the district, when required by law to provide a public offering statement, must include a copy of such information relating to the public financing and maintenance of improvements in the public offering statement. The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation must ensure that disclosures made by developers pursuant to ch. 498, F.S., meet the requirements of s. 190.009(1), F.S.

General Powers

This bill grants the district general powers consistent with those granted to community development districts under s. 190.011, F.S. The general powers of the district must be construed liberally in order to carry out effectively the specialized purpose of this bill.

- To sue and be sued in the name of the district; to acquire, by purchase, gift, devise, or otherwise, and to own and dispose of, real and personal property, or any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To apply for coverage of its employees under the Florida Retirement System in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the Florida Retirement System Trust Fund.
- To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts are subject to public bidding or competitive negotiation requirements as set forth in general law applicable to independent special districts.
- To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt and enforce rules and orders pursuant to the provisions of ch. 120, F.S., prescribing powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of certificates evidencing tax liens and all other documents and records of the district. The board may also adopt and enforce administrative rules with respect to any of the projects of the district and define the area to be included therein. The board may also adopt resolutions which may be necessary for the conduct of district business.
- To maintain an office at such place or places as the board of supervisors designates in Brevard County, and within the district when facilities are available.
- To hold, control, and acquire by donation, purchase, or condemnation, or dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any

reservations for those purposes authorized by this act and to make use of such easements, dedications, or reservations for the purposes authorized by this act.

- To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out the purposes authorized by this act.
- To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness as hereinafter provided; to levy such taxes and assessments as may be authorized; and to charge, collect, and enforce fees and other user charges.
- To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of district activities and services and the maintenance of district facilities and to enforce their receipt and collection in the manner prescribed by resolution not inconsistent with law.
- To exercise within the district, or beyond the district with prior approval by vote of a resolution of the governing body of Brevard County if the taking will occur in an unincorporated area in that county, the right and power of eminent domain, pursuant to the provisions of chs. 73 and 74, F.S., over any property within the state, except municipal, county, state, and federal property, for the uses and purpose of the district relating solely to water, sewer, district roads, and water management and control, specifically including, without limitation, the power for the taking of easements for the drainage of the land of one person over and through the land of another.
- To cooperate with, or contract with, other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.
- To assess and to impose upon lands in the district ad valorem taxes as provided by this act.
- If and when authorized by general law to determine, order, levy, impose, collect, and enforce maintenance taxes.
- To determine, order, levy, impose, collect, and enforce assessments pursuant to this act and ch. 170, F.S., as amended from time to time, pursuant to authority granted in s. 197.3631, F.S., or pursuant to other provisions of general law now or hereinafter enacted which provide or authorize a supplemental means to order, levy, impose, or collect special assessments. Such special assessments, in the discretion of the district, may be collected and enforced pursuant to the provisions of ss. 197.3632 and 197.3635, F.S., and chs. 170 and 173, F.S., or as provided by this act, or by other means authorized by general law now or hereinafter enacted.
- To exercise such special powers and other express powers as may be authorized and granted by this act in the charter of the district, including powers as provided in any interlocal agreement entered into pursuant to ch. 163, F.S., or which must be required or permitted to be undertaken by the district pursuant to any development order or development of regional impact, including any interlocal service agreement with Brevard County for proportionate, fair-share, or pipelining capital construction funding for any certain capital facilities or systems required of the developer pursuant to any applicable development order or agreement.
- To exercise all of the powers necessary, convenient, incidental, or proper in connection with any other powers or duties or the special purpose of the district authorized by this act.

Special Powers

The district has, and the board may exercise, the following special powers to implement its lawful and special purpose and to provide, pursuant to that purpose, systems, facilities, services, improvements, projects, works, and infrastructure, each of which constitutes a lawful public purpose when exercised pursuant to this charter, subject to, and not inconsistent with, the regulatory jurisdiction and permitting authority of all other applicable governmental bodies, agencies, and any special districts having authority with respect to any area included therein, and to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, finance, fund, and maintain improvements, systems, facilities, services, works, projects, and infrastructure. Any or all of the following special powers are granted by this act in order to implement the special purpose of the district:

- To provide water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges and to construct, acquire and operate any dam, work, appurtenant work, impoundment, or reservoir and any connecting, intercepting or outlet mains and pipes in, along or under any street, alley, highway or other public place or ways; including, but not limited to, acquiring, operating, maintaining, repairing and improving water management and control facilities necessary for the collection, storage control, development, utilization and distribution of nonpotable waters for irrigation purposes.
- To provide water systems, sewer systems, and wastewater management, reclamation and reuse, or any combination thereof, and to construct and operate connecting intercepting or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any street, alley, highway, or other public place or ways, and to dispose of any effluent, residue, or other byproducts of such system or sewer system. The district may not purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a wastewater facility privatization contract for a wastewater facility, until the governing body of the district has held a public hearing on the purchase, sale, or wastewater facility privatization contract and made a determination that the purchase, sale, or wastewater facility privatization contract is in the public interest. In determining if the purchase, sale, or wastewater facility privatization contract is in the public interest, the district must consider, at a minimum, criteria specified by the bill.
- To provide bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of such works and improvements across, through, or over any public right-of way, highway, grade, fill, or cut.
- To provide public roads and related improvements equal to or exceeding the specifications of Brevard County, including, but not limited to transportation improvements necessary to comply with conditions of development approval applicable to lands within the district. This special power includes, but is not limited to, roads, parkways, interchanges, bridges, landscaping, hardscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, regulatory or informational signage, road striping, underground conduit, underground cable or fiber or wire installed to pursuant an agreement with or tariff of a retail provider of services, and all other related improvements and the elements of a functioning modern road system in general or as related to the conditions of development approval for the lands within the district, together with transportation improvements and facilities that are freestanding or that may be related to any innovative strategic intermodal system of transportation pursuant to applicable federal, state, and local law and ordinance.
- To provide buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage.
- To provide investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to the contamination.
- To provide conservation areas, mitigation areas, wilderness areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property, and to evaluate, acquire, enhance, manage, monitor and maintain conservation, mitigation, and preservation lands and wildlife habitat.
- Using its general and special powers as set forth in this act, to provide any other project within or without the boundaries of the district when the project is the subject of an agreement between the district and the Board of County Commissioners of Brevard County or with any other applicable public or private entity, or is approved or required by a development order pursuant to sections 380.06 or s. s 380.061, F.S., and is not inconsistent with the effective local comprehensive plan.
- To provide parks and facilities for indoor and outdoor recreational, cultural, and educational uses, provided, however, that in no event may the district finance or own a golf course.

- To provide fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
- To provide school buildings and related structures, which may be leased, sold, or donated to the school district, for use in the educational system when authorized by the district school board.
- To provide security, including, but not limited to, guardhouses, fences, and gates, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies; however, the district may not exercise any powers of a law enforcement agency but may contract with the appropriate local general-purpose government agencies for an increased level of such services within the district boundaries. Notwithstanding any provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must he operated by the district or any other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.
- To provide control and elimination of mosquitoes and other arthropods of public health importance.
- To provide waste collection and disposal.
- To enter into impact fee credit agreements.
- To provide buildings and structures for district offices, maintenance facilities, meeting facilities, community centers, or any other project authorized or granted by this act.
- To establish and create, at noticed meetings, such governmental departments of the Board of Supervisors of the district, as well as committees, task forces, boards, or commissions, or other agencies under the supervision and control of the district, as from time to time the board may deem necessary or desirable in the performance of the acts or other things necessary to exercise the board's general or special powers to implement an innovative project to carry out the special purpose of the district as provided in this act and to delegate the exercise of its powers to such departments, boards, task forces, committees or other agencies and such administrative duties and other powers as the board may deem necessary or desirable but only if there is a set of expressed limitations for accountability, notice, and periodic written reporting to the board that must retain the powers of the board.

The enumeration of special powers herein may not be deemed exclusive or restrictive but must be deemed to incorporate powers express or implied necessary or incident to carrying out such enumerated special powers, including also the general powers provided by this special act charter to the district to implement its single purpose.

The district may exercise its powers to provide facilities for potable water, sewer, fire protection, mosquito control, waste collection and waste disposal services only if such facilities are to be dedicated to and operated by the county or a municipality already providing the service or if such county or municipality declines or is unable to provide the service at the time the service becomes necessary. The bill specifically provides that nothing:

- May prevent the district from dedicating transportation or other facilities to the county or a municipality;
- May be construed to authorize the district to provide or approve franchises for emergency medical ambulance services, which authority is reserved to Brevard County under ch. 71-556 F.S.;
- Is intended to authorize the imposition of impact fees based upon alleged police powers or regulatory powers of the district;
- Is intended to limit the power of the county or a city to provide such facilities and to require landowners to utilize such facilities as a condition to development of lands within the district; or
- Is intended to prohibit the district from providing additional services beyond those offered by the county or a municipality.

District Borrowing and Issuance of Bonds

The district is authorized to obtain loans in any amount and on such terms as the board approves at an interest rate not to exceed the maximum rate allowed by general law. The district is also authorized to issue bond anticipation notes, interim certificates, certificates of indebtedness, assessment bonds, revenue bonds, and refunding bonds.

The district may also issue general obligation bonds to finance or refinance capital projects or to refund outstanding bonds in an aggregate principal amount of bonds outstanding at any one time not in excess of 35 percent of the assessed value of the taxable property within the district as shown on the pertinent tax records at the time of the authorization of the general obligation bonds for which the full faith and credit of the district is pledged. Except for refunding bonds, no general obligation bonds may be issued unless the bonds are issued to finance or refinance a capital project and the issuance has been approved at an election held in accordance with the requirements for such election as prescribed by the State Constitution. Such elections must be called to be held in the district by the Board of County Commissioners of Brevard County upon the request of the board of the district. The expenses of calling and holding an election are at the expense of the district, and the district must reimburse the county for any expenses incurred in calling or holding such election.

The district may pledge its full faith and credit for the payment of the principal and interest on such general obligation bonds and for any reserve funds provided therefor and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all taxable property in the district, to the extent necessary for the payment thereof, without limitation as to rate or amount.

The power of the district to issue bonds may be determined, and any of the bonds of the district maturing over a period of more than 5 years must be validated and confirmed, by court decree, under the provisions of ch. 75, F.S., and laws supplementary thereto.

The state pledges to the holders of any bonds issued under this bill that it will not limit or alter the rights of the district to own, acquire, construct, reconstruct, improve, maintain, operate, or furnish the projects or to levy and collect the taxes, assessments, rentals, rates, fees, and other charges provided for herein and to fulfill the terms of any agreement made with the holders of such bonds or other obligations and that it will not in any way impair the rights or remedies of such holders.

A default on the bonds or obligations of a district does not constitute a debt or obligation of the state or any general-purpose local government or the state.

To the extent allowed by general law, all bonds issued by the district and interest paid thereon and all fees, charges, and other revenues derived by the district from the projects provided by this act are exempt from all taxes by the state or by any political subdivision, agency, or instrumentality thereof; however, any interest, income, or profits on debt obligations issued hereunder are not exempt from the tax imposed by ch. 220, F.S.

Taxes, Special Assessments, Fees, and Charges

Ad Valorem Taxation. When the entire Board is elected by qualified electors of the district, the Board is authorized to levy and assess an ad valorem tax on all the taxable property in the district to construct, operate, and maintain assessable improvements; to pay the principal of, and interest on, any general obligation bonds of the district; and to provide for any sinking or other funds established in connection with any such bonds. An ad valorem tax levied by the Board for operating purposes, exclusive of debt service on bonds, may not exceed 3 mills. The ad valorem tax is in addition to county and all other ad valorem taxes provided for by law. Ad valorem taxes must be assessed, levied, and collected in the same manner and at the same time as county taxes. The levy of ad valorem taxes must be approved by referendum as required by s. 9 of Art. VII of the State Constitution.

Benefit Special Assessments. The Board must determine, order, and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance assessable improvements. These assessments may be due and collected during each year that county taxes are due and collected, in which case such annual installment and levy must be evidenced to and certified to the property appraiser by the board not later than August 31 of each year. Such assessment must be entered by the property appraiser on the county tax rolls and must be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds thereof must be paid to the district. However, the district may, in its discretion, use the method prescribed in either s. 197.3632, F.S., or ch. 173, F.S., as each may be amended from time to time, for collecting and enforcing these assessments. Each annual installment of benefit special assessments are a lien on the property against which assessed until paid and are enforceable in like manner as county taxes. The amount of the assessment for the exercise of the district's powers must be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land. The board may, if it determines it is in the best interests of the district, set forth in the proceedings initially levying such benefit special assessments or in subsequent proceedings a formula for the determination of an amount, which when paid by a taxpayer with respect to any tax parcel, constitutes a prepayment all future annual installments of benefit special assessments. Payment of that amount relieves and discharges the lien of such benefit special assessments and any subsequent annual installment on a taxable parcel. The board may provide further that upon delinquency in the payment of any annual installment of benefit special assessments, the prepayment amount of all future annual installments of benefit special assessments as determined in the preceding sentence are immediately due and payable together with such delinquent annual installment.

Non-ad valorem maintenance taxes. If and when authorized by general law, to maintain and to preserve the physical facilities and services constituting the works, improvements, or infrastructure provided by the district pursuant to this act, to repair and restore any one or more of them, when needed, and to defray the current expenses of the district, including any sum which may be required to pay state and county ad valorem taxes on any taxable lands which may have been purchased and which are held by the district under the provisions of this act, the Board of Supervisors may, upon the completion of said systems, facilities, services, works, improvements, or infrastructure, in whole or in part, as may be certified to the board by the engineer of the board, levy annually a non-ad valorem and nonmillage tax upon each tract or parcel of land within the district, to be known as a "maintenance tax." This non-ad valorem maintenance tax must be apportioned upon the basis of the net assessments of benefits assessed as accruing from the original construction and must be evidenced to and certified by the Board of Supervisors of the district not later than June 1 of each year to the property appraiser of Brevard County and must be extended by the property appraiser on the tax roll of the property appraiser, as certified by the property appraiser to the tax collector, and collected by the tax collector on the merged collection roll of the tax collector in the same manner and at the same time as county ad valorem taxes, and the proceeds must be paid to the district. This non-ad valorem maintenance tax is a lien until paid on the property against which assessed and enforceable in like manner and of the same dignity as county ad valorem taxes.

Maintenance special assessments. To maintain and preserve the facilities and projects of the district, the board may levy a maintenance special assessment. This assessment may be evidenced to and certified to the property appraiser by the Board of Supervisors not later than August 31 of each year and must be entered by the property appraiser on the county tax rolls and must be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds must be paid to the district. However, this subsection does not prohibit the district in its discretion from using the method prescribed in either ss. 197.363, 197.3631, or 197.3632, F.S., for collecting and enforcing these assessments. These maintenance special assessments are a lien on the property against which assessed until paid and are enforceable in like manner as county taxes. The amount of the maintenance special assessment for the exercise of the district's powers under this section must be determined by the board based upon a report of the district's engineer and assessed

by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

Special Assessments. As an alternative method to the levy and imposition of special assessments pursuant to ch. 170, F.S., pursuant to the authority of s. 197.3631, F.S., or pursuant to other provisions of general law, now or hereafter enacted, which provide a supplemental means or authority to impose, levy, and collect special assessments as otherwise authorized under this act, the board may levy and impose special assessments to finance the exercise of any of its powers permitted under this act using specified uniform procedures.

At a noticed meeting, the board of supervisors of the district may consider and review an engineer's report on the costs of the systems, facilities, and services to be provided, a preliminary assessment methodology, and a preliminary roll based on acreage or platted lands, depending upon whether platting has occurred.

The assessment methodology must address and discuss and the board must consider whether the systems, facilities, and services being contemplated will result in special benefits peculiar to the property, different in kind and degree than general benefits, as a logical connection between the systems, facilities, and services themselves and the property, and whether the duty to pay the assessments by the property owners is apportioned in a manner that is fair and equitable and not in excess of the special benefit received. It must be fair and equitable to designate a fixed proportion of the annual debt service, together with interest thereon, on the aggregate principal amount of bonds issued to finance such systems, facilities, and services which give rise to unique, special, and peculiar benefits to property of the same or similar characteristics under the assessment methodology so long as such fixed proportion does not exceed the unique, special, and peculiar benefits enjoyed by such property from such systems, facilities, and services.

The engineer's cost report must identify the nature the proposed systems, facilities, and services, their location, a cost breakdown plus a total estimated cost, including cost of construction or reconstruction, labor, and materials, lands, property, rights, easements, franchises, or systems, facilities, and services to be acquired, cost of plans and specifications, surveys of estimates of costs and revenues, costs of engineering, legal, and other professional consultation services, and other expenses or costs necessary or incident to determining the feasibility or practicability of such construction, reconstruction, or acquisition, administrative expenses, relationship to the authority and power of the district in its charter, and such other expenses or costs as may be necessary or incident to the financing to be authorized by the Board of Supervisors.

The preliminary assessment roll to be prepared will be in accordance with the method of assessment provided for in the assessment methodology and as may be adopted by the Board of Supervisors; the assessment roll must be completed as promptly as possible and must show the acreage, lots, lands, or plats assessed and the amount of the fairly and reasonably apportioned assessment based on special and peculiar benefit to the property, lot, parcel, or acreage of land; and, if the assessment against each such lot, parcel, acreage, or portion of land is to be paid in installments, the number of annual installments in which the assessment is divided must be entered into and shown upon the assessment roll.

The Board of Supervisors of the district may determine and declare by an initial assessment resolution to levy and assess the assessments with respect to assessable improvements stating the nature of the systems, facilities, and services, improvements, projects, or infrastructure constituting such assessable improvements, the information in the engineer's cost report, the information in the assessment methodology as determined by the board at the noticed meeting and referencing and incorporating as part of the resolution the engineer's cost report, the preliminary assessment methodology, and the preliminary assessment roll as referenced exhibits to the resolution by reference. If the board determines to declare and levy the special assessments by the initial assessment resolution, the board

must also adopt and declare a notice resolution which must provide and cause the initial assessment resolution to be published once a week for a period of 2 weeks in newspapers of general circulation published in Brevard County and said board must by the same resolution fix a time and place at which the owner or owners of the property to be assessed or any other persons interested therein may appear before said board and be heard as to the propriety and advisability of making such improvements, as to the costs thereof, as to the manner of payment therefor, and as to the amount thereof to be assessed against each property so improved. Thirty days' notice in writing of such time and place must be given to such property owners. The notice must include the amount of the assessment and must be served by mailing a copy to each assessed property owner at his or her last known address, the names and addresses of such property owners to be obtained from the record of the property appraiser of the county political subdivision in which the land is located or from such other sources as the district manager or engineer deems reliable, and proof of such mailing must be made by the affidavit of the manager of the district or by the engineer, said proof to be filed with the district manager, provided that failure to mail said notice or notices must not invalidate any of the proceedings hereunder. It is provided further that the last publication must be at least 1 week prior to the date of the hearing on the final assessment resolution. Said notice must describe the general areas to be improved and advise all persons interested that the description of each property to be assessed and the amount to be assessed to each piece, parcel, lot, or acre of property may be ascertained at the office of the manager of the district. Such service by publication must be verified by the affidavit of the publisher and filed with the manager of the district. Moreover, the initial assessment resolution with its attached, referenced, and incorporated engineer's cost report, preliminary assessment methodology, and preliminary assessment roll, along with the notice resolution, must be available for public inspection at the office of the manager and the office of the engineer or any other office designated by the Board of Supervisors in the notice resolution. Notwithstanding the foregoing, the landowners of all of the property which is proposed to be assessed may give the district written notice of waiver of any notice and publication provided for in this subparagraph and such notice and publication is not required, provided, however, that any meeting of the Board of Supervisors to consider such resolution must be a publicly noticed meeting.

At the time and place named in the noticed resolution as provided for in subparagraph 2., the board of supervisors of the district must meet and hear testimony from affected property owners as to the propriety and advisability of making the systems, facilities, services, projects, works, improvements, or infrastructure and funding them with assessments referenced in the initial assessment resolution on the property. Following the testimony and questions from the members of the board or any professional advisors to the district of the preparers of the engineer's cost report, the assessment methodology, and the assessment roll, the board of supervisors must make a final decision on whether to levy and assess the particular assessments. Thereafter, the board of supervisors must meet as an equalizing board to hear and to consider any and all complaints as to the particular assessments and must adjust and equalize the assessments on the basis of justice and right.

When so equalized and approved by resolution or ordinance by the board of supervisors, to be called the final assessment resolution, a final assessment roll must be filed with the clerk of the board and such assessment must stand confirmed and remain legal, valid, and binding first liens on the property against which such assessments are made until paid, equal in dignity to the first liens of ad valorem taxation of county and municipal governments and school boards. However, upon completion of the systems, facilities, service, project, improvement, works, or infrastructure, the district must credit to each of the assessments the difference in the assessment as originally made, approved, levied, assessed, and confirmed and the proportionate part of the actual cost of the improvement to be paid by the particular special assessments as finally determined upon the completion of the improvement; but in no event may the final assessment exceed the amount of the special and peculiar benefits as apportioned fairly and reasonably to the property from the system, facility, or service being provided as originally assessed. Promptly after such confirmation, the assessment must be recorded by the clerk of the district in the minutes of the proceedings of the district, and the record of the lien in this set of minutes constitutes prima facie evidence of its validity. The board of supervisors, in its sole discretion, may, by resolution grant a discount equal to all or a part of the payee's proportionate share of the cost of the project consisting of bond financing cost, such as capitalized interest, funded reserves, and bond

discounts included in the estimated cost of the project, upon payment in full of any assessments during such period prior to the time such financing costs are incurred as may be specified by the board of supervisors in such resolution.

District assessments may be made payable in installments over no more than 30 years from the date of the payment of the first installment thereof and may bear interest at fixed or variable rates.

Notwithstanding any provision of this act or ch. 170, F.S., that portion of s. 170.09, F.S., that provides that assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted by the governing authority is not applicable to any district assessments, whether imposed, levied, and collected pursuant to the provisions of this act or other provisions of general law, including, but not limited to ch. 170, F.S.

In addition, the district is authorized expressly in the exercise of its rulemaking power to adopt a rule or rules which provides or provide for notice, levy, imposition, equalization, and collection of assessments.

Fees, Rentals, and Charges. The district is authorized to prescribe, fix, establish, and collect rates, fees, rentals, or other charges, hereinafter sometimes referred to as "revenues," and to revise the same from time to time, for the systems, facilities, and services furnished by the district, within the limits of the district, including, but not limited to, recreational facilities, water management and control facilities, and water and sewer systems; to recover the costs of making connection with any district service, facility, or system; and to provide for reasonable penalties against any user or property for an such rates, fees, rentals, or other charges that are delinquent.

Rates, fees, rentals, or other charges for any of the facilities or services of the district may be fixed until after a public hearing at which all the users of the proposed facility or services or owners, tenants, or occupants served or to be served thereby and all other interested persons must have an opportunity to be heard concerning the proposed rates, fees, rentals, or other charges. Rates, fees, rentals, and other charges must be adopted under the administrative rulemaking authority of the district, but must not apply to district leases. Notice of such public hearing setting forth the proposed schedule or schedules of rates, fees, rentals, and other charges must have been published in a newspaper of general circulation in Brevard County at least once and at least 10 days prior to such public hearing. The rulemaking hearing may be adjourned from time to time. After such hearing, such schedule or schedules, either as initially proposed or as modified or amended, may be finally adopted. A copy of the schedule or schedules of such rates, fees, rentals, or charges as finally adopted must be kept on file in an office designated by the board and must be open at all reasonable times to public inspection. The rates, fees, rentals, or charges so fixed for any class of users or property served must be extended to cover any additional users or properties thereafter served which must fall in the same class, without the necessity of any notice or hearing.

Such rates, fees, rentals, and charges must be just and equitable and uniform for users of the same class, and when appropriate may be based or computed either upon the amount of service furnished, upon the average number of persons residing or working in or otherwise occupying the premises served, or upon any other factor affecting the use of the facilities furnished, or upon any combination of the foregoing factors, as may be determined by the board on an equitable basis.

The rates, fees, rentals, or other charges prescribed must be such as will produce revenues, together with any other assessments, taxes, revenues, or funds available or pledged for such purpose, at least sufficient to provide for the items hereinafter listed, but not necessarily in the order stated:

1. To provide for all expenses of operation and maintenance of such facility or service.
2. To pay when due all bonds and interest thereon for the payment of which such revenues are, or must have been, pledged or encumbered, including reserves for such purpose.
3. To provide for any other funds which may be required under the resolution or resolutions authorizing the issuance of bonds pursuant to this act.

The board has the power to enter into contracts for the use of the projects of the district and with respect to the services, systems, and facilities furnished or to be furnished by the district.

In the event that any rates, fees, rentals, charges, or delinquent penalties are not paid as and when due and are in default for 60 days or more, the unpaid balance thereof and all interest accrued thereon, together with reasonable attorney's fees and costs, may be recovered by the district in a civil action.

In the event the fees, rentals, or other charges for water and sewer services, or either of them, are not paid when due, the board has the power, under such reasonable rules and regulations as the board may adopt, to discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance and the restoration of such water and sewer services or both, are fully paid; and, for such purposes, the board may enter on any lands, waters, or premises of any person, firm, corporation, or body, public or private, within the district limits. Such delinquent fees, rentals, or other charges together with interest, penalties, and charges for the shutting off and discontinuance and the restoration of such services and facilities and reasonable attorney's fees and other expenses may be recovered by the district, which may also enforce payment of such delinquent fees, rentals, or other charges by any other lawful method of enforcement.

Enforcement of taxes

All taxes provided for in this act are delinquent and bear penalties on the amount of such taxes in the same manner as county taxes. The collection and enforcement of all taxes levied by the district must be at the same time and in like manner as county taxes, and the provisions of the laws of Florida relating to the sale of lands for unpaid and delinquent county taxes; the issuance, sale, and delivery of tax certificates for such unpaid and delinquent county taxes; the redemption thereof; the issuance to individuals of tax deeds based thereon; and all other procedures in connection therewith are applicable to the district to the same extent as if such statutory provisions were expressly set forth herein. All taxes are subject to the same discounts as county taxes.

Any lien in favor of the district arising under this act may be foreclosed by the district by foreclosure proceedings in the name of the district in a court of competent jurisdiction as provided by general law in like manner as is provided in ch. 173, F.S., and the provisions of that chapter are applicable to such proceedings with the same force and effect as if those provisions were expressly set forth in this act. Any act required or authorized to be done by or on behalf of a municipality in foreclosure proceedings under ch. 173, F.S., may be performed by such officer or agent of the district as the board of supervisors may designate. Such foreclosure proceedings may be brought at any time after the expiration of 1 year from the date any tax, or installment thereof, becomes delinquent; however, no lien may be foreclosed against any political subdivision or agency of the state. Other legal remedies remain available.

Competitive Bidding Requirements

No contract may be let by the board for any goods, supplies, or materials to be purchased when the amount thereof to be paid by the district exceeds the amount provided in s. 287.017, F.S., for category four, unless notice of bids are advertised once in a newspaper in general circulation in Brevard County. The board seeking to construct or improve a public building, structure, or other public works must comply with the bidding procedures of s. 255.20, F.S., and other applicable general law. In each case, the bid of the lowest responsive and responsible bidder must be accepted unless all bids are rejected because the bids are too high or the board determines it is in the best interests of the district to reject all bids. The board may require the bidders to furnish bond with a responsible surety to be approved by the board. Nothing in this section prevents the board from undertaking and performing the construction, operation, and maintenance of any project or facility authorized by this act by the employment of labor, material, and machinery.

The provisions of the Consultants' Competitive Negotiation Act, s. 287.055, F.S., apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services let by the board.

Contracts for maintenance services for any district facility or project are subject to competitive bidding requirements when the amount thereof to be paid by the district exceeds the amount provided in s. 287.017, F.S., for category four. The district must adopt rules, policies, or procedures establishing competitive bidding procedures for maintenance services. Contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts. Nothing herein precludes the use of requests for proposal instead of invitations to bid as determined by the district to be in its best interest.

District Property Declared Public Property
Any system, facility, service, works, improvement, project, or other infrastructure owned by the district, or funded by federal tax exempt bonding issued by the district, is public; and the district by rule may regulate and may impose reasonable charges or fees for the use thereof but not to the extent that such regulation or imposition of such charges or fees constitutes denial of reasonable access.

C. SECTION DIRECTORY:

Section 1. Provides short title of the Act.
Section 2. Provides legislative intent and definitions.
Section 3. Provides minimum charter requirements, creates the District, and provides for exclusive charter.
Section 4. Sets forth District boundaries.
Section 5. Provides for the District governing board and its administration.
Section 6. Provides for the general duties of the governing board; general and special powers of the District; bonds; ad valorem taxation; special assessments; non-ad valorem maintenance taxes; tax liens; fees, rentals, and charges; and other administrative provisions.
Section 7. Provides for severability.
Section 8. Provides that the bill takes effect upon becoming a law, except that the provisions regarding the levy of ad valorem taxes are not effective until approved at a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 20, 2006

WHERE? Florida Today, Brevard County, Florida

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

IF YES, WHEN? The substantive provisions of the bill take effect upon approval by a majority vote of the owners of land within the district who are not exempt from ad valorem taxes or non-ad valorem assessments and who are present in person or by proxy at a landowners' meeting to be held within 90 days after the effective date of this act. Such landowners' meeting must be noticed and may be combined with the initial landowners' meeting. However, the provisions of the bill that authorize the levy of ad valorem taxation and issuance of general obligation bonds take effect only upon express approval by a majority vote of those qualified electors of the Viera Stewardship District voting in a referendum election held at such time as all members of the board are qualified electors who are elected by qualified electors of the district.

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

One-Acre, One-Vote Election Mechanism

It should be noted that the broad grants of power to the District 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 ch. 190, F.S., based on the decisions of the United States Supreme Court,13 the narrow purpose of such districts, and the disproportionate effect district operations have on landowners:

> 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.

Following this case, the 4th District Court of Appeal reached a similar conclusion with respect to water control districts which are governed by ch. 298, F.S., 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 does 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.

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, it seems more likely that one-vote-per acre voting would be 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.

B. RULE-MAKING AUTHORITY:

The bill authorizes the district to adopt and enforce rules and orders pursuant to ch. 120, F.S., the Florida Administrative Procedure Act, prescribing the duties, powers, and functions of the officers of the district, the conduct of the business of the district; the maintenance of records; and, the form of certificates evidencing tax liens and all other documents and records of the district.

The bill authorizes the district to provide security, including guardhouses, fences, and gates, electronic intrusion-detection systems, and patrol cars, which are authorized by proper governmental agencies; however, the district may not exercise any powers of a law enforcement agency. Notwithstanding any

provision of general law, the district may operate guardhouses for the limited purpose of providing security for the residents of the district and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the district or any other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.

The district board may adopt and enforce appropriate rules following the procedures of ch. 120, F.S., in connection with the provision of one or more services through its systems and facilities. The district is authorized expressly in the exercise of its rulemaking power to adopt a rule or rules which provides or provide for notice, levy, imposition, equalization, and collection of special assessments.

The district must adopt rules, policies, or procedures establishing competitive bidding procedures for maintenance services. Contracts for other services are not subject to competitive bidding unless the district adopts a rule, policy, or procedure applying competitive bidding procedures to said contracts.

Lastly, the bill requires rates, fees, rentals, and other charges imposed by the district to be adopted under the administrative rulemaking authority of the district. In the event the fees, rentals, or other charges for water and sewer services, or either of them, are not paid when due, the board is authorized, under such reasonable rules and regulations as the board may adopt, to discontinue and shut off both water and sewer services until such fees, rentals, or other charges, including interest, penalties, and charges for the shutting off and discontinuance and the restoration of such water and sewer services or both, are fully paid.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Possible Exemptions from General Law

The bill includes the following provisions, all of which appear to be exemptions from general law:

- The bill establishes a process to transition the governing board from one elected by landowners only to a board elected by qualified electors of the district. The bill specifically provides that "[t]he transition process described herein is intended to be in lieu of the process set forth in section 189.4051, Florida Statutes." [Emphasis added.]

- Notwithstanding any provision of this bill or ch. 170, F.S., that portion of s. 170.09, F.S., that provides that assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted by the governing authority is not applicable to any District assessments, whether imposed, levied, and collected pursuant to the provisions of this bill or other provisions of Florida law, including, but not limited to ch. 170, F.S.

- The bill authorizes the District to provide security, including guardhouses, fences, and gates, electronic intrusion-detection systems, and patrol cares, which authorized by proper governmental agencies; however, the District may not exercise any powers of a law enforcement agency. Notwithstanding any provision of general law, the District may operate guardhouses for the limited purpose of providing security for the residents of the District and which serve a predominate public, as opposed to private, purpose. Such guardhouses must be operated by the District or any other unit of local government pursuant to procedures designed to serve such security purposes as set forth in rules adopted by the board, from time to time, following the procedures set forth in ch. 120, F.S.

- Notwithstanding any provisions of any other law to the contrary, all bonds issued under the provisions of this act shall constitute legal investments for savings banks, banks, trust companies, insurance companies, executors, administrators, trustees, guardians, and other fiduciaries and for any board, body, agency, instrumentality, county, municipality, or other

political subdivision of the state and shall be and constitute security which may be deposited by banks or trust companies as security for deposits of state, county, municipal, or other public funds or by insurance companies as required or voluntary statutory deposits.

Broad Powers of the District

The "specialized functions and related prescribed powers," which are a defining characteristic for a special district, are extremely broad for this particular District, including the power to provide for and fund: water management and control, water supply, sewer, and wastewater management, reclamation, and reuse; privatization contracting; bridges or culverts; roadways and roads, parkways, hardscaping, landscaping, irrigation, bicycle lanes, jogging paths, street lighting, traffic signals, road striping; parking facilities; buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, related signage; costs associated with cleanup of actual or perceived environmental contamination within the District; observation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property; parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control; school buildings and related structures; security; mosquitoes and other public health nuisance arthropods control; waste, waste collection, and disposal; impact fee credit agreements; and provide buildings and structures for District offices, maintenance facilities, meeting facilities, town centers, or any other project authorized by this bill.

However, such broad powers, however, have been upheld by the courts as demonstrated by the leading case on this issue, State v. Reedy Creek Imp. Dist., 216 So.2d 202 (Fla. 1968):

> So long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose. In the present case, the numerous and diverse powers granted to the District by the enabling act appear to be logically related and essential to the realization of the valid public purposes by the District. In reaching this conclusion, we reject the State's argument that the powers granted the District are commensurate in scope with those characteristic of a local municipal government rendering the enabling act a mere subterfuge to avoid the creation of a municipality.

Modification of District Boundaries/Binding Future Legislatures

The bill specifies that the charter of the district, as created in this bill, may only be amended by special act of the Legislature. The bill provides that the Legislature may not consider an amendment of the district boundaries or the special powers of the district unless it is accompanied by a resolution or official statement as provided for in s. 189.404(2)(e)4., F.S. Although this bill appears to prohibit future legislatures from amending district boundaries unless a resolution from the affected county is secured, this provision cannot "bind" future legislatures or limit the legislature's ability to amend the district's boundaries. Therefore, although this language may evidence intent of the parties, a future legislature that wishes to amend the boundaries of the district may do so without a resolution from an affected county.

Supremacy Clause

Section 3(4) of this bill includes a supremacy clause as follows:

> This special-purpose district is created as a public body corporate and politic, and local government authority and power is limited by its charter, this act, and subject to the provisions of other general laws, including chapter 189, Florida Statutes, except that an inconsistent provision in this act shall control and the district has jurisdiction to perform such acts and exercise such authorities, functions, and powers as shall be necessary, convenient, incidental, proper, or reasonable for the implementation of its limited, single, and specialized purpose regarding the sound planning, provision, acquisition, development, operation, maintenance, and related financing of those public systems,

> facilities, services, improvements, projects, and infrastructure works as authorized herein, including those necessary and incidental thereto.

Supremacy clauses are provisions that attempt to resolve conflicts between legislative enactments by assigning supremacy or prominence to one provision or set of provisions over another. If a bill includes a general supremacy clause, such as the one contained in this bill, the judiciary determines superiority between general and special law provisions, rather than the Legislature. In addition, general supremacy clauses do not inform interested persons or members of the Legislature of the specific laws containing potential conflicts. Unless the specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

Extraterritorial Services and Projects
Section 3(4) of the bill provides as follows:

> The jurisdiction of this district, in the exercise of its general and special powers, and in the carrying out of its special purposes, is both within the external boundaries of the legal description of this district and extraterritorially when limited to, and as authorized expressly elsewhere in, the charter of the district as created in this act or applicable general law.

Section 6(7) of the charter authorizes the district to, using its general and special powers, provide any project within or without the boundaries of the district when the project is the subject of an agreement between the district and the Brevard County Board of County Commissioners or with any other applicable public or private entity, or is approved or required by a development order and is not inconsistent with the effective local comprehensive plan.

The ability of the District to exercise its general and special powers outside its boundaries may raise questions regarding the levy of special assessments on property owners within the District if proceeds of the special assessments, fees, or non-ad valorem taxes are used to fund projects outside the District. The charter is unclear as to when and under what circumstances the District may exercise its powers extraterritorially or how assessments, taxes, and fees will be apportioned to fund projects outside District boundaries.

New Powers to Community Development Districts
Although the District is created pursuant to chapter 189, Florida Statutes, Section 3(2) of the bill attempts to give the District future powers that may be included in ch. 190, F.S., relating to Community Development Districts as follows:

> Any amendments to chapter 190, Florida Statutes, after January 1, 2006, granting additional general powers, special powers, authorities, or projects to a community development district by amendment to its uniform charter, sections 190.006-190.041, Florida Statutes, shall constitute a general power, special power, authority, or function of the Viera Stewardship District.

Therefore, if the Legislature amends ch. 190, F.S., to grant community development districts additional authority at any time in the future, that additional authority will be automatically granted to the District without further legislative review or enactment.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Local Government Council adopted a technical amendment to correct the legal description of district boundaries.

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to Brevard County; creating the Viera
7 Stewardship District; providing a short title; providing
8 legislative findings and intent; providing definitions;
9 stating legislative policy regarding creation of the
10 district; establishing compliance with minimum
11 requirements in s. 189.404(3), F.S., for creation of an
12 independent special district; providing for creation and
13 establishment of the district; establishing the legal
14 boundaries of the district; providing for the jurisdiction
15 and charter of the district; providing for a board of
16 supervisors and establishing membership criteria and
17 election procedures; providing for board members' terms of
18 office; providing for board meetings; providing for
19 administrative duties of the board; providing a method for
20 transition of the board from landowner control to control
21 by the resident electors of the district; providing for a
22 district manager and district personnel; providing for a
23 district treasurer, selection of a public depository, and

24 district budgets and financial reports; providing for the
25 general powers of the district; providing for the special
26 powers of the district to plan, finance, and provide
27 community infrastructure and services within the district;
28 providing for required notices to purchasers of
29 residential units within the district; providing
30 severability; providing for a referendum; providing an
31 effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Short title.--This act may be cited as the
36 "Viera Stewardship District Act."
37 Section 2. Legislative findings and intent; definitions;
38 policy.--
39 (1) LEGISLATIVE FINDINGS AND INTENT.--
40 (a) The extensive lands located within Brevard County and
41 covered by this act contain many opportunities for thoughtful,
42 comprehensive, environmentally responsible, and consistent
43 development over a long period.
44 (b) There is a particular special need to use a
45 specialized and limited single-purpose independent special
46 district unit of local government for the district lands located
47 within Brevard County and covered by this act to prevent urban
48 sprawl by providing sustaining and freestanding infrastructure
49 and by preventing needless and counterproductive community
50 development when the existing urban area is not yet developed,
51 and to prevent the needless duplication, fragmentation, and

52 proliferation of local government services in a proposed land
53 use area.
54 (c) The establishment of such a limited specialized
55 single-purpose local government for the district lands will
56 serve a necessary and useful public purpose by providing an
57 efficient and effective method of ensuring the long-term
58 stewardship of environmental and conservation resources within
59 the district through the comprehensive management of the
60 district's ecosystem, including, but not limited to, the
61 implementation and administration of habitat protection and
62 management plans approved by regulatory agencies having
63 jurisdiction and the local governing authority.
64 (d) The creation and establishment of the district will
65 constitute a timely, efficient, effective, responsive, and
66 economical method to deliver capital infrastructure, facilities,
67 and services to accommodate the growth projected under Brevard
68 County's comprehensive land use plan for the extensive lands
69 comprising the district, by providing a legitimate alternative
70 method for owning, operating, constructing, and financing such
71 infrastructure, facilities, and services which will not
72 overburden local general purpose governments and their
73 taxpayers.
74 (e) While chapter 190, Florida Statutes, provides an
75 opportunity for community development services and facilities to
76 be provided by the establishment of community development
77 districts in a manner that furthers the public interest, given
78 the vast nature of the lands covered by this act and the
79 potentially long-term nature of its development, establishing

80 multiple community development districts over these lands would
81 result in an inefficient, duplicative, and needless
82 proliferation of local special purpose government, contrary to
83 the public interest and the Legislature's findings in chapter
84 190, Florida Statutes. Instead, it is in the public interest
85 that the long-range provision for, and management, financing,
86 and long-term maintenance, upkeep, and operation of, services
87 and facilities to be provided for ultimate development of the
88 lands covered by this act be under one coordinated entity.
89 (f) Longer involvement of the initial landowner with
90 regard to the provision of systems, facilities, and services for
91 the district lands, coupled with a severely limited and highly
92 specialized single purpose of the district is in the public
93 interest.
94 (g) Any public or private system to provide infrastructure
95 improvements, systems, facilities, and services to these lands
96 must be focused on an unfettered, highly specialized,
97 innovative, responsive, and accountable mechanism to provide the
98 components of infrastructure at sustained levels of high quality
99 over the long term only when and as needed for such a unique
100 community in such a unique area.
101 (h) There is a need to coincide the use and special
102 attributes of various public and private alternatives for the
103 provision of infrastructure to such a community development,
104 including the limited, flexible, focused, and locally
105 accountable management and related financing capabilities of
106 independent special-purpose local government.

107 (i) The existence and use of such a limited specialized
108 single purpose local government for the district lands, subject
109 to the respective county comprehensive plans, will result in a
110 high propensity to provide for orderly development and prevent
111 urban sprawl; protect and preserve environmental, conservation,
112 and agricultural uses and assets; enhance the market value for
113 both present and future landowners of the property consistent
114 with the need to protect private property; enhance the net
115 economic benefit to the Brevard County area, including an
116 enhanced and well-maintained tax base to the benefit of all
117 present and future taxpayers in Brevard County; and result in
118 the sharing of costs of providing certain systems, facilities,
119 and services in an innovative, sequential, and flexible manner
120 within the developing area to be serviced by the district.
121 (j) The creation and establishment of the district will
122 encourage local government financial self-sufficiency in
123 providing public facilities and in identifying and implementing
124 physically sound, innovative, and cost-effective techniques to
125 provide and finance public facilities while encouraging
126 development, use, and coordination of capital improvement plans
127 by all levels of government, pursuant to chapter 187, Florida
128 Statutes.
129 (k) The creation and establishment of the district will
130 encourage and enhance cooperation among communities that have
131 unique assets, irrespective of political boundaries, to bring
132 the private and public sectors together for establishing an
133 orderly and environmentally and economically sound plan for
134 current and future needs and growth.

135 (l) In order to be responsive to the critical timing
136 required through the exercise of its special management
137 functions, an independent district requires financing of those
138 functions, including bondable lienable and nonlienable revenue,
139 with full and continuing public disclosure and accountability,
140 funded by landowners, both present and future, and funded also
141 by users of the systems, facilities, and services provided to
142 the land area by the district, without unduly burdening the
143 taxpayers and citizens of the state, Brevard County, or any
144 municipality therein.
145 (m) The district created and established by this act shall
146 not have or exercise any comprehensive planning, zoning, or
147 development permitting power; the establishment of the district
148 shall not be considered a development order within the meaning
149 of chapter 380, Florida Statutes; and all applicable planning
150 and permitting laws, rules, regulations, and policies of Brevard
151 County control the development of the land to be serviced by the
152 district.
153 (n) The creation by this act of the Viera Stewardship
154 District is not inconsistent with the Brevard County
155 comprehensive plan.
156 (o) It is the legislative intent and purpose that no debt
157 or obligation of the district constitute a burden on any local
158 general-purpose government without its consent.
159 (2) DEFINITIONS.--As used in this act:
160 (a) "Ad valorem bonds" means bonds which are payable from
161 the proceeds of ad valorem taxes levied on real and tangible

162 personal property and which are generally referred to as general
163 obligation bonds.
164 (b) "Assessable improvements" means, without limitation,
165 any and all public improvements and community facilities that
166 the district is empowered to provide in accordance with this act
167 that provide a special benefit to property within the district.
168 (c) "Assessment bonds" means special obligations of the
169 district which are payable solely from proceeds of the special
170 assessments or benefit special assessments levied for assessable
171 improvements, provided that, in lieu of issuing assessment bonds
172 to fund the costs of assessable improvements, the district may
173 issue revenue bonds for such purposes payable from special
174 assessments.
175 (d) "Assessments" means those nonmillage district
176 assessments which include special assessments, benefit special
177 assessments, and maintenance special assessments and a
178 nonmillage, non-ad valorem maintenance tax if authorized by
179 general law.
180 (e) "Benefit special assessments" are district assessments
181 imposed, levied, and collected pursuant to the provisions of
182 section 6(12)(b).
183 (f) "Board of supervisors" or "board" means the governing
184 board of the district or, if such board has been abolished, the
185 board, body, or commission assuming the principal functions
186 thereof or to whom the powers given to the board by this act
187 have been given by law.
188 (g) "Bond" includes "certificate" and the provisions that
189 are applicable to bonds are equally applicable to certificates.

190 The term "bond" includes any general obligation bond, assessment
191 bond, refunding bond, revenue bond, and other such obligation in
192 the nature of a bond as is provided for in this act.
193 (h) "Cost" or "costs," when used with reference to any
194 project, includes, but is not limited to:
195 1. The expenses of determining the feasibility or
196 practicability of acquisition, construction, or reconstruction.
197 2. The cost of surveys, estimates, plans, and
198 specifications.
199 3. The cost of improvements.
200 4. Planning, engineering, designing, fiscal, legal, and
201 other professional and consultant expenses and charges.
202 5. The cost of all labor, materials, machinery, and
203 equipment.
204 6. The cost of all lands, properties, rights, easements,
205 and franchises acquired.
206 7. Financing charges.
207 8. The creation of initial reserve and debt service funds.
208 9. Working capital.
209 10. Interest charges incurred or estimated to be incurred
210 on money borrowed prior to and during construction and
211 acquisition and for such reasonable period of time after
212 completion of construction or acquisition as the board may
213 determine.
214 11. The cost of issuance of bonds pursuant to this act,
215 including advertisements and printing.
216 12. The cost of any bond or tax referendum held pursuant
217 to this act and all other expenses of issuance of bonds.

218 13. The discount, if any, on the sale or exchange of
219 bonds.
220 14. Administrative expenses.
221 15. Such other expenses as may be necessary or incidental
222 to the acquisition, disposition, transfer, construction, or
223 reconstruction of any project, to the financing thereof, or to
224 the development of any lands within the district.
225 16. Payments, contributions, dedications, and any other
226 exactions required as a condition of receiving any governmental
227 approval or permit necessary to accomplish any district purpose.
228 (i) "District" means the Viera Stewardship District.
229 (j) "District manager" means the manager of the district.
230 (k) "District roads" means highways, streets, roads,
231 alleys, sidewalks, landscaping, storm drains, bridges, and
232 thoroughfares of all kinds.
233 (l) "General obligation bonds" means bonds which are
234 secured by, or provide for their payment by, the pledge of the
235 full faith and credit and taxing power of the district, in
236 addition to those special taxes levied for their discharge and
237 such other sources as may be provided for their payment or
238 pledged as security under the resolution authorizing their
239 issuance, and for payment of which recourse may be had against
240 the general fund of the district.
241 (m) "Governing board member" means any member of the board
242 of supervisors.
243 (n) "Land development regulations" means those regulations
244 of general purpose local government, adopted under the Florida
245 Local Government Comprehensive Planning and Land Development

246 Regulation Act, part II of chapter 163, Florida Statutes, to
247 which the district is subject and as to which the district may
248 not do anything that is inconsistent. Land development
249 regulations shall not mean specific management, engineering,
250 planning, operating, and other criteria and standards needed in
251 the daily management, implementation, and provision by the
252 district of systems, facilities, services, works, improvements,
253 projects, or infrastructure, including design criteria and
254 standards, so long as they remain subject to and are not
255 inconsistent with the applicable land development regulations.
256 (o) "Landowner" means the owner of a freehold estate as it
257 appears on the deed record, including a trustee, a private
258 corporation, and an owner of a condominium unit. "Landowner"
259 does not include a reversioner, remainderman, mortgagee, or any
260 governmental entity, who shall not be counted and need not be
261 notified of proceedings under this act. "Landowner" also means
262 the owner of a ground lease from a governmental entity, which
263 leasehold interest has a remaining term, excluding all renewal
264 options, in excess of 50 years.
265 (p) "General-purpose local government" means a county,
266 municipality, or consolidated city-county government.
267 (q) "Maintenance special assessments" are assessments
268 imposed, levied, and collected pursuant to the provisions of
269 section 6(12)(d).
270 (r) "Non-ad valorem assessment" means only those
271 assessments which are not based upon millage and which can
272 become a lien against a homestead as permitted in s. 4, Art. X
273 of the State Constitution.

274 (s) "Powers" means powers used and exercised by the board
275 to accomplish the single, limited, and special purpose of the
276 district, including:
277 1. "General powers" means those organizational and
278 administrative powers of the district as provided in this
279 charter in order to carry out its single special purpose as a
280 local government public corporate body politic.
281 2. "Special powers" means those powers enumerated by the
282 district charter to implement its specialized systems,
283 facilities, services, projects, improvements, and infrastructure
284 and related functions in order to carry out its single
285 specialized purpose.
286 3. Any other powers, authority, or functions set forth in
287 this act or in chapter 189 or chapter 190, Florida Statutes.
288 (t) "Project" means any development, improvement,
289 property, power, utility, facility, enterprise, service, system,
290 works, or infrastructure now existing or hereafter undertaken or
291 established under the provisions of this act.
292 (u) "Qualified elector" means any person at least 18 years
293 of age who is a citizen of the United States and a legal
294 resident of the state and of the district and who registers to
295 vote with the Supervisor of Elections of Brevard County.
296 (v) "Refunding bonds" means bonds issued to refinance
297 outstanding bonds of any type and the interest and redemption
298 premium thereon. Refunding bonds shall be issuable and payable
299 in the same manner as refinanced bonds, except that no approval
300 by the electorate shall be required unless required by the State
301 Constitution.

302 (w) "Revenue bonds" means obligations of the district that
303 are payable from revenues, including, but not limited to,
304 special assessments and benefit special assessments, derived
305 from sources other than ad valorem taxes on real or tangible
306 personal property and that do not pledge the property, credit,
307 or general tax revenue of the district.
308 (x) "Sewer system" means any plant, system, facility, or
309 property, and additions, extensions, and improvements thereto at
310 any future time constructed or acquired as part thereof, useful
311 or necessary or having the present capacity for future use in
312 connection with the collection, treatment, purification, or
313 disposal of sewage, including, but not limited to, industrial
314 wastes resulting from any process of industry, manufacture,
315 trade, or business or from the development of any natural
316 resource. "Sewer system" also includes treatment plants, pumping
317 stations, lift stations, valves, force mains, intercepting
318 sewers, laterals, pressure lines, mains, and all necessary
319 appurtenances and equipment; all sewer mains, laterals, and
320 other devices for the reception and collection of sewage from
321 premises connected therewith; and all real and personal property
322 and any interest therein, and rights, easements, and franchises
323 of any nature relating to any such system and necessary or
324 convenient for operation thereof.
325 (y) "Special assessments" means assessments as imposed,
326 levied, and collected by the district for the costs of
327 assessable improvements pursuant to the provisions of this act,
328 chapter 170, Florida Statutes, and the additional authority
329 under section 197.3631, Florida Statutes, or other provisions of

330 general law, now or hereinafter enacted, which provide or
331 authorize a supplemental means to impose, levy, or collect
332 special assessments.
333 (z) "Taxes" or "tax" means those levies and impositions of
334 the board that support and pay for government and the
335 administration of law and that may be:
336 1. Ad valorem or property taxes based upon both the
337 appraised value of property and millage, at a rate uniform
338 within the jurisdiction; or
339 2. If and when authorized by general law, non-ad valorem
340 maintenance taxes not based on millage that are used to maintain
341 district systems, facilities, and services.
342 (aa) "Viera Stewardship District" means the unit of
343 special and single purpose local government created and
344 chartered by this act, including the creation of its charter,
345 and limited to the performance, in implementing its single
346 purpose, of those general and special powers authorized by its
347 charter under this act, the boundaries of which are set forth by
348 the act, the governing head of which is created and authorized
349 to operate with legal existence by this act, and the purpose of
350 which is as set forth in this act.
351 (bb) "Water management and control facilities" means any
352 lakes, canals, ditches, reservoirs, dams, impoundments, levees,
353 sluiceways, floodways, pumping stations, or any other works,
354 structures, or facilities for the conservation, control,
355 development, utilization, and disposal of nonpotable water, and
356 any purposes appurtenant, necessary or incidental thereto. The
357 term "water management and control facilities" includes all real

358 and personal property and any interest therein, rights,
359 easements, and franchises of any nature relating to any such
360 water management and control facilities or necessary or
361 convenient for the acquisition, construction, reconstruction,
362 operation or maintenance thereof.
363 (cc) "Water system" means any plant, system, facility, or
364 property, and any addition, extension, or improvement thereto at
365 any future time constructed or acquired as a part thereof,
366 useful, necessary, or having the present capacity for future use
367 in connection with the development of sources, treatment,
368 purification, or distribution of water. "Water system" also
369 includes dams, reservoirs, storage tanks, mains, lines, valves,
370 pumping stations, laterals, and pipes for the purpose of
371 carrying water to the premises connected with such system, and
372 all rights, easements, and franchises of any nature relating to
373 any such system and necessary or convenient for the operation
374 thereof.
375 (3) POLICY.--Based upon its findings, ascertainments,
376 determinations, intent, purpose, and definitions, the
377 Legislature states its policy expressly:
378 (a) The district and the district charter, with its
379 general and special powers, as created in this act, are
380 essential and the best alternative for the residential,
381 commercial, and other community uses, projects, or functions in
382 the included portions of Brevard County consistent with the
383 effective comprehensive plans and designed to serve a lawful
384 public purpose.

385 (b) The district, which is a local government and
386 political subdivision, is limited to its special purpose as
387 expressed in this act, with the power to provide, plan,
388 implement, construct, operate, maintain, repair, improve,
389 replace, manage, and finance as a local government management
390 entity its systems, facilities, services, improvements,
391 infrastructure, and projects and possessing financing powers to
392 fund its management power over the long term and with sustained
393 levels of high quality.
394 (c) The creation of the Viera Stewardship District by and
395 pursuant to this act, and its exercise of its management and
396 related financing powers to implement its limited, single, and
397 special purpose, is not a development order and does not trigger
398 or invoke any provision within the meaning of chapter 380,
399 Florida Statutes, and all applicable governmental planning,
400 environmental, and land development laws, regulations, rules,
401 policies, and ordinances apply to all development of the land
402 within the jurisdiction of the district as created by this act.
403 Moreover, the creation of the district itself shall neither
404 cause a reclassification for assessment purposes of any
405 agricultural lands within the district, nor prohibit or preclude
406 the use of any land within the district for agricultural
407 purposes or for any use related thereto.
408 (d) The district shall operate and function subject to,
409 and not inconsistent with, the comprehensive plan of Brevard
410 County and any applicable development orders, zoning
411 regulations, and other land development regulations.

412 (e) The special and single purpose Viera Stewardship
413 District shall not have the power of a general-purpose local
414 government to adopt a comprehensive plan or related land
415 development regulation as those terms are defined in the Local
416 Government Comprehensive Planning and Land Development
417 Regulation Act.
418 (f) This act may be amended, in whole or in part, only by
419 special act of the Legislature. No amendment to this act that
420 alters the district boundaries or the general or special powers
421 of the district may be considered by the Legislature unless it
422 is accompanied by a resolution or official statement as provided
423 for in section 189.404(2)(e)4., Florida Statutes.
424 Section 3. Minimum charter requirements; creation and
425 establishment; jurisdiction; construction; charter with legal
426 description.--
427 (1) Pursuant to section 189.404(3), Florida Statutes, the
428 Legislature sets forth that the minimum requirements in
429 paragraphs (a)-(o) have been met in the identified provisions of
430 this act as follows:
431 (a) The reasons for the district are articulated in the
432 findings in section 2, and the specific functions of the
433 district are described through the powers granted to the
434 district throughout the bill. However, in summary, the general
435 purpose of the district is to provide, through a special purpose
436 governmental entity, certain capital infrastructure, facilities
437 and services which benefit the residents of the district.
438 (b) The powers, functions, and duties of the district
439 regarding ad valorem taxation, bond issuance, other revenue-

440 raising capabilities, budget preparation and approval, liens and
441 foreclosure of liens, use of tax deeds and tax certificates as
442 appropriate for non-ad valorem assessments, and contractual
443 agreements are set forth in section 6.
444 (c) The provisions for methods for establishing the
445 district are in this section.
446 (d) The methods for amending the charter of the district
447 are set forth in section 2.
448 (e) The provisions for the membership and organization of
449 the governing board and the establishment of a quorum are in
450 section 5.
451 (f) The provisions regarding maximum compensation of each
452 board member are in section 5.
453 (g) The provisions regarding the administrative duties of
454 the governing board are found in sections 5 and 6.
455 (h) The provisions applicable to financial disclosure,
456 noticing, and reporting requirements generally are set forth in
457 sections 5 and 6.
458 (i) The provisions regarding procedures and requirements
459 for issuing bonds are set forth in section 6.
460 (j) The provisions regarding elections or referenda and
461 the qualifications of an elector of the district are in sections
462 2 and 5.
463 (k) The provisions regarding methods for financing the
464 district are generally in section 6.
465 (l) Other than taxes levied for the payment of bonds and
466 taxes levied for periods not longer than 2 years when authorized
467 by vote of the electors of the district, the provisions for the

468 authority to levy ad valorem tax and the authorized millage rate
469 are in section 6.
470 (m) The provisions for the method or methods of collecting
471 non-ad valorem assessments, fees, or service charges are in
472 section 6.
473 (n) The provisions for planning requirements are in this
474 section and section 6.
475 (o) The provisions for geographic boundary limitations of
476 the district are set forth in sections 4 and 6.
477 (2) The Viera Stewardship District, which also may be
478 referred to as the "stewardship district," "Viera District," or
479 "district," is created and incorporated as a public body
480 corporate and politic, an independent, limited, special purpose
481 local government, an independent special district, under section
482 189.404, Florida Statutes, and as defined in this act and in
483 section 189.403(3), Florida Statutes. Any amendments to chapter
484 190, Florida Statutes, after January 1, 2006, granting
485 additional general powers, special powers, authorities, or
486 projects to a community development district by amendment to its
487 uniform charter, sections 190.006-190.041, Florida Statutes,
488 shall constitute a general power, special power, authority, or
489 function of the Viera Stewardship District. All notices for the
490 enactment by the Legislature of this special act have been
491 provided pursuant to the State Constitution, the laws of Florida
492 and the Rules of the Florida House of Representatives and of the
493 Florida Senate. Subject to the referendum requirement in section
494 9, the district, as created by this act, is established on the
495 property described in this act.

496 (3) The territorial boundary of the district shall embrace
497 and include all of that certain real property described legally
498 in section 4.
499 (4) The jurisdiction of this district, in the exercise of
500 its general and special powers, and in the carrying out of its
501 special purposes, is both within the external boundaries of the
502 legal description of this district and extraterritorially when
503 limited to, and as authorized expressly elsewhere in, the
504 charter of the district as created in this act or applicable
505 general law. This special-purpose district is created as a
506 public body corporate and politic, and local government
507 authority and power is limited by its charter, this act, and
508 subject to the provisions of other general laws, including
509 chapter 189, Florida Statutes, except that an inconsistent
510 provision in this act shall control and the district has
511 jurisdiction to perform such acts and exercise such authorities,
512 functions, and powers as shall be necessary, convenient,
513 incidental, proper, or reasonable for the implementation of its
514 limited, single, and specialized purpose regarding the sound
515 planning, provision, acquisition, development, operation,
516 maintenance, and related financing of those public systems,
517 facilities, services, improvements, projects, and infrastructure
518 works as authorized herein, including those necessary and
519 incidental thereto.
520 (5) The exclusive charter of the Viera Stewardship
521 District is this act and, except as otherwise provided in
522 subsection (2), may be amended only by special act of the
523 Legislature.

524 Section 4. Legal description of the Viera Stewardship
525 District.--
526 The legal description of the district, within which
527 there are no parcels of property owned by those who do
528 not wish for their property to be included within the
529 district, is as follows:
530 Commence at a 4" X 4" concrete monument at the
531 Northwest corner of Section 30, Township 25 South,
532 Range 36 East and run N89°21'55"E, along the North
533 line of said Section 30, a distance of 2,545.93 feet,
534 to an iron rod and the POINT OF BEGINNING of the
535 herein described lands; thence S08°24'33"E, a distance
536 of 748.62 feet, to an iron rod; thence S08°55'25"E, a
537 distance of 405.40 feet, to an iron rod; thence
538 S07°53'09"E, a distance of 404.42 feet, to an iron
539 rod; thence S07°41'38"E, a distance of 556.16 feet, to
540 an iron rod; thence S08°07'57"E, a distance of 556.72
541 feet, to an iron rod; thence S07°54'48"E, a distance
542 of 556.44 feet, to an iron rod; thence S08°10'16"E, a
543 distance of 880.33 feet, to an iron rod; thence
544 S07°57'39"E, a distance of 482.44 feet, to an iron
545 rod; thence S79°41'18"W, a distance of 8.69 feet, to
546 an iron rod; thence S07°38'31"E, a distance of 396.84
547 feet, to an iron rod; thence S13°30'01"W, a distance
548 of 6.84 feet, to an iron rod; thence S68°53'11"W, a
549 distance of 456.26 feet, to an iron rod; thence
550 S75°44'29"W, a distance of 86.29 feet, to an iron rod;
551 thence S64°14'40"W, a distance of 129.79 feet, to an

552 iron rod; thence S68°29'29"W, a distance of 703.75
553 feet, to an iron rod; thence S03°43'55"E, a distance
554 of 774.28 feet, to an iron rod; thence S03°43'05"E, a
555 distance of 420.39 feet, to an iron rod; thence
556 S17°31'55"W, a distance of 31.51 feet, to an iron rod;
557 thence S02°10'23"W, a distance of 15.32 feet, to an
558 iron rod; thence S84°49'06"W, a distance of 1,260.85
559 feet, to an iron rod; thence S65°26'07"W, a distance
560 of 553.39 feet, to an iron rod; thence S65°16'09"W, a
561 distance of 553.65 feet, to an iron rod; thence
562 S65°26'06"W, a distance of 552.21 feet, to an iron
563 rod; thence S65°42'09"W, a distance of 553.14 feet, to
564 an iron rod; thence S86°33'52"W, a distance of 560.20
565 feet, to an iron rod; thence S86°36'43"W, a distance
566 of 1,119.98 feet, to an iron rod; thence N15°49'12"W,
567 a distance of 53.08 feet, to an iron rod; thence
568 S88°41'21"W, a distance of 144.31 feet to an iron rod;
569 thence S86°14'12"W, a distance of 360.22 feet, to an
570 iron rod; thence S44°22'00"W, a distance of 2,194.87
571 feet, to an iron rod; thence S02°24'20"E, a distance
572 of 99.12 feet, to an iron rod; thence S46°55'21"W, a
573 distance of 146.56 feet, to an iron rod; thence
574 S65°38'19"W, a distance of 194.77 feet, to an iron
575 rod; thence S63°42'25"W, a distance of 577.43 feet, to
576 an iron rod; thence S69°45'01"W, a distance of 412.41
577 feet, to an iron rod; thence N89°15'09", a distance of
578 79.29 feet, to an iron rod; thence S73°35'49W, a
579 distance of 521.37 feet, to an iron rod; thence

580 S87°25'48"W, a distance of 483.14 feet, to an iron
581 rod; thence S87°26'32"W, a distance of 966.55 feet, to
582 an iron rod; thence S87°21'06"W, a distance of 485.66
583 feet, to an iron rod; thence S62°14'38"W, a distance
584 of 444.40 feet, to an iron rod; thence S62°17'07"W, a
585 distance of 446.88 feet, to an iron rod; thence
586 S62°19'23"W, a distance of 358.90 feet, to an iron
587 rod; thence S62°27'13"W, a distance of 370.19 feet, to
588 an iron rod; thence S77°23'47"W, a distance of 411.83
589 feet, to an iron rod; thence S00°53'45"W, a distance
590 of 125.73 feet, to an iron rod; thence S00°13'05"W, a
591 distance of 658.60 feet, to an iron rod; thence
592 S00°02'40"E, a distance of 1,583.00 feet, to an iron
593 rod; thence S00°01'31"E, a distance of 543.46 feet, to
594 an iron rod; thence S06°38'41"E, a distance of 236.05
595 feet, to an iron rod; thence S00°05'15"W, a distance
596 of 1,609.02 feet, to an iron rod, thence N89°56'44"E,
597 a distance of 1,150.63 feet, to an iron rod; thence
598 N89°41'56"E, a distance of 575.37 feet, to an iron
599 rod; thence S89°48'28"E, a distance of 575.27 feet, to
600 an iron rod; thence S05°17'41"E, a distance of
601 5,150.06 feet, to an iron rod; thence S88°28'59"W, a
602 distance of 892.20 feet, to an iron rod; thence
603 S89°18'35"W, a distance of 1,352.16 feet, to an iron
604 rod; thence N88°11'42"W, a distance of 478.57 feet, to
605 an iron rod; thence S04°20'09"W, a distance of 165.35
606 feet, to an iron rod; thence S44°31'42"E, a distance
607 of 1,884.04 feet, to an iron rod; thence S44°35'30"E,

608 a distance of 3,917.97 feet, to an iron rod; thence
609 S62°09'21"E, a distance of 2,317.97 feet, to an iron
610 rod; thence S61°05'48"E, a distance of 649.92 feet, to
611 an iron rod; thence N47°16'55" E, a distance of 35.75
612 feet, to an iron rod; thence S61°57'44"E, a distance
613 of 923.38 feet, to an iron rod; thence S41°26'58"E, a
614 distance of 273.10 feet, to an iron rod; thence
615 S30°04'29"E, a distance of 310.25 feet, to an iron
616 rod; thence S34°43'38"E, a distance of 598.07 feet, to
617 an iron rod; thence S26°25'22"E, a distance of 301.86
618 feet, to an iron rod; thence S04°19'41"E, a distance
619 of 773.92 feet, to an iron rod; thence S03°54'52"E, a
620 distance of 1,444.29 feet, to an iron rod; thence
621 S88°57'24"E, a distance of 504.03 feet, to an iron
622 rod; thence S13°21'03"W, a distance of 118.12 feet, to
623 an iron rod; thence S34°02'56"W, a distance of
624 1,348.21 feet, to an iron rod; thence S45°13'06"W, a
625 distance of 1,297.85 feet, to an iron rod; thence
626 S63°01'28"W, a distance of 72.85 feet, to an iron rod;
627 thence S35°48'10"E, a distance of 45.45 feet, to an
628 iron rod; thence S36°43'44"E, a distance of 81.14
629 feet, to an iron rod; thence S43°22'10"E, a distance
630 of 2,416.90 feet, to an iron rod; thence S54°43'27"E,
631 a distance of 118.25 feet, to an iron rod; thence
632 S76°01'08"E, a distance of 114.63 feet, to an iron
633 rod; thence S89°15'48"E, a distance of 397.01 feet, to
634 an iron rod; thence S67°53'23"E, a distance of 92.26
635 feet, to a iron rod; thence S27°40'02"E, a distance of

636 156.14 feet, to an iron rod; thence S64°16'29"E, a
637 distance of 37.61 feet, to an iron rod; thence
638 S89°15'14"E, a distance of 352.87 feet, to an iron
639 rod; thence S85°51''17"E, a distance of 307.67 feet,
640 to an iron rod; thence N86°54'20"E, a distance of
641 151.74 feet, to an iron rod; thence N76°30'06"E, a
642 distance of 261.56 feet, to an iron rod; thence
643 N87°06'14"E, a distance of 251.77 feet, to an iron
644 rod; thence N88°53'08"E, a distance of 158.24 feet, to
645 an iron rod; thence N85°02'05"E, a distance of 159.48
646 feet, to an iron rod; thence S87°50'11"E, a distance
647 of 174.88 feet, to an iron rod; thence S83°44'02"E, a
648 distance of 176.43 feet, to an iron rod; thence
649 S86°24'25"E, a distance of 258.17 feet, to an iron
650 rod; thence S81°07'19"E, a distance of 151.23 feet, to
651 an iron rod; thence N73°40'28"E, a distance of 247.99
652 feet, to an iron rod; thence N84°35'54"E, a distance
653 of 81.80 feet, to an iron rod; thence S79°39'38"E, a
654 distance of 98.82 feet, to an iron rod; thence
655 S67°29'44"E, a distance of 168.94 feet, to an iron
656 rod; thence S56°25'12"E, a distance of 206.81 feet, to
657 an iron rod; thence S70°16'15"E, a distance of 241.47
658 feet, to an iron rod; thence S71°16'02"E, a distance
659 of 271.51 feet, to an iron rod; thence S76°57'22"E, a
660 distance of 144.38 feet, to an iron rod; thence
661 S83°43'51"E, a distance of 362.54 feet, to an iron
662 rod; thence S82°09'02"E, a distance of 428.93 feet, to
663 an iron rod; thence S76°54'20"E, a distance of 74.04

664 feet, to an iron rod; thence S69°05'45"E, a distance
665 of 73.41 feet, to an iron rod; thence S54°06'44"E, a
666 distance of 97.18 feet, to an iron rod; thence
667 S37°26'00"E, a distance of 287.82 feet, to an iron
668 rod; thence S54°56'39"E, a distance of 72.06 feet, to
669 an iron rod; thence S73°11'26"E, a distance of 65.07
670 feet, to an iron rod; thence S79°38'52"E, a distance
671 of 374.93 feet, to an iron rod; thence S74°51'17"E, a
672 distance of 156.56 feet, to an iron rod; thence
673 S60°41'38"E, a distance of 171.07 feet, to an iron
674 rod; thence S75°22'42"E, a distance of 109.56 feet, to
675 an iron rod; thence S52°26'28"E, a distance of 84.10
676 feet, to an iron rod; thence S41°24'22"E, a distance
677 of 210.47 feet, to an iron rod; thence S38°52'45"E, a
678 distance of 174.40 feet, to an iron rod; thence
679 S33°54'38"E, a distance of 212.94 feet, to an iron
680 rod; thence S37°40'21"E, a distance of 119.90 feet, to
681 an iron rod; thence S63°38'27"E, a distance of 397.23
682 feet, to an iron rod; thence S54°42'23"E, a distance
683 of 137.02 feet, to an iron rod; thence S66°28'00"E, a
684 distance of 72.13 feet, to an iron rod; thence
685 S74°03'50"E, a distance of 526.89 feet, to an iron
686 rod; thence S65°07'14"E, a distance of 169.50 feet, to
687 an iron rod; thence S56°11'35"E, a distance of 261.82
688 feet, to an iron rod; thence S62°05'45"E, a distance
689 of 141.63 feet, to an iron rod; thence S82°38'30"E, a
690 distance of 227.95 feet, to an iron rod; thence
691 S64°34'06"E, a distance of 134.09 feet, to an iron

692 rod; thence S44°50'15"E, a distance of 117.21 feet, to
693 an iron rod; thence S36°18'31"E, a distance of 242.72
694 feet, to an iron rod; thence S49°43'39"E, a distance
695 of 178.02 feet, to an iron rod; thence S45°48'41"E, a
696 distance of 179.26 feet, to an iron rod; thence
697 S49°49'20"E, a distance of 214.19 feet, to an iron
698 rod; thence S41°48'48"E, a distance of 222.20 feet, to
699 an iron rod; thence S48°35'30"E, a distance of 200.25
700 feet, to an iron rod; thence S61°25'40"E, a distance
701 of 428.09 feet, to an iron rod; thence S63°06'44"E, a
702 distance of 644.39 feet, to an iron rod; thence
703 S62°46'04"E, a distance of 678.14 feet, to an iron
704 rod; thence S62°43'50"E, a distance of 652.63 feet, to
705 an iron rod; thence S53°36'34"E, a distance of 218.94
706 feet, to an iron rod; thence S64°10'09"E, a distance
707 of 726.09 feet, to an iron rod; thence S64°07'34"E, a
708 distance of 634.55 feet, to an iron rod; thence
709 S62°56'15"E, a distance of 752.40 feet, to an iron
710 rod; thence S65°29'06"E, a distance of 118.42 feet, to
711 an iron rod; thence S59°29'15"E, a distance of 116.71
712 feet, to an iron rod; thence S41°56'01"E, a distance
713 of 88.47 feet, to an iron rod; thence S39°21'46"E, a
714 distance of 287.92 feet, to an iron rod; thence
715 S39°13'55"E, a distance of 321.23 feet, to an iron
716 rod; thence S39°37'39"E, a distance of 318.13 feet, to
717 an iron rod; thence S51°26'09"E, a distance of 73.03
718 feet, to an iron rod; thence S75°43'21"E, a distance
719 of 132.64 feet, to an iron rod; thence S81°00'26"E, a

720 distance of 449.69 feet, to an iron rod; thence
721 S61°25'12"E, a distance of 181.24 feet, to an iron
722 rod; thence S76°11'38"E, a distance of 79.34 feet, to
723 an iron rod; thence N83°23'17"E, a distance of 57.02
724 feet, to an iron rod; thence N57°28'51"E, a distance
725 of 65.75 feet, to an iron rod; thence N48°12'37"E, a
726 distance of 218.65 feet, to an iron rod; thence
727 S71°43'37"E, a distance of 109.38 feet, to an iron
728 rod; thence S55°14'02"E, a distance of 91.32 feet, to
729 an iron rod; thence S38°01'21"E, a distance of 56.46
730 feet, to an iron rod; thence S03°46'11"E, a distance
731 of 62.49 feet, to an iron rod; thence S00°46'56"W, a
732 distance of 262.22 feet, to an iron rod; thence
733 S13°01'47"E, a distance of 243.27 feet, to an iron
734 rod; thence S16°57'33"E, a distance of 140.72 feet, to
735 an iron rod on the South line of the Southeast one-
736 quarter of Section 33, Township 26 South, Range 36
737 East; thence N88°28'46"E along the South line of said
738 Section 33, 1212.95 feet to Southwest Corner of
739 Section 34, Township 26 South, Range 36 East; thence
740 N89°06'05"E along the South line of said Section 34,
741 4798.14 feet to a point on the West Right-of-Way line
742 of Interstate 95 (Circuit Court Book 53, Pages 359-
743 363, Public Records of Brevard County Florida), thence
744 N00°03'59"W, along said Right-of-Way 2480.30 feet;
745 thence N00°28'45"W, 328.41 feet, to a point on the
746 South Boundary line of Nail Farms (Deed Book 63, Page
747 155, Public Records of Brevard County, Florida);

748 thence S78°21'10"W along said South Line, 303.63 feet;
749 thence N00°38'50"W, 554.40 feet; thence N89°21'11"E,
750 290.53 feet, to a point on the said West Right-of-Way
751 line of Interstate 95 and a non-tangent intersection
752 with a curve to the left; Thence along said Right-of-
753 Way line and the arc of said curve, (said curve being
754 concave to the West and having a radius of 22800.32
755 feet; a radial bearing of S87°51'38"W, a delta angle
756 of 12°22'37", a chord distance of 4915.73 feet; and a
757 chord bearing of N08°19'41"W) a distance of 4925.30
758 feet to the end of said curve; thence N14°30'59"W,
759 4457.16 feet; thence S75°29'01"W, 200.00 feet; thence
760 N14°30'59"W, 950.00 feet; thence N75°29'01"E, 200.00
761 feet; thence N14°30'59"W, 4932.58 feet to the
762 Southeast corner of the Plat of Viera Central PUD,
763 Tract 12, Unit 1, Parcels 1-3, Phase 3 (Plat Book 44
764 Pages 52-54, Public Records of Brevard County,
765 Florida); thence S61°38'33"W along the South line of
766 said Plat, 86.02 feet to a non-tangent intersection
767 with a curve to the left; Thence along the arc of said
768 curve, (said curve being concave to the West and
769 having a radius of 750.00 feet; a radial bearing of
770 S61°38'33"W, a delta angle of 33°08'08", a chord
771 distance of 427.72 feet; and a chord bearing of
772 N44°55'31"W) a distance of 433.74 feet to the end of
773 said curve and a point on the East line of a parcel of
774 land described in Official Records Book 4568, Pages
775 518-522, Public Records of Brevard County, Florida;

776 thence S14°30'59"E along the East line of said parcel,
777 253.23 feet; thence S75°13'39"W, 717.10 feet; thence
778 N14°17'52"W, 287.62 feet to the beginning of a curve
779 to the right; Thence along the arc of said curve,
780 (said curve being curved concave to the East and
781 having a radius of 50.00 feet; a delta angle of
782 39°18'18", a chord distance of 33.63 feet; and a chord
783 bearing of N05°21'17"E) a distance of 34.30 feet to
784 the beginning of a reverse curve to the left; Thence
785 along the arc of said curve, (said curve being curved
786 concave to the West and having a radius of 195.00
787 feet; a delta angle of 39°31'10", a chord distance of
788 131.85 feet, and a chord bearing of N05°14'51"E) a
789 distance of 134.50 feet to the Southeast corner of the
790 Plat of Viera Central PUD, Tract 12, Unit 1, Parcels
791 1-3, Phase 5 (Plat Book 45, Page 22, Public Records of
792 Brevard County, Florida) and a non-tangent
793 intersection with a curve to the left; Thence along
794 the South line of said Plat and the arc of said curve,
795 (said curve being concave to the Southeast and having
796 a radius of 750.00 feet; a radial bearing of
797 S25°55'03"E, a delta angle of 47°24'20", a chord
798 distance of 602.99 feet; and a chord bearing of
799 S40°22'47"W) a distance of 620.54 feet to the end of
800 said curve; thence S76°30'35"W, 326.62 feet to the
801 Southwest corner of said plat and a point on the East
802 line of the Plat of Trafford West (Plat Book 51, Page
803 54, Public Records of Brevard County, Florida) and a

804 non-tangent intersection with a curve to the right;
805 Thence along the East line of said plat and arc of
806 said curve, (said curve being concave to the West and
807 having a radius of 3025.00 feet; a delta angle of
808 01°51'26", a chord distance of 98.06 feet; and a chord
809 bearing of S12°33'47"E) a distance of 98.06 feet to a
810 non-tangent intersection with the Southerly boundary
811 of said plat; thence along said Southerly boundary the
812 following 5 courses and distances:
813 1) S89°08'33"W, 217.69 feet;
814 2) S35°10'57"W, 136.27 feet;
815 3) S00°51'27"E, 242.81 feet;
816 4) S89°08'33"W, 725.22 feet;
817 5) N00°51'27"W, 898.20 feet to the Northwest corner
818 of Tract A of said Trafford West, and a point on the
819 South Right-of-Way line of Trafford Drive; thence
820 S89°08'33"W along said Right-of-Way line of Trafford
821 Drive, 50.00 feet to the Southwest corner of Trafford
822 Drive; thence N00°51'27"W along the West line of
823 Trafford Drive, 100.00 feet to the Northwest corner of
824 Trafford Drive; thence N89°08'33"E along the North
825 Right-of-Way line of Trafford Drive, 70.79 feet to the
826 Southwest corner of that certain parcel of land
827 described in Official Records Book 4939, Page 1184;
828 thence N00°51'24"W, along the West line of said
829 parcel, 401.50 feet to the Northwest corner of said
830 parcel; thence N89°08'33"E, along the North line of
831 said Parcel, 590.76 feet to the Northeast corner of

832 said parcel and a point on the West Right-of-Way line
833 of Lake Andrew Drive (150' Right-of Way, Tract G-1,
834 Plat of Viera Central PUD, Tract 12, Unit 1, Parcels
835 1-3, Phase 4, Plat Book 44, Pages 91-92); thence
836 N31°59'26"W along said West Right-of-Way, 1061.84 feet
837 to the beginning of a curve to the right; Thence along
838 the arc of said curve, (said curve being concave to
839 the Northeast and having a radius of 7025.00 feet; a
840 delta angle of 10°02'20", a chord distance of 242.21
841 feet, and a chord bearing of N26°58'16"W) a distance
842 of 363.57 feet to the end of said curve; thence
843 S69°25'46"W, 700.00 feet; thence N20°34'14"W, 100.00
844 feet; thence S69°25'46"W, 208.37 feet; thence
845 S89°08'33"W, 566.39 feet; thence S44°08'33"W, 1022.48
846 feet; thence S89°08'33"W, 150.00 feet; thence
847 N00°51'27"W, 318.85 feet; thence S89°08'33"W, 40.00
848 feet; thence N00°51'27"W, 40.00 feet; thence
849 S89°08'33"W, 1293.68 feet; thence N00°51'27"W, 1059.47
850 feet; thence S89°08'33"W, 150.00 feet; thence
851 S00°51'27"E, 438.26 feet; thence S89°08'33"W, 1552.65
852 feet; thence N00°35'21"E, 849.03 feet to a point on
853 the South Right-of Way line of Wickham Road (Plat of
854 Wickham Road Extension, Plat Book 50, Page 10, Public
855 Records of Brevard County, Florida); thence
856 S89°08'33"W along the South line of said plat, 2225.96
857 feet to the Southwest corner of said Plat; thence
858 N00°51'27"W along the West line of said plat, 150.00
859 feet to the Northwest corner of said plat of Wickham

860 Road Extension, and a point on the South line of the
861 Plat of Heritage Isle - Phase 1 (Plat Book 50, Pages
862 61-66, Public Records of Brevard County, Florida);
863 thence S89°08'33"W along the South line of said plat
864 of Heritage Isle - Phase 1, 1772.10 feet to a point on
865 the West line of the Viera Development of Regional
866 Impact (DRI) (as described in the BREVARD COUNTY
867 RESOLUTION 01-391, Public Records of Brevard County,
868 Florida) and the West line of Section 8, Township 26
869 South, Range 36 East; thence N00°35'22"W along the
870 West line of said Viera DRI and Section 8, 5227.90
871 feet to the Southwest Corner of Section 5, Township 26
872 South, Range 36 East; thence N00°33'35"W along the
873 West line of said Section 5, 5290.28 feet to the
874 Southwest corner of Section 32, Township 25 South,
875 Range 36 East thence N00°31'18"E along the West line
876 of said Section 32, 4667.92 feet; thence N66°33'30"E,
877 1990.78 feet to the beginning of a curve to the left;
878 Thence along the arc of said curve, (said curve being
879 curved concave to the Northwest and having a radius of
880 2988.25 feet; a delta angle of 28°53'46", a chord
881 distance of 1491.15 feet; , and a chord bearing of
882 N52°06'37"E) a distance of 1507.07 feet to the end of
883 said curve and an intersection with a non-tangent
884 line; thence N26°25'15"W, along said non-tangent line,
885 1508.04 feet; thence N00°33'05"W, 470.00 feet; thence
886 N45°39'16"W, 1200.05 feet; thence S89°26'55"W, 150.00
887 feet; thence N45°51'06"W, 274.34 feet; thence

888 N00°33'05"W, 1456.41 feet to a point on the North line
889 of Section 29, Township 25 South, Range 36 East;
890 thence S89°20'44"W along the North line of said
891 Section 29, 1153.36 feet to the Northeast corner of
892 Section 30, Township 25 South, Range 36 East; Thence
893 S89°23'19"W along the North line of said Section 30,
894 2789.62 feet to the POINT OF BEGINNING.
895 Subject to Easements, Restrictions, Reservations and
896 Rights-of-way of record.
897 LESS AND EXCEPT those certain parcels of land
898 described in Official Records Book 2951, Page 1574;
899 Official Records Book 3412, Page 4823; Official
900 Records Book 4203, Page 2463; Official Records Book
901 5262, Page 3838; AND LESS AND EXCEPT that certain
902 parcel of land described in Civil Action Documents 96-
903 16731-CA-F; all being recorded in the Public Records
904 of Brevard County, Florida.
905 TOGETHER WITH that certain parcel described in
906 Official Records Book 5262, Page 3836, Public Records
907 of Brevard County, Florida
908 Section 5. Board of supervisors; members and meetings;
909 organization; powers; duties; terms of office; related election
910 requirements.--
911 (1) The board of the district shall exercise the powers
912 granted to the district pursuant to this act. The board shall
913 consist of five members, each of whom shall hold office for a
914 term of 4 years, as provided in this section, except as
915 otherwise provided herein for initial board members, and until a

916 successor is chosen and qualified. The members of the board must
917 be residents of the state and citizens of the United States.
918 (2)(a) Within 90 days following the effective date of the
919 law establishing the district, there shall be held a meeting of
920 the landowners of the district for the purpose of electing five
921 supervisors for the district. Notice of the landowners' meeting
922 shall be published once a week for 2 consecutive weeks in a
923 newspaper which is in general circulation in the area of the
924 district, the last day of such publication to be not fewer than
925 14 days or more than 28 days before the date of the election.
926 The landowners, when assembled at such meeting, shall organize
927 by electing a chair, who shall conduct the meeting. The chair
928 may be any person present at the meeting. If the chair is a
929 landowner or proxy holder of a landowner, he or she may nominate
930 candidates and make and second motions. The landowners present
931 at the meeting, in person or by proxy, shall constitute a
932 quorum. At any landowners' meeting, 50 percent of the district
933 acreage shall not be required to constitute a quorum, and each
934 governing board member elected by landowners shall be elected by
935 a majority of the acreage represented either by owner or proxy
936 present and voting at said meeting.
937 (b) At such meeting, each landowner shall be entitled to
938 cast one vote per acre of land owned by him or her and located
939 within the district for each person to be elected. A landowner
940 may vote in person or by proxy in writing. Each proxy must be
941 signed by one of the legal owners of the property for which the
942 vote is cast and must contain the typed or printed name of the
943 individual who signed the proxy; the street address, legal

944 description of the property, or tax parcel identification
945 number; and the number of authorized votes. If the proxy
946 authorizes more than one vote, each property must be listed and
947 the number of acres of each property must be included. The
948 signature on a proxy need not be notarized. A fraction of an
949 acre shall be treated as 1 acre, entitling the landowner to one
950 vote with respect thereto. The two candidates receiving the
951 highest number of votes shall be elected for a term expiring
952 November 18, 2008, and the three candidates receiving the next
953 largest number of votes shall be elected for a term expiring
954 November 7, 2006, with the term of office for each successful
955 candidate commencing upon election. The members of the first
956 board elected by landowners shall serve their respective terms;
957 however, the next election of board members shall be held on the
958 first Tuesday after the first Monday in November 2006.
959 Thereafter, there shall be an election by landowners for the
960 district every 2 years on the first Tuesday after the first
961 Monday in November, which shall be noticed pursuant to paragraph
962 (a). The second and subsequent landowners' election shall be
963 announced at a public meeting of the board at least 90 days
964 prior to the date of the landowners' meeting and shall also be
965 noticed pursuant to paragraph (a). Instructions on how all
966 landowners may participate in the election, along with sample
967 proxies, shall be provided during the board meeting that
968 announces the landowners' meeting. Each supervisor elected in or
969 after November 2006 shall serve a 4-year term, unless the
970 supervisor is elected to complete a term created by a vacancy in
971 the office.

972 (3)(a)1. The board may not exercise the ad valorem taxing
973 power or the general obligation bond power authorized by this
974 act until such time as all members of the board are qualified
975 electors who are elected by qualified electors of the district.
976 2.a. Regardless of whether the district has proposed to
977 levy ad valorem taxes or issue general obligation bonds, board
978 members shall begin being elected by qualified electors of the
979 district as the district becomes populated with qualified
980 electors. The transition shall occur such that the composition
981 of the board, after the first general election following a
982 trigger as set forth below, shall be as follows:
983 (I) Five years following the creation of the district, one
984 governing board member shall be a person who was elected by the
985 qualified electors and four governing board members shall be
986 persons who were elected by the landowners.
987 (II) Ten years following the creation of the district, two
988 governing board members shall be persons who were elected by the
989 qualified electors and three governing board members shall be
990 persons elected by the landowners.
991 (III) When the district is populated by 60 percent of the
992 projected total qualified electors, three governing board
993 members shall be persons who were elected by the qualified
994 electors and two governing members shall be persons who were
995 elected by the landowners.
996 (IV) Three years following the trigger in sub-sub-
997 subparagraph (III), four governing board members shall be
998 persons who were elected by the qualified electors and one

999 governing board member shall be a person who was elected by the
1000 landowners.
1001 (V) Five years following the trigger in subparagraph
1002 (III), all five governing board members shall be persons who
1003 were elected by the qualified electors.
1004
1005 For purposes of this subparagraph, "projected total qualified
1006 electors" shall mean and refer to the product of: (the total
1007 number of single-family and multi-family units approved within
1008 the district by a development order issued by Brevard County and
1009 in effect in the tenth year following creation of the district)
1010 x (the average number of persons residing within a household
1011 located within Brevard County based on the 2010 U.S. Census) x
1012 (the percentage of Brevard County's general population
1013 registered to vote as reported by the Brevard County Supervisor
1014 of Elections as of the general election occurring November
1015 2014).
1016 Nothing in this sub-subparagraph is intended to require an
1017 election prior to the expiration of an existing board member's
1018 term.
1019 b. On or before June 1, 2016, the board shall determine
1020 the number of projected qualified electors in the district as of
1021 the immediately preceding April 15. Additionally, on or before
1022 June 1, 2016, and each year thereafter until the trigger in
1023 subparagraph (III) is met, the board shall determine the actual
1024 number of qualified electors in the district as of the
1025 immediately preceding April 15. The board shall use and rely
1026 upon the official records maintained by the supervisor of

1027 elections and property appraiser or tax collector in each county
1028 in making this determination. Such determination shall be made
1029 at a properly noticed meeting of the board and shall become a
1030 part of the official minutes of the district.
1031 c. All governing board members elected by qualified
1032 electors shall be elected at large at an election occurring as
1033 provided in subsection (2) and this subsection.
1034 d. Once the district qualifies to have any of its board
1035 members elected by the qualified electors of the district, the
1036 initial and all subsequent elections by the qualified electors
1037 of the district shall be held at the general election in
1038 November, except as provided in sub-subparagraph e. The board
1039 shall adopt a resolution if necessary to this requirement. The
1040 transition process described herein is intended to be in lieu of
1041 the process set forth in section 189.4051, Florida Statutes.
1042 e. If, during the term of office, a vacancy occurs, the
1043 remainder of the unexpired term shall be filled as follows:
1044 (I) If the vacancy arises with respect to a supervisor
1045 that was elected by landowners, the vacancy shall be filled by a
1046 supervisor elected by the landowners; and
1047 (II) If the vacancy arises with respect to a supervisor
1048 that was elected by the qualified electors of the district, the
1049 vacancy shall be filled by a supervisor elected by the qualified
1050 electors of the district, in which case the district shall be
1051 responsible for paying the expenses associated with any special
1052 election that is required to be conducted.
1053 (b) Elections of board members by qualified electors held
1054 pursuant to this subsection shall be nonpartisan and shall be

1055 conducted in the manner prescribed by law for holding general
1056 elections. Board members shall assume the office on the second
1057 Tuesday following their election.
1058 (c) Candidates seeking election to office by qualified
1059 electors under this subsection shall conduct their campaigns in
1060 accordance with the provisions of chapter 106, Florida Statutes,
1061 and shall file qualifying papers and qualify for individual
1062 seats in accordance with section 99.061, Florida Statutes.
1063 Candidates shall pay a qualifying fee, which shall consist of a
1064 filing fee and an election assessment or, as an alternative,
1065 shall file a petition signed by not less than 1 percent of the
1066 registered voters of the district, and take the oath required in
1067 section 99.021, Florida Statutes, with the supervisor of
1068 elections in the county affected by such candidacy. The amount
1069 of the filing fee is 3 percent of $4,800; however, if the
1070 electors have provided for compensation, the amount of the
1071 filing fee is 3 percent of the maximum annual compensation so
1072 provided. The amount of the election assessment is 1 percent of
1073 $4,800; however, if the electors have provided for compensation,
1074 the amount of the election assessment is 1 percent of the
1075 maximum annual compensation so provided. The filing fee and
1076 election assessment shall be distributed as provided in section
1077 105.031(3), Florida Statutes.
1078 (d) The supervisors of elections shall appoint the
1079 inspectors and clerks of elections, prepare and furnish the
1080 ballots, designate polling places, and canvass the returns of
1081 the election of board members by qualified electors. The county

1082 canvassing boards shall declare and certify the results of the
1083 election.
1084 (4) Members of the board, regardless of how elected, shall
1085 be public officers, shall be known as supervisors, and, upon
1086 entering into office, shall take and subscribe to the oath of
1087 office as prescribed by section 876.05, Florida Statutes.
1088 Members of the board shall be subject to ethics and conflict of
1089 interest laws of the state that apply to all local public
1090 officers. They shall hold office for the terms for which they
1091 were elected or appointed and until their successors are chosen
1092 and qualified.
1093 (5) Any elected board member may be removed by the
1094 Governor for malfeasance, misfeasance, dishonesty, incompetency,
1095 or failure to perform the duties imposed upon him or her by this
1096 act, and any vacancies that may occur in such office for such
1097 reasons shall be filled by the Governor as soon as practicable.
1098 (6) A majority of the members of the board constitutes a
1099 quorum for the purposes of conducting its business and
1100 exercising its powers and for all other purposes. Action taken
1101 by the district shall be upon a vote of a majority of the
1102 members present unless general law or a rule of the district
1103 requires a greater number.
1104 (7) As soon as practicable after each election or
1105 appointment, the board shall organize by electing one of its
1106 members as chair and by electing a secretary, who need not be a
1107 member of the board, and such other officers as the board may
1108 deem necessary.

1109 (8) The board shall keep a permanent record book entitled
1110 "Record of Proceedings of Viera Stewardship District," in which
1111 shall be recorded minutes of all meetings, resolutions,
1112 proceedings, certificates, bonds given by all employees, and any
1113 and all corporate acts. The record book and all other district
1114 records shall at reasonable times be opened to inspection in the
1115 same manner as state, county, and municipal records pursuant to
1116 chapter 119, Florida Statutes. The record book shall be kept at
1117 the office or other regular place of business maintained by the
1118 board in a designated location in Brevard County.
1119 (9) Each supervisor shall be entitled to receive for his
1120 or her services an amount not to exceed $200 per board meeting,
1121 not to exceed $4,800 per year per supervisor, or an amount
1122 established by the electors at a referendum. In addition, each
1123 supervisor shall receive travel and per diem expenses as set
1124 forth in section 112.061, Florida Statutes.
1125 (10) All meetings of the board shall be open to the public
1126 and governed by the provisions of chapter 286, Florida Statutes.
1127 Section 6. Board of supervisors; general duties.--
1128 (1) DISTRICT MANAGER AND EMPLOYEES.--The board shall
1129 employ and fix the compensation of a district manager, who shall
1130 have charge and supervision of the works of the district and
1131 shall be responsible for preserving and maintaining any
1132 improvement or facility constructed or erected pursuant to the
1133 provisions of this act, for maintaining and operating the
1134 equipment owned by the district, and for performing such other
1135 duties as may be prescribed by the board. It shall not be a
1136 conflict of interest under chapter 112, Florida Statutes, for a

1137 board member, the district manager, or another employee of the
1138 district to be a stockholder, officer, or employee of a
1139 landowner. The district manager may hire or otherwise employ and
1140 terminate the employment of such other persons, including,
1141 without limitation, professional, supervisory, and clerical
1142 employees, as may be necessary and authorized by the board. The
1143 compensation and other conditions of employment of the officers
1144 and employees of the district shall be as provided by the board.
1145 (2) TREASURER.--The board shall designate a person who is
1146 a resident of the state as treasurer of the district, who shall
1147 have charge of the funds of the district. Such funds shall be
1148 disbursed only upon the order of or pursuant to a resolution of
1149 the board by warrant or check countersigned by the treasurer and
1150 by such other person as may be authorized by the board. The
1151 board may give the treasurer such other or additional powers and
1152 duties as the board may deem appropriate and may fix his or her
1153 compensation. The board may require the treasurer to give a bond
1154 in such amount, on such terms, and with such sureties as may be
1155 deemed satisfactory to the board to secure the performance by
1156 the treasurer of his or her powers and duties. The financial
1157 records of the board shall be audited by an independent
1158 certified public accountant at least once a year.
1159 (3) PUBLIC DEPOSITORY.--The board is authorized to select
1160 as a depository for its funds any qualified public depository as
1161 defined in section 280.02, Florida Statutes, which meets all the
1162 requirements of chapter 280, Florida Statutes, and has been
1163 designated by the treasurer as a qualified public depository
1164 upon such terms and conditions as to the payment of interest by

1165 such depository upon the funds so deposited as the board may
1166 deem just and reasonable.
1167 (4) BUDGET; REPORTS AND REVIEWS.--
1168 (a) The district shall provide financial reports in such
1169 form and such manner as prescribed pursuant to this act and
1170 chapter 218, Florida Statutes, as amended from time to time.
1171 (b) On or before July 15 of each year, the district
1172 manager shall prepare a proposed budget for the ensuing fiscal
1173 year to be submitted to the board for board approval. The
1174 proposed budget shall include at the direction of the board an
1175 estimate of all necessary expenditures of the district for the
1176 ensuing fiscal year and an estimate of income to the district
1177 from the taxes and assessments provided in this act. The board
1178 shall consider the proposed budget item by item and may either
1179 approve the budget as proposed by the district manager or modify
1180 the same in part or in whole. The board shall indicate its
1181 approval of the budget by resolution, which resolution shall
1182 provide for a hearing on the budget as approved. Notice of the
1183 hearing on the budget shall be published in a newspaper of
1184 general circulation in the area of the district once a week for
1185 2 consecutive weeks, except that the first publication shall be
1186 not fewer than 15 days prior to the date of the hearing. The
1187 notice shall further contain a designation of the day, time, and
1188 place of the public hearing. At the time and place designated in
1189 the notice, the board shall hear all objections to the budget as
1190 proposed and may make such changes as the board deems necessary.
1191 At the conclusion of the budget hearing, the board shall, by

1192 resolution, adopt the budget as finally approved by the board.
1193 The budget shall be adopted prior to October 1 of each year.
1194 (c) At least 60 days prior to adoption, the Board of
1195 Supervisors of the district shall submit to the Brevard County
1196 Board of County Commissioners, for purposes of disclosure and
1197 information only, the proposed annual budget for the ensuing
1198 fiscal year, and the Board of County Commissioners may submit
1199 written comments to the Board of Supervisors solely for the
1200 assistance and information of the Board of Supervisors of the
1201 district in adopting its annual district budget.
1202 (d) The Board of Supervisors of the district shall submit
1203 annually, to the Board of County Commissioners of Brevard
1204 County, its district public facilities report under section
1205 189.415(2), Florida Statutes, or the most recent Development of
1206 Regional Impact report required by section 380.06(15) and (18),
1207 Florida Statutes, to the extent the report provides the
1208 information required by section 189.415(2), Florida Statutes,
1209 which reports the board of county commissioners shall use and
1210 rely upon in the preparation or revision of its comprehensive
1211 plan, specifically under section 189.415(6), Florida Statutes.
1212 (5) DISCLOSURE OF PUBLIC FINANCING.--The district shall
1213 take affirmative steps to provide for the full disclosure of
1214 information relating to the public financing and maintenance of
1215 improvements to real property undertaken by the district. Such
1216 information shall be made available to all existing residents
1217 and all prospective residents of the district. The district
1218 shall furnish each developer of a residential development within
1219 the district with sufficient copies of that information to

1220 provide each prospective initial purchaser of property in that
1221 development with a copy; and any developer of a residential
1222 development within the district, when required by law to provide
1223 a public offering statement, shall include a copy of such
1224 information relating to the public financing and maintenance of
1225 improvements in the public offering statement. The Division of
1226 Florida Land Sales, Condominiums, and Mobile Homes of the
1227 Department of Business and Professional Regulation shall ensure
1228 that disclosures made by developers pursuant to chapter 498,
1229 Florida Statutes, meet the requirements of section 190.009(1),
1230 Florida Statutes.
1231 (6) GENERAL POWERS.--The district shall have, and the
1232 board may exercise, the following general powers, together with
1233 all other general powers authorized under chapters 189 and 190:
1234 (a) To sue and be sued in the name of the district; to
1235 adopt and use a seal and authorize the use of a facsimile
1236 thereof; to acquire, by purchase, gift, devise, or otherwise,
1237 and to own and dispose of, real and personal property, or any
1238 estate therein; and to make and execute contracts and other
1239 instruments necessary or convenient to the exercise of its
1240 powers.
1241 (b) To apply for coverage of its employees under the
1242 Florida Retirement System in the same manner as if such
1243 employees were state employees, subject to necessary action by
1244 the district to pay employer contributions into the Florida
1245 Retirement System Trust Fund.
1246 (c) To contract for the services of consultants to perform
1247 planning, engineering, legal, or other appropriate services of a

1248 professional nature. Such contracts shall be subject to public
1249 bidding or competitive negotiation requirements as set forth in
1250 general law applicable to independent special districts.
1251 (d) To borrow money and accept gifts; to apply for and use
1252 grants or loans of money or other property from the United
1253 States, the state, a unit of local government, or any person for
1254 any district purposes and enter into agreements required in
1255 connection therewith; and to hold, use, and dispose of such
1256 moneys or property for any district purposes in accordance with
1257 the terms of the gift, grant, loan, or agreement relating
1258 thereto.
1259 (e) To adopt and enforce rules and orders pursuant to the
1260 provisions of chapter 120, Florida Statutes, prescribing powers,
1261 duties, and functions of the officers of the district; the
1262 conduct of the business of the district; the maintenance of
1263 records; and the form of certificates evidencing tax liens and
1264 all other documents and records of the district. The board may
1265 also adopt and enforce administrative rules with respect to any
1266 of the projects of the district and define the area to be
1267 included therein. The board may also adopt resolutions which may
1268 be necessary for the conduct of district business.
1269 (f) To maintain an office at such place or places as the
1270 board of supervisors designates in Brevard County, and within
1271 the district when facilities are available.
1272 (g) To hold, control, and acquire by donation, purchase,
1273 or condemnation, or dispose of, any public easements,
1274 dedications to public use, platted reservations for public
1275 purposes, or any reservations for those purposes authorized by

1276 this act and to make use of such easements, dedications, or
1277 reservations for the purposes authorized by this act.
1278 (h) To lease as lessor or lessee to or from any person,
1279 firm, corporation, association, or body, public or private, any
1280 projects of the type that the district is authorized to
1281 undertake and facilities or property of any nature for the use
1282 of the district to carry out the purposes authorized by this
1283 act.
1284 (i) To borrow money and issue bonds, certificates,
1285 warrants, notes, or other evidence of indebtedness as
1286 hereinafter provided; to levy such taxes and assessments as may
1287 be authorized; and to charge, collect, and enforce fees and
1288 other user charges.
1289 (j) To raise, by user charges or fees authorized by
1290 resolution of the board, amounts of money which are necessary
1291 for the conduct of district activities and services and the
1292 maintenance of district facilities and to enforce their receipt
1293 and collection in the manner prescribed by resolution not
1294 inconsistent with law.
1295 (k) To exercise within the district, or beyond the
1296 district with prior approval by vote of a resolution of the
1297 governing body of Brevard County if the taking will occur in an
1298 unincorporated area in that county, the right and power of
1299 eminent domain, pursuant to the provisions of chapters 73 and
1300 74, Florida Statutes, over any property within the state, except
1301 municipal, county, state, and federal property, for the uses and
1302 purpose of the district relating solely to water, sewer,
1303 district roads, and water management and control, specifically

1304 including, without limitation, the power for the taking of
1305 easements for the drainage of the land of one person over and
1306 through the land of another.
1307 (l) To cooperate with, or contract with, other
1308 governmental agencies as may be necessary, convenient,
1309 incidental, or proper in connection with any of the powers,
1310 duties, or purposes authorized by this act.
1311 (m) To assess and to impose upon lands in the district ad
1312 valorem taxes as provided by this act.
1313 (n) If and when authorized by general law to determine,
1314 order, levy, impose, collect, and enforce maintenance taxes.
1315 (o) To determine, order, levy, impose, collect, and
1316 enforce assessments pursuant to this act and chapter 170,
1317 Florida Statutes, as amended from time to time, pursuant to
1318 authority granted in section 197.3631, Florida Statutes, or
1319 pursuant to other provisions of general law now or hereinafter
1320 enacted which provide or authorize a supplemental means to
1321 order, levy, impose, or collect special assessments. Such
1322 special assessments, in the discretion of the district, may be
1323 collected and enforced pursuant to the provisions of sections
1324 197.3632 and 197.3635, Florida Statutes, and chapters 170 and
1325 173, Florida Statutes, as they may be amended from time to time,
1326 or as provided by this act, or by other means authorized by
1327 general law now or hereinafter enacted.
1328 (p) To exercise such special powers and other express
1329 powers as may be authorized and granted by this act in the
1330 charter of the district, including powers as provided in any
1331 interlocal agreement entered into pursuant to chapter 163,

1332 Florida Statutes, or which shall be required or permitted to be
1333 undertaken by the district pursuant to any development order or
1334 development of regional impact, including any interlocal service
1335 agreement with Brevard County for proportionate, fair-share, or
1336 pipelining capital construction funding for any certain capital
1337 facilities or systems required of the developer pursuant to any
1338 applicable development order or agreement.
1339 (q) To exercise all of the powers necessary, convenient,
1340 incidental, or proper in connection with any other powers or
1341 duties or the special purpose of the district authorized by this
1342 act.
1343
1344 The provisions of this subsection shall be construed liberally
1345 in order to carry out effectively the specialized purpose of
1346 this act.
1347 (7) SPECIAL POWERS.--The district shall have, and the
1348 board may exercise, the following special powers to implement
1349 its lawful and special purpose and to provide, pursuant to that
1350 purpose, systems, facilities, services, improvements, projects,
1351 works, and infrastructure, each of which constitutes a lawful
1352 public purpose when exercised pursuant to this charter, subject
1353 to, and not inconsistent with, the regulatory jurisdiction and
1354 permitting authority of all other applicable governmental
1355 bodies, agencies, and any special districts having authority
1356 with respect to any area included therein, and to plan,
1357 establish, acquire, construct or reconstruct, enlarge or extend,
1358 equip, operate, finance, fund, and maintain improvements,
1359 systems, facilities, services, works, projects, and

1360 infrastructure. Any or all of the following special powers are
1361 granted by this act in order to implement the special purpose of
1362 the district:
1363 (a) To provide water management and control for the lands
1364 within the district and to connect some or any of such
1365 facilities with roads and bridges and to construct, acquire and
1366 operate any dam, work, appurtenant work, impoundment, or
1367 reservoir and any connecting, intercepting or outlet mains and
1368 pipes in, along or under any street, alley, highway or other
1369 public place or ways; including, but not limited to, acquiring,
1370 operating, maintaining, repairing and improving water management
1371 and control facilities necessary for the collection, storage
1372 control, development, utilization and distribution of nonpotable
1373 waters for irrigation purposes.
1374 (b) To provide water systems, sewer systems, and
1375 wastewater management, reclamation and reuse, or any combination
1376 thereof, and to construct and operate connecting intercepting or
1377 outlet sewers and sewer mains and pipes and water mains,
1378 conduits, or pipelines in, along, and under any street, alley,
1379 highway, or other public place or ways, and to dispose of any
1380 effluent, residue, or other byproducts of such system or sewer
1381 system.
1382 1. The district may not purchase or sell a water, sewer,
1383 or wastewater reuse utility that provides service to the public
1384 for compensation, or enter into a wastewater facility
1385 privatization contract for a wastewater facility, until the
1386 governing body of the district has held a public hearing on the
1387 purchase, sale, or wastewater facility privatization contract

1388 and made a determination that the purchase, sale, or wastewater
1389 facility privatization contract is in the public interest. This
1390 limitation is not applicable to an irrigation water utility
1391 provided pursuant to paragraph (a).
1392 2. In determining if the purchase, sale, or wastewater
1393 facility privatization contract is in the public interest, the
1394 district shall consider, at a minimum, the following:
1395 a. The most recent available income and expense statement
1396 for the utility.
1397 b. The most recent available balance sheet for the
1398 utility, listing assets and liabilities and clearly showing the
1399 amount of contributions in aid of construction and the
1400 accumulated depreciation thereon.
1401 c. A statement of the existing rate base of the utility
1402 for regulatory purposes.
1403 d. The physical condition of the utility facilities being
1404 purchased or sold or subject to a wastewater facility
1405 privatization contract.
1406 e. The reasonableness of the purchase, sale, or wastewater
1407 facility privatization contract price and terms.
1408 f. The impacts of the purchase, sale, or wastewater
1409 facility privatization contract on utility customers, both
1410 positive and negative.
1411 g. Any additional investment required and the ability and
1412 willingness of the purchaser or the private firm under a
1413 wastewater facility privatization contract to make that
1414 investment, whether the purchaser is the district or the entity
1415 purchasing the utility from the district.

1416 h. In the case of a wastewater facility privatization
1417 contract, the terms and conditions on which the private firm
1418 will provide capital investment and financing or a combination
1419 thereof for contemplated capital replacements, additions,
1420 expansions, and repairs.
1421 i. The alternatives to the purchase, sale, or wastewater
1422 facility privatization contract and the potential impact on
1423 utility customers if the purchase, sale, or wastewater facility
1424 privatization contract is not made.
1425 j. The ability of the purchaser or the private firm under
1426 a wastewater facility privatization contract to provide and
1427 maintain high-quality and cost-effective utility service,
1428 whether the purchaser is the district or the entity purchasing
1429 the utility from the district.
1430 k. In the case of a wastewater facility privatization
1431 contract, the district shall give significant weight to the
1432 technical expertise and experience of the private firm in
1433 carrying out the obligations specified in the wastewater
1434 facility privatization contract.
1435 l. All moneys paid by a private firm to a district
1436 pursuant to a wastewater facility privatization contract shall
1437 be used for the purpose of reducing or offsetting property
1438 taxes, wastewater service rates, or debt reduction or making
1439 infrastructure improvements or capital asset expenditures or
1440 other public purpose, provided, however, that nothing herein
1441 shall preclude the district from using all or part of the moneys
1442 for the purpose of the district's qualification for relief from
1443 the repayment of federal grant awards associated with the

1444 wastewater system as may be required by federal law or
1445 regulation. The district shall prepare a statement showing that
1446 the purchase, sale, or wastewater facility privatization
1447 contract is in the public interest, including a summary of the
1448 purchaser's or private firm's experience in water, sewer, or
1449 wastewater reuse utility operation and a showing of financial
1450 ability to provide the service, whether the purchaser or private
1451 firm is the district or the entity purchasing the utility from
1452 the district.
1453 (c) To provide bridges or culverts that may be needed
1454 across any drain, ditch, canal, floodway, holding basin,
1455 excavation, public highway, tract, grade, fill, or cut and
1456 roadways over levees and embankments, and to construct any and
1457 all of such works and improvements across, through, or over any
1458 public right-of way, highway, grade, fill, or cut.
1459 (d) To provide public roads and related improvements equal
1460 to or exceeding the specifications of Brevard County, including,
1461 but not limited to transportation improvements necessary to
1462 comply with conditions of development approval applicable to
1463 lands within the district. This special power includes, but is
1464 not limited to, roads, parkways, interchanges, bridges,
1465 landscaping, hardscaping, irrigation, bicycle lanes, jogging
1466 paths, street lighting, traffic signals, regulatory or
1467 informational signage, road striping, underground conduit,
1468 underground cable or fiber or wire installed to pursuant an
1469 agreement with or tariff of a retail provider of services, and
1470 all other related improvements and the elements of a functioning
1471 modern road system in general or as related to the conditions of

1472 development approval for the lands within the district, together
1473 with transportation improvements and facilities that are
1474 freestanding or that may be related to any innovative strategic
1475 intermodal system of transportation pursuant to applicable
1476 federal, state, and local law and ordinance.
1477 (e) To provide buses, trolleys, transit shelters,
1478 ridesharing facilities and services, parking improvements, and
1479 related signage.
1480 (f) To provide investigation and remediation costs
1481 associated with the cleanup of actual or perceived environmental
1482 contamination within the district under the supervision or
1483 direction of a competent governmental authority unless the
1484 covered costs benefit any person who is a landowner within the
1485 district and who caused or contributed to the contamination.
1486 (g) To provide conservation areas, mitigation areas,
1487 wilderness areas, and wildlife habitat, including the
1488 maintenance of any plant or animal species, and any related
1489 interest in real or personal property, and to evaluate, acquire,
1490 enhance, manage, monitor and maintain conservation, mitigation,
1491 and preservation lands and wildlife habitat.
1492 (h) Using its general and special powers as set forth in
1493 this act, to provide any other project within or without the
1494 boundaries of the district when the project is the subject of an
1495 agreement between the district and the Board of County
1496 Commissioners of Brevard County or with any other applicable
1497 public or private entity, or is approved or required by a
1498 development order pursuant to sections 380.06 or sections

1499 380.061, Florida Statutes and is not inconsistent with the
1500 effective local comprehensive plan.
1501 (i) To provide parks and facilities for indoor and outdoor
1502 recreational, cultural, and educational uses, provided, however,
1503 that in no event shall the district finance or own a golf
1504 course..
1505 (j) To provide fire prevention and control, including fire
1506 stations, water mains and plugs, fire trucks, and other vehicles
1507 and equipment.
1508 (k) To provide school buildings and related structures,
1509 which may be leased, sold, or donated to the school district,
1510 for use in the educational system when authorized by the
1511 district school board.
1512 (l) To provide security, including, but not limited to,
1513 guardhouses, fences, and gates, electronic intrusion-detection
1514 systems, and patrol cars, when authorized by proper governmental
1515 agencies; however, the district may not exercise any powers of a
1516 law enforcement agency but may contract with the appropriate
1517 local general-purpose government agencies for an increased level
1518 of such services within the district boundaries. Notwithstanding
1519 any provision of general law, the district may operate
1520 guardhouses for the limited purpose of providing security for
1521 the residents of the district and which serve a predominate
1522 public, as opposed to private, purpose. Such guardhouses shall
1523 he operated by the district or any other unit of local
1524 government pursuant to procedures designed to serve such
1525 security purposes as set forth in rules adopted by the board,

1526 from time to time, following the procedures set forth in chapter
1527 120, Florida Statutes.
1528 (m) To provide control and elimination of mosquitoes and
1529 other arthropods of public health importance.
1530 (n) To provide waste collection and disposal.
1531 (o) To enter into impact fee credit agreements.
1532 (p) To provide buildings and structures for district
1533 offices, maintenance facilities, meeting facilities, community
1534 centers, or any other project authorized or granted by this act.
1535 (q) To establish and create, at noticed meetings, such
1536 governmental departments of the Board of Supervisors of the
1537 district, as well as committees, task forces, boards, or
1538 commissions, or other agencies under the supervision and control
1539 of the district, as from time to time the board may deem
1540 necessary or desirable in the performance of the acts or other
1541 things necessary to exercise the board's general or special
1542 powers to implement an innovative project to carry out the
1543 special purpose of the district as provided in this act and to
1544 delegate the exercise of its powers to such departments, boards,
1545 task forces, committees or other agencies and such
1546 administrative duties and other powers as the board may deem
1547 necessary or desirable but only if there is a set of expressed
1548 limitations for accountability, notice, and periodic written
1549 reporting to the board that shall retain the powers of the
1550 board.
1551 (r) To adopt and enforce appropriate rules following the
1552 procedures of chapter 120, in connection with the provision of
1553 one or more services through its systems and facilities.

1554
1555 The enumeration of special powers herein shall not be deemed
1556 exclusive or restrictive but shall be deemed to incorporate
1557 powers express or implied necessary or incident to carrying out
1558 such enumerated special powers, including also the general
1559 powers provided by this special act charter to the district to
1560 implement its single purpose. Further, the provisions of this
1561 subsection shall be construed liberally in order to carry out
1562 effectively the special purpose of this district under this act.
1563 The district may exercise its powers to provide facilities for
1564 potable water, sewer, fire protection, mosquito control, waste
1565 collection and waste disposal services only if such facilities
1566 are to be dedicated to and operated by the county or a
1567 municipality already providing the service or if such county or
1568 municipality declines or is unable to provide the service at the
1569 time the service becomes necessary. Nothing herein:
1570 1. Shall prevent the district from dedicating
1571 transportation or other facilities to the county or a
1572 municipality;
1573 2. Shall be construed to authorize the district to provide
1574 or approve franchises for emergency medical ambulance services,
1575 which authority is reserved to Brevard County under chapter 71-
1576 556 Laws of Florida;
1577 3. Is intended to authorize the imposition of impact fees
1578 based upon alleged police powers or regulatory powers of the
1579 district;
1580 4. Is intended to limit the power of the county or a city
1581 to provide such facilities and to require landowners to utilize

1582 such facilities as a condition to development of lands within
1583 the district; or
1584 5. Is intended to prohibit the district from providing
1585 additional services beyond those offered by the county or a
1586 municipality.
1587 (8) ISSUANCE OF BOND ANTICIPATION NOTES.--In addition to
1588 the other powers provided for in this act, and not in limitation
1589 thereof, the district shall have the power, at any time and from
1590 time to time after the issuance of any bonds of the district
1591 shall have been authorized, to borrow money for the purposes for
1592 which such bonds are to be issued in anticipation of the receipt
1593 of the proceeds of the sale of such bonds and to issue bond
1594 anticipation notes in a principal sum not in excess of the
1595 authorized maximum amount of such bond issue. Such notes shall
1596 be in such denomination or denominations, bear interest at such
1597 rate as the board may determine not to exceed the maximum rate
1598 allowed by general law, mature at such time or times not later
1599 than 5 years from the date of issuance, and be in such form and
1600 executed in such manner as the board shall prescribe. Such notes
1601 may be sold at either public or private sale or, if such notes
1602 shall be renewal notes, may be exchanged for notes then
1603 outstanding on such terms as the board shall determine. Such
1604 notes shall be paid from the proceeds of such bonds when issued
1605 The board may, in its discretion, in lieu of retiring the notes
1606 by means of bonds, retire them by means of current revenues or
1607 from any taxes or assessments levied for the payment of such
1608 bonds, but, in such event, a like amount of the bonds authorized
1609 shall not be issued.

1610 (9) BORROWING.--The district at any time may obtain loans,
1611 in such amount and on such terms and conditions as the board may
1612 approve, for the purpose of paying any of the expenses of the
1613 district or any costs incurred or that may be incurred in
1614 connection with any of the projects of the district, which loans
1615 shall bear interest as the board determines, not to exceed the
1616 maximum rate allowed by general law, and may be payable from and
1617 secured by a pledge of such funds, revenues, taxes, and
1618 assessments as the board may determine, subject, however, to the
1619 provisions contained in any proceeding under which bonds were
1620 theretofore issued and are then outstanding. For the purpose of
1621 defraying such costs and expenses, the district may issue
1622 negotiable notes, warrants, or other evidences of debt to be
1623 payable at such times and to bear such interest as the board may
1624 determine, not to exceed the maximum rate allowed by general
1625 law, and to be sold or discounted at such price or prices not
1626 less than 95 percent of par value and on such terms as the board
1627 may deem advisable. The board shall have the right to provide
1628 for the payment thereof by pledging the whole or any part of the
1629 funds, revenues, taxes, and assessments of the district. The
1630 approval of the electors residing in the district shall not be
1631 necessary except when required by the State Constitution.
1632 (10) BONDS.--
1633 (a) Sale of bonds.--Bonds may be sold in blocks or
1634 installments at different times, or an entire issue or series
1635 may be sold at one time. Bonds may be sold at public or private
1636 sale after such advertisement, if any, as the board may deem
1637 advisable but not in any event at less than 90 percent of the

1638 par value thereof, together with accrued interest thereon. Bonds
1639 may be sold or exchanged for refunding bonds. Special assessment
1640 and revenue bonds may be delivered by the district as payment of
1641 the purchase price of any project or part thereof, or a
1642 combination of projects or parts thereof, or as the purchase
1643 price or exchange for any property, real, personal, or mixed,
1644 including franchises or services rendered by any contractor,
1645 engineer, or other person, all at one time or in blocks from
1646 time to time, in such manner and upon such terms as the board in
1647 its discretion shall determine. The price or prices for any
1648 bonds sold, exchanged, or delivered may be:
1649 1. The money paid for the bonds.
1650 2. The principal amount, plus accrued interest to the date
1651 of redemption or exchange, or outstanding obligations exchanged
1652 for refunding bonds.
1653 3. In the case of special assessment or revenue bonds, the
1654 amount of any indebtedness to contractors or other persons paid
1655 with such bonds, or the fair value of any properties exchanged
1656 for the bonds, as determined by the board.
1657 (b) Authorization and form of bonds.--Any general
1658 obligation bonds, special assessment bonds, or revenue bonds may
1659 be authorized by resolution or resolutions of the board which
1660 shall be adopted by a majority of all the members thereof then
1661 in office. Such resolution or resolutions may be adopted at the
1662 same meeting at which they are introduced and need not be
1663 published or posted. The board may, by resolution, authorize the
1664 issuance of bonds and fix the aggregate amount of bonds to be
1665 issued; the purpose or purposes for which the moneys derived

1666 therefrom shall be expended, including, but not limited to,
1667 payment of costs as defined in section 2(2)(i); the rate or
1668 rates of interest, not to exceed the maximum rate allowed by
1669 general law; the denomination of the bonds; whether or not the
1670 bonds are to be issued in one or more series; the date or dates
1671 of maturity, which shall not exceed 40 years from their
1672 respective dates of issuance; the medium of payment; the place
1673 or places within or without the state at which payment shall be
1674 made; registration privileges; redemption terms and privileges,
1675 whether with or without premium; the manner of execution; the
1676 form of the bonds, including any interest coupons to be attached
1677 thereto; the manner of execution of bonds and coupons; and any
1678 and all other terms, covenants, and conditions thereof and the
1679 establishment of revenue or other funds. Such authorizing
1680 resolution or resolutions may further provide for the contracts
1681 authorized by section 159.825(1)(f) and (g), Florida Statutes,
1682 regardless of the tax treatment of such bonds being authorized,
1683 subject to the finding by the board of a net saving to the
1684 district resulting by reason thereof. Such authorizing
1685 resolution may further provide that such bonds may be executed
1686 in accordance with the Registered Public Obligations Act, except
1687 that bonds not issued in registered form shall be valid if
1688 manually countersigned by an officer designated by appropriate
1689 resolution of the board. The seal of the district may be
1690 affixed, lithographed, engraved, or otherwise reproduced in
1691 facsimile on such bonds. In case any officer whose signature
1692 shall appear on any bonds or coupons shall cease to be such
1693 officer before the delivery of such bonds, such signature or

1694 facsimile shall nevertheless be valid and sufficient for all
1695 purposes the same as if he or she had remained in office until
1696 such delivery.
1697 (c) Interim certificates; replacement
1698 certificates.--Pending the preparation of definitive bonds, the
1699 board may issue interim certificates or receipts or temporary
1700 bonds, in such form and with such provisions as the board may
1701 determine, exchangeable for definitive bonds when such bonds
1702 have been executed and are available for delivery. The board may
1703 also provide for the replacement of any bonds which become
1704 mutilated lost, or destroyed.
1705 (d) Negotiability of bonds.--Any bond issued under this
1706 act or any temporary bond, in the absence of an express recital
1707 on the face thereof that it is nonnegotiable, shall be fully
1708 negotiable and shall be and constitute a negotiable instrument
1709 within the meaning and for all purposes of the law merchant and
1710 the laws of the state.
1711 (e) Defeasance.--The board may make such provision with
1712 respect to the defeasance of the right, title, and interest of
1713 the holders of any of the bonds and obligations of the district
1714 in any revenues, funds, or other properties by which such bonds
1715 are secured as the board deems appropriate and, without
1716 limitation on the foregoing, may provide that when such bonds or
1717 obligations become due and payable or shall have been called for
1718 redemption and the whole amount of the principal and interest
1719 and premium, if any, due and payable upon the bonds or
1720 obligations then outstanding shall be held in trust for such
1721 purpose, and provision shall also be made for paying all other

1722 sums payable in connection with such bonds or other obligations,
1723 then and in such event the right, title, and interest of the
1724 holders of the bonds in any revenues, funds, or other properties
1725 by which such bonds are secured shall thereupon cease,
1726 terminate, and become void; and the board may apply any surplus
1727 in any sinking fund established in connection with such bonds or
1728 obligations and all balances remaining in all other funds or
1729 accounts other than moneys held for the redemption or payment of
1730 the bonds or other obligations to any lawful purpose of the
1731 district as the board shall determine.
1732 (f) Issuance of additional bonds.--If the proceeds of any
1733 bonds are less than the cost of completing the project in
1734 connection with which such bonds were issued, the board may
1735 authorize the issuance of additional bonds, upon such terms and
1736 conditions as the board may provide in the resolution
1737 authorizing the issuance thereof, but only in compliance with
1738 the resolution or other proceedings authorizing the issuance of
1739 the original bonds.
1740 (g) Refunding bonds.--The district shall have the power to
1741 issue bonds to provide for the retirement or refunding of any
1742 bonds or obligations of the district that at the time of such
1743 issuance are or subsequent thereto become due and payable, or
1744 that at the time of issuance have been called or are or will be
1745 subject to call for redemption within 10 years thereafter, or
1746 the surrender of which can be procured from the holders thereof
1747 at prices satisfactory to the board. Refunding bonds may be
1748 issued at any time that in the judgment of the board such
1749 issuance will be advantageous to the district. No approval of

1750 the qualified electors residing in the district shall be
1751 required for the issuance of refunding bonds except in cases in
1752 which such approval is required by the State Constitution. The
1753 board may by resolution confer upon the holders of such
1754 refunding bonds all rights, powers, and remedies to which the
1755 holders would be entitled if they continued to be the owners and
1756 had possession of the bonds for the refinancing of which such
1757 refunding bonds are issued, including, but not limited to, the
1758 preservation of the lien of such bonds on the revenues of any
1759 project or on pledged funds, without extinguishment, impairment,
1760 or diminution thereof. The provisions of this act pertaining to
1761 bonds of the district shall, unless the context otherwise
1762 requires, govern the issuance of refunding bonds, the form and
1763 other details thereof, the rights of the holders thereof, and
1764 the duties of the board with respect to them.
1765 (h) Revenue bonds.--
1766 1. The district shall have the power to issue revenue
1767 bonds from time to time without limitation as to amount. Such
1768 revenue bonds may be secured by, or payable from, the gross or
1769 net pledge of the revenues to be derived from any project or
1770 combination of projects; from the rates, fees, or other charges
1771 to be collected from the users of any project or projects; from
1772 any revenue-producing undertaking or activity of the district;
1773 from special assessments; or from benefit special assessments;
1774 or from any other source or pledged security. Such bonds shall
1775 not constitute an indebtedness of the district, and the approval
1776 of the qualified electors shall not be required unless such

1777 bonds are additionally secured by the full faith and credit and
1778 taxing power of the district.
1779 2. Any two or more projects may be combined and
1780 consolidated into a single project and may hereafter be operated
1781 and maintained as a single project. The revenue bonds authorized
1782 herein may be issued to finance any one or more of such
1783 projects, regardless of whether or not such projects have been
1784 combined and consolidated into a single project. If the board
1785 deems it advisable, the proceedings authorizing such revenue
1786 bonds may provide that the district may thereafter combine the
1787 projects then being financed or theretofore financed with other
1788 projects to be subsequently financed by the district and that
1789 revenue bonds to be thereafter issued by the district shall be
1790 on parity with the revenue bonds then being issued, all on such
1791 terms, conditions, and limitations as shall have been provided
1792 in the proceeding which authorized the original bonds.
1793 (i) General obligation bonds.--
1794 1. Subject to the limitations of this charter, the
1795 district shall have the power from time to time to issue general
1796 obligation bonds to finance or refinance capital projects or to
1797 refund outstanding bonds in an aggregate principal amount of
1798 bonds outstanding at any one time not in excess of 35 percent of
1799 the assessed value of the taxable property within the district
1800 as shown on the pertinent tax records at the time of the
1801 authorization of the general obligation bonds for which the full
1802 faith and credit of the district is pledged. Except for
1803 refunding bonds, no general obligation bonds shall be issued
1804 unless the bonds are issued to finance or refinance a capital

1805 project and the issuance has been approved at an election held
1806 in accordance with the requirements for such election as
1807 prescribed by the State Constitution. Such elections shall be
1808 called to be held in the district by the Board of County
1809 Commissioners of Brevard County upon the request of the board of
1810 the district. The expenses of calling and holding an election
1811 shall be at the expense of the district, and the district shall
1812 reimburse the county for any expenses incurred in calling or
1813 holding such election.
1814 2. The district may pledge its full faith and credit for
1815 the payment of the principal and interest on such general
1816 obligation bonds and for any reserve funds provided therefor and
1817 may unconditionally and irrevocably pledge itself to levy ad
1818 valorem taxes on all taxable property in the district, to the
1819 extent necessary for the payment thereof, without limitation as
1820 to rate or amount.
1821 3. If the board determines to issue general obligation
1822 bonds for more than one capital project, the approval of the
1823 issuance of the bonds for each and all such projects may be
1824 submitted to the electors on one and the same ballot. The
1825 failure of the electors to approve the issuance of bonds for one
1826 or more capital projects shall not defeat the approval of any
1827 bonds for any capital project which has been approved by the
1828 electors.
1829 4. In arriving at the amount of general obligation bonds
1830 permitted to be outstanding at any one time pursuant to
1831 subparagraph 1., there shall not be included any general

1832 obligation bonds which are additionally secured by the pledge
1833 of:
1834 a. Any assessments levied in an amount sufficient to pay
1835 the principal and interest on the general obligation bonds so
1836 additionally secured, which assessments have been equalized and
1837 confirmed by resolution of the board pursuant to this act or
1838 section 170.08, Florida Statutes.
1839 b. Water revenues, sewer revenues, or water and sewer
1840 revenues of the district to be derived from user fees in an
1841 amount sufficient to pay the principal and interest on the
1842 general obligation bonds so additionally secured.
1843 c. Any combination of assessments and revenues described
1844 in sub-subparagraphs a. and b.
1845 (j) Bonds as legal investment or security.--
1846 1. Notwithstanding any provisions of any other law to the
1847 contrary, all bonds issued under the provisions of this act
1848 shall constitute legal investments for savings banks, banks,
1849 trust companies, insurance companies, executors, administrators,
1850 trustees, guardians, and other fiduciaries and for any board,
1851 body, agency, instrumentality, county, municipality, or other
1852 political subdivision of the state and shall be and constitute
1853 security which may be deposited by banks or trust companies as
1854 security for deposits of state, county, municipal, or other
1855 public funds or by insurance companies as required or voluntary
1856 statutory deposits.
1857 2. Any bonds issued by the district shall be incontestable
1858 in the hands of bona fide purchasers or holders for value and

1859 shall not be invalid because of any irregularity or defect in
1860 the proceedings for the issue and sale thereof.
1861 (k) Covenants.--Any resolution authorizing the issuance of
1862 bonds may contain such covenants as the board may deem
1863 advisable, and all such covenants shall constitute valid and
1864 legally binding and enforceable contracts between the district
1865 and the bondholders, regardless of the time of issuance thereof.
1866 Such covenants may include, without limitation, covenants
1867 concerning the disposition of the bond proceeds; the use and
1868 disposition of project revenues; the pledging of revenues,
1869 taxes, and assessments; the obligations of the district with
1870 respect to the operation of the project and the maintenance of
1871 adequate project revenues; the issuance of additional bonds; the
1872 appointment, powers, and duties of trustees and receivers; the
1873 acquisition of outstanding bonds and obligations; restrictions
1874 on the establishing of competing projects or facilities;
1875 restrictions on the sale or disposal of the assets and property
1876 of the district; the priority of assessment liens; the priority
1877 of claims by bondholders on the taxing power of the district;
1878 the maintenance of deposits to ensure the payment of revenues by
1879 users of district facilities and services; the discontinuance of
1880 district services by reason of delinquent payments; acceleration
1881 upon default; the execution of necessary instruments; the
1882 procedure for amending or abrogating covenants with the
1883 bondholders; and such other covenants as may be deemed necessary
1884 or desirable for the security of the bondholders.
1885 (l) Validation proceedings.--The power of the district to
1886 issue bonds under the provisions of this act may be determined,

1887 and any of the bonds of the district maturing over a period of
1888 more than 5 years shall be validated and confirmed, by court
1889 decree, under the provisions of chapter 75, Florida Statutes,
1890 and laws amendatory thereof or supplementary thereto.
1891 (m) Tax exemption.--To the extent allowed by general law,
1892 all bonds issued hereunder and interest paid thereon and all
1893 fees, charges, and other revenues derived by the district from
1894 the projects provided by this act are exempt from all taxes by
1895 the state or by any political subdivision, agency, or
1896 instrumentality thereof; however, any interest, income, or
1897 profits on debt obligations issued hereunder are not exempt from
1898 the tax imposed by chapter 220, Florida Statutes.
1899 (n) Application of section 189.4085, Florida
1900 Statutes.--Bonds issued by the district shall meet the criteria
1901 set forth in section 189.4085, Florida Statutes.
1902 (o) Act furnishes full authority for issuance of the
1903 bonds.--This act constitutes full and complete authority for the
1904 issuance of bonds and the exercise of the powers of the district
1905 provided herein. No procedures or proceedings, publications,
1906 notices, consents, approvals, orders, acts, or things by the
1907 board, or any board, officer, commission, department, agency, or
1908 instrumentality of the district, other than those required b
1909 this act, shall be required to perform anything under this act,
1910 except that the issuance or sale of bonds pursuant to the
1911 provisions of this act shall comply with the general law
1912 requirements applicable to the issuance or sale of bonds by the
1913 district. Nothing in this act shall be construed to authorize

1914 the district to utilize bond proceeds to fund the ongoing
1915 operations of the district.
1916 (p) Pledge by the state to the bondholders of the
1917 district.--The state pledges to the holders of any bonds issued
1918 under this act that it will not limit or alter the rights of the
1919 district to own, acquire, construct, reconstruct, improve,
1920 maintain, operate, or furnish the projects or to levy and
1921 collect the taxes, assessments, rentals, rates, fees, and other
1922 charges provided for herein and to fulfill the terms of any
1923 agreement made with the holders of such bonds or other
1924 obligations and that it will not in any way impair the rights or
1925 remedies of such holders.
1926 (q) Default.--A default on the bonds or obligations of a
1927 district shall not constitute a debt or obligation of the state
1928 or any general-purpose local government or the state.
1929 (11) TRUST AGREEMENTS.--Any issue of bonds shall be
1930 secured by a trust agreement by and between the district and a
1931 corporate trustee or trustees, which may be any trust company or
1932 bank having the powers of a trust company within or without the
1933 state. The resolution authorizing the issuance of the bonds or
1934 such trust agreement may pledge the revenues to be received from
1935 any projects of the district and may contain such provisions for
1936 protecting and enforcing the rights and remedies of the
1937 bondholders as the board may approve, including, without
1938 limitation, covenants setting forth the duties of the district
1939 in relation to: the acquisition, construction, reconstruction,
1940 improvement, maintenance, repair, operation, and insurance of
1941 any projects; the fixing and revising of the rates, fees, and

1942 charges; and the custody, safeguarding, and application of all
1943 moneys and for the employment of consulting engineers in
1944 connection with such acquisition, construction, reconstruction,
1945 improvement, maintenance, repair, or operation. It shall be
1946 lawful for any bank or trust company within or without the state
1947 which may act as a depository of the proceeds of bonds or of
1948 revenues to furnish such indemnifying bonds or to pledge such
1949 securities as may be required by the district. Such resolution
1950 or trust agreement may set forth the rights and remedies of the
1951 bondholders and of the trustee, if any, and may restrict the
1952 individual right of action by bondholders. The board may provide
1953 for the payment of proceeds of the sale of the bonds and the
1954 revenues of any project to such officer, board, or depository as
1955 it may designate for the custody thereof and may provide for the
1956 method of disbursement thereof with such safeguards and
1957 restrictions as it may determine. All expenses incurred in
1958 carrying out the provisions of such resolution or trust
1959 agreement may be treated as part of the cost of operation of the
1960 project to which such trust agreement pertains.
1961 (12) AD VALOREM TAXES; ASSESSMENTS, BENEFIT SPECIAL
1962 ASSESSMENTS, MAINTENANCE SPECIAL ASSESSMENTS, AND SPECIAL
1963 ASSESSMENTS; MAINTENANCE TAXES.--
1964 (a) Ad valorem taxes.--When all members of the board are
1965 qualified electors who are elected by qualified electors of the
1966 district, the board shall have the power to levy and assess an
1967 ad valorem tax on all the taxable property in the district to
1968 construct, operate, and maintain assessable improvements; to pay
1969 the principal of, and interest on, any general obligation bonds

1970 of the district; and to provide for any sinking or other funds
1971 established in connection with any such bonds. An ad valorem tax
1972 levied by the board for operating purposes, exclusive of debt
1973 service on bonds, shall not exceed 3 mills. The ad valorem tax
1974 provided for herein shall be in addition to county and all other
1975 ad valorem taxes provided for by law. Such tax shall be
1976 assessed, levied, and collected in the same manner and at the
1977 same time as county taxes. The levy of ad valorem taxes must be
1978 approved by referendum as required by s. 9, Article VII of the
1979 State Constitution.
1980 (b) Benefit special assessments.--The board annually shall
1981 determine, order, and levy the annual installment of the total
1982 benefit special assessments for bonds issued and related
1983 expenses to finance assessable improvements. These assessments
1984 may be due and collected during each year that county taxes are
1985 due and collected, in which case such annual installment and
1986 levy shall be evidenced to and certified to the property
1987 appraiser by the board not later than August 31 of each year.
1988 Such assessment shall be entered by the property appraiser on
1989 the county tax rolls and shall be collected and enforced by the
1990 tax collector in the same manner and at the same time as county
1991 taxes, and the proceeds thereof shall be paid to the district.
1992 However, this subsection shall not prohibit the district in its
1993 discretion from using the method prescribed in either section
1994 197.3632, Florida Statutes or chapter 173, Florida Statutes, as
1995 each may be amended from time to time, for collecting and
1996 enforcing these assessments. Each annual installment of benefit
1997 special assessments shall be a lien on the property against

1998 which assessed until paid and shall be enforceable in like
1999 manner as county taxes. The amount of the assessment for the
2000 exercise of the district's powers under subsections (6) and (7)
2001 shall be determined by the board based upon a report of the
2002 district's engineer and assessed by the board upon such lands,
2003 which may be part or all of the lands within the district
2004 benefited by the improvement, apportioned between benefited
2005 lands in proportion to the benefits received by each tract of
2006 land. The board may, if it determines it is in the best
2007 interests of the district, set forth in the proceedings
2008 initially levying such benefit special assessments or in
2009 subsequent proceedings a formula for the determination of an
2010 amount, which when paid by a taxpayer with respect to any tax
2011 parcel, shall constitute a prepayment all future annual
2012 installments of such benefit special assessments and that the
2013 payment of which amount with respect such tax parcel shall
2014 relieve and discharge such tax parcel of the lien of such
2015 benefit special assessments and any subsequent annual
2016 installment thereof. The board may provide further that upon
2017 delinquency in the payment of any annual installment of benefit
2018 special assessments, the prepayment amount of all future annual
2019 installments of benefit special assessments as determined in the
2020 preceding sentence shall be and become immediately due and
2021 payable together with such delinquent annual installment.
2022 (c) Non-ad valorem maintenance taxes.--If and when
2023 authorized by general law, to maintain and to preserve the
2024 physical facilities and services constituting the works,
2025 improvements, or infrastructure provided by the district

2026 pursuant to this act, to repair and restore any one or more of
2027 them, when needed, and to defray the current expenses of the
2028 district, including any sum which may be required to pay state
2029 and county ad valorem taxes on any taxable lands which may have
2030 been purchased and which are held by the district under the
2031 provisions of this act, the Board of Supervisors may, upon the
2032 completion of said systems, facilities, services, works,
2033 improvements, or infrastructure, in whole or in part, as may be
2034 certified to the board by the engineer of the board, levy
2035 annually a non-ad valorem and nonmillage tax upon each tract or
2036 parcel of land within the district, to be known as a
2037 "maintenance tax." This non-ad valorem maintenance tax shall be
2038 apportioned upon the basis of the net assessments of benefits
2039 assessed as accruing from the original construction and shall be
2040 evidenced to and certified by the Board of Supervisors of the
2041 district not later than June 1 of each year to the property
2042 appraiser of Brevard County and shall be extended by the
2043 property appraiser on the tax roll of the property appraiser, as
2044 certified by the property appraiser to the tax collector, and
2045 collected by the tax collector on the merged collection roll of
2046 the tax collector in the same manner and at the same time as
2047 county ad valorem taxes, and the proceeds therefrom shall be
2048 paid to the district. This non-ad valorem maintenance tax shall
2049 be a lien until paid on the property against which assessed and
2050 enforceable in like manner and of the same dignity as county ad
2051 valorem taxes.
2052 (d) Maintenance special assessments.--To maintain and
2053 preserve the facilities and projects of the district, the board

2054 may levy a maintenance special assessment. This assessment may
2055 be evidenced to and certified to the property appraiser by the
2056 Board of Supervisors not later than August 31 of each year and
2057 shall be entered by the property appraiser on the county tax
2058 rolls and shall be collected and enforced by the tax collector
2059 in the same manner and at the same time as county taxes, and the
2060 proceeds therefrom shall be paid to the district. However, this
2061 subsection shall not prohibit the district in its discretion
2062 from using the method prescribed in either section 197.363,
2063 section 197.3631, or section 197.3632, Florida Statutes, for
2064 collecting and enforcing these assessments. These maintenance
2065 special assessments shall be a lien on the property against
2066 which assessed until paid and shall be enforceable in like
2067 manner as county taxes. The amount of the maintenance special
2068 assessment for the exercise of the district's powers under this
2069 section shall be determined by the board based upon a report of
2070 the district's engineer and assessed by the board upon such
2071 lands, which may be all of the lands within the district
2072 benefited by the maintenance thereof, apportioned between the
2073 benefited lands in proportion to the benefits received by each
2074 tract of land.
2075 (e) Special assessments.--To levy and impose any special
2076 assessments pursuant to this subsection.
2077 (f) Enforcement of taxes.--The collection and enforcement
2078 of all taxes levied by the district shall be at the same time
2079 and in like manner as county taxes, and the provisions of the
2080 laws of Florida relating to the sale of lands for unpaid and
2081 delinquent county taxes; the issuance, sale, and delivery of tax

2082 certificates for such unpaid and delinquent county taxes; the
2083 redemption thereof; the issuance to individuals of tax deeds
2084 based thereon; and all other procedures in connection therewith
2085 shall be applicable to the district to the same extent as if
2086 such statutory provisions were expressly set forth herein. All
2087 taxes shall be subject to the same discounts as county taxes.
2088 (g) When unpaid tax is delinquent; penalty.--All taxes
2089 provided for in this act shall become delinquent and bear
2090 penalties on the amount of such taxes in the same manner as
2091 county taxes.
2092 (h) Status of assessments.--Benefit special assessments,
2093 maintenance special assessments, and special assessments are
2094 hereby found and determined to be non-ad valorem assessments as
2095 defined by section 197.3632, Florida Statutes. Maintenance taxes
2096 are non-ad valorem taxes and are not special assessments.
2097 (i) Assessments constitute liens; collection.--Any and all
2098 assessments, including special assessments, benefit special
2099 assessments, and maintenance special assessments authorized by
2100 this section, and including special assessments as defined by
2101 section 2(2)(z) and granted and authorized by this subsection,
2102 and including maintenance taxes if authorized by general law,
2103 shall constitute a lien on the property against which assessed
2104 from the date of levy and imposition thereof until paid, coequal
2105 with the lien of state, county, municipal, and school board
2106 taxes. These assessments may be collected, at the district's
2107 discretion, under authority of section 197.3631, Florida
2108 Statutes, as amended from time to time, by the tax collector
2109 pursuant to the provisions of sections 197.3632 and 197.3635,

2110 Florida Statutes, as amended from time to time, or in accordance
2111 with other collection measures provided by law. In addition to,
2112 and not in limitation of, any powers otherwise set forth herein
2113 or in general law, these assessments may also be enforced
2114 pursuant to the provisions of chapter 173, Florida Statutes, as
2115 amended from time to time.
2116 (j) Land owned by governmental entity.--Except as
2117 otherwise provided by law, no levy of ad valorem taxes or non-ad
2118 valorem assessments under this act, chapter 170, or chapter 197,
2119 Florida Statutes, as each may be amended from time to time, or
2120 otherwise, by a board of a District, on property of a
2121 governmental entity that is subject to a ground lease as
2122 described in section 190.003(13), Florida Statutes, shall
2123 constitute a lien or encumbrance on the underlying fee interest
2124 of such governmental entity.
2125 (13) SPECIAL ASSESSMENTS.--
2126 (a) As an alternative method to the levy and imposition of
2127 special assessments pursuant to chapter 170, Florida Statutes,
2128 pursuant to the authority of section 197.3631, Florida Statutes,
2129 or pursuant to other provisions of general law, now or hereafter
2130 enacted, which provide a supplemental means or authority to
2131 impose, levy, and collect special assessments as otherwise
2132 authorized under this act, the board may levy and impose special
2133 assessments to finance the exercise of any of its powers
2134 permitted under this act using the following uniform procedures:
2135 1. At a noticed meeting, the board of supervisors of the
2136 district may consider and review an engineer's report on the
2137 costs of the systems, facilities, and services to be provided, a

2138 preliminary assessment methodology, and a preliminary roll based
2139 on acreage or platted lands, depending upon whether platting has
2140 occurred.
2141 a. The assessment methodology shall address and discuss
2142 and the board shall consider whether the systems, facilities,
2143 and services being contemplated will result in special benefits
2144 peculiar to the property, different in kind and degree than
2145 general benefits, as a logical connection between the systems,
2146 facilities, and services themselves and the property, and
2147 whether the duty to pay the assessments by the property owners
2148 is apportioned in a manner that is fair and equitable and not in
2149 excess of the special benefit received. It shall be fair and
2150 equitable to designate a fixed proportion of the annual debt
2151 service, together with interest thereon, on the aggregate
2152 principal amount of bonds issued to finance such systems,
2153 facilities, and services which give rise to unique, special, and
2154 peculiar benefits to property of the same or similar
2155 characteristics under the assessment methodology so long as such
2156 fixed proportion does not exceed the unique, special, and
2157 peculiar benefits enjoyed by such property from such systems,
2158 facilities, and services.
2159 b. The engineer's cost report shall identify the nature
2160 the proposed systems, facilities, and services, their location,
2161 a cost breakdown plus a total estimated cost, including cost of
2162 construction or reconstruction, labor, and materials, lands,
2163 property, rights, easements, franchises, or systems, facilities,
2164 and services to be acquired, cost of plans and specifications,
2165 surveys of estimates of costs and revenues, costs of

2166 engineering, legal, and other professional consultation
2167 services, and other expenses or costs necessary or incident to
2168 determining the feasibility or practicability of such
2169 construction, reconstruction, or acquisition, administrative
2170 expenses, relationship to the authority and power of the
2171 district in its charter, and such other expenses or costs as may
2172 be necessary or incident to the financing to be authorized by
2173 the Board of Supervisors.
2174 c. The preliminary assessment roll to be prepared will be
2175 in accordance with the method of assessment provided for in the
2176 assessment methodology and as may be adopted by the Board of
2177 Supervisors; the assessment roll shall be completed as promptly
2178 as possible and shall show the acreage, lots, lands, or plats
2179 assessed and the amount of the fairly and reasonably apportioned
2180 assessment based on special and peculiar benefit to the
2181 property, lot, parcel, or acreage of land; and, if the
2182 assessment against each such lot, parcel, acreage, or portion of
2183 land is to be paid in installments, the number of annual
2184 installments in which the assessment is divided shall be entered
2185 into and shown upon the assessment roll.
2186 2. The Board of Supervisors of the district may determine
2187 and declare by an initial assessment resolution to levy and
2188 assess the assessments with respect to assessable improvements
2189 stating the nature of the systems, facilities, and services,
2190 improvements, projects, or infrastructure constituting such
2191 assessable improvements, the information in the engineer's cost
2192 report, the information in the assessment methodology as
2193 determined by the board at the noticed meeting and referencing

2194 and incorporating as part of the resolution the engineer's cost
2195 report, the preliminary assessment methodology, and the
2196 preliminary assessment roll as referenced exhibits to the
2197 resolution by reference. If the board determines to declare and
2198 levy the special assessments by the initial assessment
2199 resolution, the board shall also adopt and declare a notice
2200 resolution which shall provide and cause the initial assessment
2201 resolution to be published once a week for a period of 2 weeks
2202 in newspapers of general circulation published in Brevard County
2203 and said board shall by the same resolution fix a time and place
2204 at which the owner or owners of the property to be assessed or
2205 any other persons interested therein may appear before said
2206 board and be heard as to the propriety and advisability of
2207 making such improvements, as to the costs thereof, as to the
2208 manner of payment therefor, and as to the amount thereof to be
2209 assessed against each property so improved. Thirty days' notice
2210 in writing of such time and place shall be given to such
2211 property owners. The notice shall include the amount of the
2212 assessment and shall be served by mailing a copy to each
2213 assessed property owner at his or her last known address, the
2214 names and addresses of such property owners to be obtained from
2215 the record of the property appraiser of the county political
2216 subdivision in which the land is located or from such other
2217 sources as the district manager or engineer deems reliable, and
2218 proof of such mailing shall be made by the affidavit of the
2219 manager of the district or by the engineer, said proof to be
2220 filed with the district manager, provided that failure to mail
2221 said notice or notices shall not invalidate any of the

2222 proceedings hereunder. It is provided further that the last
2223 publication shall be at least 1 week prior to the date of the
2224 hearing on the final assessment resolution. Said notice shall
2225 describe the general areas to be improved and advise all persons
2226 interested that the description of each property to be assessed
2227 and the amount to be assessed to each piece, parcel, lot, or
2228 acre of property may be ascertained at the office of the manager
2229 of the district. Such service by publication shall be verified
2230 by the affidavit of the publisher and filed with the manager of
2231 the district. Moreover, the initial assessment resolution with
2232 its attached, referenced, and incorporated engineer's cost
2233 report, preliminary assessment methodology, and preliminary
2234 assessment roll, along with the notice resolution, shall be
2235 available for public inspection at the office of the manager and
2236 the office of the engineer or any other office designated by the
2237 Board of Supervisors in the notice resolution. Notwithstanding
2238 the foregoing, the landowners of all of the property which is
2239 proposed to be assessed may give the district written notice of
2240 waiver of any notice and publication provided for in this
2241 subparagraph and such notice and publication shall not be
2242 required, provided, however, that any meeting of the Board of
2243 Supervisors to consider such resolution shall be a publicly
2244 noticed meeting.
2245 3. At the time and place named in the noticed resolution
2246 as provided for in subparagraph 2., the board of supervisors of
2247 the district shall meet and hear testimony from affected
2248 property owners as to the propriety and advisability of making
2249 the systems, facilities, services, projects, works,

2250 improvements, or infrastructure and funding them with
2251 assessments referenced in the initial assessment resolution on
2252 the property. Following the testimony and questions from the
2253 members of the board or any professional advisors to the
2254 district of the preparers of the engineer's cost report, the
2255 assessment methodology, and the assessment roll, the board of
2256 supervisors shall make a final decision on whether to levy and
2257 assess the particular assessments. Thereafter, the board of
2258 supervisors shall meet as an equalizing board to hear and to
2259 consider any and all complaints as to the particular assessments
2260 and shall adjust and equalize the assessments on the basis of
2261 justice and right.
2262 4. When so equalized and approved by resolution or
2263 ordinance by the board of supervisors, to be called the final
2264 assessment resolution, a final assessment roll shall be filed
2265 with the clerk of the board and such assessment shall stand
2266 confirmed and remain legal, valid, and binding first liens on
2267 the property against which such assessments are made until paid,
2268 equal in dignity to the first liens of ad valorem taxation of
2269 county and municipal governments and school boards. However,
2270 upon completion of the systems, facilities, service, project,
2271 improvement, works, or infrastructure, the district shall credit
2272 to each of the assessments the difference in the assessment as
2273 originally made, approved, levied, assessed, and confirmed and
2274 the proportionate part of the actual cost of the improvement to
2275 be paid by the particular special assessments as finally
2276 determined upon the completion of the improvement; but in no
2277 event shall the final assessment exceed the amount of the

2278 special and peculiar benefits as apportioned fairly and
2279 reasonably to the property from the system, facility, or service
2280 being provided as originally assessed. Promptly after such
2281 confirmation, the assessment shall be recorded by the clerk of
2282 the district in the minutes of the proceedings of the district,
2283 and the record of the lien in this set of minutes shall
2284 constitute prima facie evidence of its validity. The board of
2285 supervisors, in its sole discretion, may, by resolution grant a
2286 discount equal to all or a part of the payee's proportionate
2287 share of the cost of the project consisting of bond financing
2288 cost, such as capitalized interest, funded reserves, and bond
2289 discounts included in the estimated cost of the project, upon
2290 payment in full of any assessments during such period prior to
2291 the time such financing costs are incurred as may be specified
2292 by the board of supervisors in such resolution.
2293 5. District assessments may be made payable in
2294 installments over no more than 30 years from the date of the
2295 payment of the first installment thereof and may bear interest
2296 at fixed or variable rates.
2297 (b) Notwithstanding any provision of this act or chapter
2298 170, Florida Statutes, that portion of section 170.09, Florida
2299 Statutes, that provides that assessments may be paid without
2300 interest at any time within 30 days after the improvement is
2301 completed and a resolution accepting the same has been adopted
2302 by the governing authority shall not be applicable to any
2303 district assessments, whether imposed, levied, and collected
2304 pursuant to the provisions of this act or other provisions of

2305 general law, including, but not limited to chapter 170, Florida
2306 Statutes.
2307 (c) In addition, the district is authorized expressly in
2308 the exercise of its rulemaking power to adopt a rule or rules
2309 which provides or provide for notice, levy, imposition,
2310 equalization, and collection of assessments.
2311 (14) ISSUANCE OF CERTIFICATES OF INDEBTEDNESS BASED ON
2312 ASSESSMENTS FOR ASSESSABLE IMPROVEMENTS; ASSESSMENT BONDS.--
2313 (a) The board may, after any special assessments or
2314 benefit special assessments for assessable improvements are
2315 made, determined, and confirmed as provided in this act, issue
2316 certificates of indebtedness for the amount so assessed against
2317 the abutting property or property otherwise benefited, as the
2318 case may be, and separate certificates shall be issued against
2319 each part or parcel of land or property assessed, which
2320 certificates shall state the general nature of the improvement
2321 for which the assessment is made. The certificates shall be
2322 payable in annual installments in accordance with the
2323 installments of the special assessment for which they are
2324 issued. The board may determine the interest to be borne by such
2325 certificates, not to exceed the maximum rate allowed by general
2326 law, and may sell such certificates at either private or public
2327 sale and determine the form, manner of execution, and other
2328 details of such certificates. The certificates shall recite that
2329 they are payable only from the special assessments levied and
2330 collected from the part or parcel of land or property against
2331 which they are issued. The proceeds of such certificates may be
2332 pledged for the payment of principal of and interest on any

2333 revenue bonds or general obligation bonds issued to finance in
2334 whole or in part such assessable improvement, or, if not so
2335 pledged, may be used to pay the cost or part of the cost of such
2336 assessable improvements.
2337 (b) The district may also issue assessment bonds, revenue
2338 bonds, or other obligations payable from a special fund into
2339 which such certificates of indebtedness referred to in the
2340 preceding subsection may be deposited or, if such certificates
2341 of indebtedness have not been issued, the district may assign to
2342 such special fund for the benefit of the holders of such
2343 assessment bonds or other obligations, or to a trustee for such
2344 bondholders, the assessment liens provided for in this act
2345 unless such certificates of indebtedness or assessment liens
2346 have been theretofore pledged for any bonds or other obligations
2347 authorized hereunder. In the event of the creation of such
2348 special fund and the issuance of such assessment bonds or other
2349 obligations, the proceeds of such certificates of indebtedness
2350 or assessment liens deposited therein shall be used only for the
2351 payment of the assessment bonds or other obligations issued as
2352 provided in this section. The district is authorized to covenant
2353 with the holders of such assessment bonds, revenue bonds, or
2354 other obligations that it will diligently and faithfully enforce
2355 and collect all the special assessments, and interest and
2356 penalties thereon, for which such certificates of indebtedness
2357 or assessment liens have been deposited in or assigned to such
2358 fund; to foreclose such assessment liens so assigned to such
2359 special fund or represented by the certificates of indebtedness
2360 deposited in the special fund, after such assessment liens have

2361 become delinquent, and deposit the proceeds derived from such
2362 foreclosure, including interest and penalties, in such special
2363 fund; and to make any other covenants deemed necessary or
2364 advisable in order to properly secure the holders of such
2365 assessment bonds or other obligations.
2366 (c) The assessment bonds, revenue bonds, or other
2367 obligations issued pursuant to this section shall have such
2368 dates of issue and maturity as shall be deemed advisable by the
2369 board; however, the maturities of such assessment bonds or other
2370 obligations shall not be more than 2 years after the due date of
2371 the last installment which will be payable on any of the special
2372 assessments for which such assessment liens, or the certificates
2373 of indebtedness representing such assessment liens, are assigned
2374 to or deposited in such special fund.
2375 (d) Such assessment bonds, revenue bonds, or other
2376 obligations issued under this section shall bear such interest
2377 as the board may determine, not to exceed the maximum rate
2378 allowed by general law, and shall be executed, shall have such
2379 provisions for redemption prior to maturity, shall be sold in
2380 the manner, and shall be subject to all of the applicable
2381 provisions contained in this act for revenue bonds, except as
2382 the same may be inconsistent with the provisions of this
2383 section.
2384 (e) All assessment bonds, revenue bonds, or other
2385 obligations issued under the provisions of this section shall
2386 be, shall constitute, and shall have all the qualities and
2387 incidents of negotiable instruments under the law merchant and
2388 the laws of the state.

2389 (15) TAX LIENS.--All taxes of the district provided for in
2390 this act, except together with all penalties for default in the
2391 payment of the same and all costs in collecting the same,
2392 including a reasonable attorney's fee fixed by the court and
2393 taxed as a cost in the action brought to enforce payment, shall,
2394 from January 1 for each year the property is liable to
2395 assessment and until paid, constitute a lien of equal dignity
2396 with the liens for state and county taxes and other taxes of
2397 equal dignity with state and county taxes, upon all the lands
2398 against which such taxes shall be levied. A sale of any of the
2399 real property within the district for state and county or other
2400 taxes shall not operate to relieve or release the property so
2401 sold from the lien for subsequent district taxes or installments
2402 of district taxes, which lien may be enforced against such
2403 property as though no such sale thereof had been made. In
2404 addition to, and not in limitation of, the preceding sentence,
2405 for purposes of section 197.552, Florida Statutes, the lien of
2406 all special assessments levied by the district shall constitute
2407 a lien of record held by a municipal or county governmental
2408 unit. The provisions of sections 194.171, 197.122, 197.333, and
2409 197.432, Florida Statutes, shall be applicable to district taxes
2410 with the same force and effect as if such provisions were
2411 expressly set forth in this act.
2412 (16) PAYMENT OF TAXES AND REDEMPTION OF TAX LIENS BY THE
2413 DISTRICT; SHARING IN PROCEEDS OF TAX SALE.--
2414 (a) The district shall have the power and right to:

2415 1. Pay any delinquent state, county, district, municipal,
2416 or other tax or assessment upon lands located wholly or
2417 partially within the boundaries of the district.
2418 2. Redeem or purchase any tax sales certificates issued or
2419 sold on account of any state, county, district, municipal, or
2420 other taxes or assessments upon lands located wholly or
2421 partially within the boundaries of the district.
2422 (b) Delinquent taxes paid, or tax sales certificates
2423 redeemed or purchased by the district, together with all
2424 penalties for the default in payment of the same and all costs
2425 in collecting the same and a reasonable attorney's fee, shall
2426 constitute a lien in favor of the district of equal dignity with
2427 the liens of state and county taxes and other taxes of equal
2428 dignity with state and county taxes upon all the real property
2429 against which the taxes were levied. The lien of the district
2430 may be foreclosed in the manner provided in this act.
2431 (c) In any sale of land pursuant to section 197.542,
2432 Florida Statutes, the district may certify to the clerk of the
2433 circuit court of the county holding such sale the amount of
2434 taxes due to the district upon the lands sought to be sold, and
2435 the district shall share in the disbursement of the sales
2436 proceeds in accordance with the provisions of this act and under
2437 the laws of the state.
2438 (17) FORECLOSURE OF LIENS.--Any lien in favor of the
2439 district arising under this act may be foreclosed by the
2440 district by foreclosure proceedings in the name of the district
2441 in a court of competent jurisdiction as provided by general law
2442 in like manner as is provided in chapter 173, Florida Statutes,

2443 and the provisions of that chapter shall be applicable to such
2444 proceedings with the same force and effect as if those
2445 provisions were expressly set forth in this act. Any act
2446 required or authorized to be done by or on behalf of a
2447 municipality in foreclosure proceedings under chapter 173,
2448 Florida Statutes, may be performed by such officer or agent of
2449 the district as the board of supervisors may designate. Such
2450 foreclosure proceedings may be brought at any time after the
2451 expiration of 1 year from the date any tax, or installment
2452 thereof, becomes delinquent; however, no lien shall be
2453 foreclosed against any political subdivision or agency of the
2454 state. Other legal remedies shall remain available.
2455 (18) MANDATORY USE OF CERTAIN DISTRICT SYSTEMS,
2456 FACILITIES, AND SERVICES.--To the full extent permitted by law,
2457 the district shall require all lands, buildings, premises,
2458 persons, firms, and corporations within the district to use the
2459 water management and control facilities, water systems, and
2460 sewer systems of the district.
2461 (19) COMPETITIVE PROCUREMENT; BIDS; NEGOTIATIONS; RELATED
2462 PROVISIONS REQUIRED.--
2463 (a) No contract shall be let by the board for any goods,
2464 supplies, or materials to be purchased when the amount thereof
2465 to be paid by the district shall exceed the amount provided in
2466 section 287.017, Florida Statutes, for category four, unless
2467 notice of bids shall be advertised once in a newspaper in
2468 general circulation in Brevard County. Any board seeking to
2469 construct or improve a public building, structure, or other
2470 public works shall comply with the bidding procedures of section

2471 255.20, Florida Statutes, and other applicable general law. In
2472 each case, the bid of the lowest responsive and responsible
2473 bidder shall be accepted unless all bids are rejected because
2474 the bids are too high or the board determines it is in the best
2475 interests of the district to reject all bids. The board may
2476 require the bidders to furnish bond with a responsible surety to
2477 be approved by the board. Nothing in this section shall prevent
2478 the board from undertaking and performing the construction,
2479 operation, and maintenance of any project or facility authorized
2480 by this act by the employment of labor, material, and machinery.
2481 (b) The provisions of the Consultants' Competitive
2482 Negotiation Act, section 287.055, Florida Statutes, shall apply
2483 to contracts for engineering, architecture, landscape
2484 architecture, or registered surveying and mapping services let
2485 by the board.
2486 (c) Contracts for maintenance services for any district
2487 facility or project shall be subject to competitive bidding
2488 requirements when the amount thereof to be paid by the district
2489 exceeds the amount provided in section 287.017, Florida
2490 Statutes, for category four. The district shall adopt rules,
2491 policies, or procedures establishing competitive bidding
2492 procedures for maintenance services. Contracts for other
2493 services shall not be subject to competitive bidding unless the
2494 district adopts a rule, policy, or procedure applying
2495 competitive bidding procedures to said contracts. Nothing herein
2496 shall preclude the use of requests for proposal instead of
2497 invitations to bid as determined by the district to be in its
2498 best interest.

2499 (20) FEES, RENTALS, AND CHARGES; PROCEDURE FOR ADOPTION
2500 AND MODIFICATIONS; MINIMUM REVENUE REQUIREMENTS.--
2501 (a) The district is authorized to prescribe, fix,
2502 establish, and collect rates, fees, rentals, or other charges,
2503 hereinafter sometimes referred to as "revenues," and to revise
2504 the same from time to time, for the systems, facilities, and
2505 services furnished by the district, within the limits of the
2506 district, including, but not limited to, recreational
2507 facilities, water management and control facilities, and water
2508 and sewer systems; to recover the costs of making connection
2509 with any district service, facility, or system; and to provide
2510 for reasonable penalties against any user or property for an
2511 such rates, fees, rentals, or other charges that are delinquent.
2512 (b) No such rates, fees, rentals, or other charges for any
2513 of the facilities or services of the district shall be fixed
2514 until after a public hearing at which all the users of the
2515 proposed facility or services or owners, tenants, or occupants
2516 served or to be served thereby and all other interested persons
2517 shall have an opportunity to be heard concerning the proposed
2518 rates, fees, rentals, or other charges. Rates, fees, rentals,
2519 and other charges shall be adopted under the administrative
2520 rulemaking authority of the district, but shall not apply to
2521 district leases. Notice of such public hearing setting forth the
2522 proposed schedule or schedules of rates, fees, rentals, and
2523 other charges shall have been published in a newspaper of
2524 general circulation in Brevard County at least once and at least
2525 10 days prior to such public hearing. The rulemaking hearing may
2526 be adjourned from time to time. After such hearing, such

2527 schedule or schedules, either as initially proposed or as
2528 modified or amended, may be finally adopted. A copy of the
2529 schedule or schedules of such rates, fees, rentals, or charges
2530 as finally adopted shall be kept on file in an office designated
2531 by the board and shall be open at all reasonable times to public
2532 inspection. The rates, fees, rentals, or charges so fixed for
2533 any class of users or property served shall be extended to cover
2534 any additional users or properties thereafter served which shall
2535 fall in the same class, without the necessity of any notice or
2536 hearing.
2537 (c) Such rates, fees, rentals, and charges shall be just
2538 and equitable and uniform for users of the same class, and when
2539 appropriate may be based or computed either upon the amount of
2540 service furnished, upon the average number of persons residing
2541 or working in or otherwise occupying the premises served, or
2542 upon any other factor affecting the use of the facilities
2543 furnished, or upon any combination of the foregoing factors, as
2544 may be determined by the board on an equitable basis.
2545 (d) The rates, fees, rentals, or other charges prescribed
2546 shall be such as will produce revenues, together with any other
2547 assessments, taxes, revenues, or funds available or pledged for
2548 such purpose, at least sufficient to provide for the items
2549 hereinafter listed, but not necessarily in the order stated:
2550 1. To provide for all expenses of operation and
2551 maintenance of such facility or service.
2552 2. To pay when due all bonds and interest thereon for the
2553 payment of which such revenues are, or shall have been, pledged
2554 or encumbered, including reserves for such purpose.

2555 3. To provide for any other funds which may be required
2556 under the resolution or resolutions authorizing the issuance of
2557 bonds pursuant to this act.
2558 (e) The board shall have the power to enter into contracts
2559 for the use of the projects of the district and with respect to
2560 the services, systems, and facilities furnished or to be
2561 furnished by the district.
2562 (21) RECOVERY OF DELINQUENT CHARGES.--In the event that
2563 any rates, fees, rentals, charges, or delinquent penalties shall
2564 not be paid as and when due and shall be in default for 60 days
2565 or more, the unpaid balance thereof and all interest accrued
2566 thereon, together with reasonable attorney's fees and costs, may
2567 be recovered by the district in a civil action.
2568 (22) DISCONTINUANCE OF SERVICE.--In the event the fees,
2569 rentals, or other charges for water and sewer services, or
2570 either of them, are not paid when due, the board shall have the
2571 power, under such reasonable rules and regulations as the board
2572 may adopt, to discontinue and shut off both water and sewer
2573 services until such fees, rentals, or other charges, including
2574 interest, penalties, and charges for the shutting off and
2575 discontinuance and the restoration of such water and sewer
2576 services or both, are fully paid; and, for such purposes, the
2577 board may enter on any lands, waters, or premises of any person,
2578 firm, corporation, or body, public or private, within the
2579 district limits. Such delinquent fees, rentals, or other charges
2580 together with interest, penalties, and charges for the shutting
2581 off and discontinuance and the restoration of such services and
2582 facilities and reasonable attorney's fees and other expenses may

2583 be recovered by the district, which may also enforce payment of
2584 such delinquent fees, rentals, or other charges by any other
2585 lawful method of enforcement.
2586 (23) ENFORCEMENT AND PENALTIES.--The board or any
2587 aggrieved person may have recourse to such remedies in law and
2588 at equity as may be necessary to ensure compliance with the
2589 provisions of this act, including injunctive relief to enjoin or
2590 restrain any person violating the provisions of this act or any
2591 bylaws, resolutions, regulations, rules, codes, or orders
2592 adopted under this act. In case any building or structure is
2593 erected, constructed, reconstructed, altered, repaired,
2594 converted, or maintained, or any building, structure, land, or
2595 water is used in violation of this act or of any code, order,
2596 resolution, or other regulation made under authority conferred
2597 by this act or under law, the board or any citizen residing in
2598 the district may institute any appropriate action or proceeding
2599 to prevent such unlawful erection, construction, reconstruction,
2600 alteration, repair, conversion, maintenance, or use; to
2601 restrain, correct, or avoid such violation; to prevent the
2602 occupancy of such building, structure, land, or water; and to
2603 prevent any illegal act, conduct, business, or use in or about
2604 such premises, land, or water.
2605 (24) SUITS AGAINST THE DISTRICT.--Any suit or action
2606 brought or maintained against the district for damages arising
2607 out of tort, including, without limitation, any claim arising
2608 upon account of an act causing an injury or loss of property,
2609 personal injury, or death, shall be subject to the limitations
2610 provided in section 768.28, Florida Statutes.

2611 (25) EXEMPTION OF DISTRICT PROPERTY FROM EXECUTION.--All
2612 district property shall be exempt from levy and sale by virtue
2613 of an execution, and no execution or other judicial process
2614 shall issue against such property, nor shall any judgment
2615 against the district be a charge or lien on its property or
2616 revenues; however, nothing contained herein shall apply to or
2617 limit the rights of bondholders to pursue any remedy for the
2618 enforcement of any lien or pledge given by the district in
2619 connection with any of the bonds or obligations of the district.
2620 (26) TERMINATION, CONTRACTION, OR EXPANSION OF DISTRICT.--
2621 (a) The board may ask the Legislature through its local
2622 legislative delegation in and for Brevard County to amend this
2623 act to contract, to expand or to contract, or to expand the
2624 boundaries of the district by amendment of this section.
2625 (b) The district shall remain in existence until:
2626 1. The district is terminated and dissolved pursuant to
2627 amendment to this act by the Legislature.
2628 2. The district has become inactive pursuant to section
2629 189.4044, Florida Statutes.
2630
2631 Provided, however, if, within 5 years after the effective date
2632 of this act establishing the district, the primary landowner has
2633 not received a development permit, as defined in chapter 380, on
2634 some part or all of the area covered by the district, then the
2635 district will be automatically dissolved and a judge of the
2636 circuit court shall cause a statement to that effect to be filed
2637 in the public records.

2638 (27) INCLUSION OF TERRITORY.--The inclusion of any or all
2639 territory of the district within a municipality does not change,
2640 alter, or affect the boundary, territory, existence, or
2641 jurisdiction of the district.
2642 (28) SALE OF REAL ESTATE WITHIN THE DISTRICT; REQUIRED
2643 DISCLOSURE TO PURCHASER.--Subsequent to the creation of this
2644 district under this act, each contract for the initial sale of a
2645 parcel of real property and each contract for the initial sale
2646 of a residential unit within the district shall include,
2647 immediately prior to the space reserved in the contract for the
2648 signature of the purchaser, the following disclosure statement
2649 in boldfaced and conspicuous type which is larger than the type
2650 in the remaining text of the contract: "THE VIERA STEWARDSHIP
2651 DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES
2652 AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS
2653 PAY FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF
2654 CERTAIN PUBLIC SYSTEMS, FACILITIES, AND SERVICES OF THE DISTRICT
2655 AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT.
2656 THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER
2657 LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND
2658 ASSESSMENTS PROVIDED FOR BY LAW."
2659 (29) NOTICE OF CREATION AND ESTABLISHMENT.--Within 30 days
2660 after the election of the first board of supervisors creating
2661 this district, the district shall cause to be recorded in the
2662 grantor-grantee index of the property records in each county in
2663 which it is located a "Notice of Creation and Establishment of
2664 the Viera Stewardship District." The notice shall, at a minimum,

2665 include the legal description of the property covered by this
2666 act.
2667 (30) DISTRICT PROPERTY PUBLIC; FEES.--Any system,
2668 facility, service, works, improvement, project, or other
2669 infrastructure owned by the district, or funded by federal tax
2670 exempt bonding issued by the district, is public; and the
2671 district by rule may regulate and may impose reasonable charges
2672 or fees for the use thereof but not to the extent that such
2673 regulation or imposition of such charges or fees constitutes
2674 denial of reasonable access.
2675 Section 7. If any provision of this act is determined
2676 unconstitutional or otherwise determined invalid by a court of
2677 law, all the rest and remainder of the act shall remain in full
2678 force and effect as the law of this state.
2679 Section 8. In the election provided for in section 9, each
2680 assessable acre or fraction thereof present in person or by
2681 proxy shall be counted as one vote.
2682 Section 9. This section and section 8 shall take effect
2683 upon this act becoming law, and the remaining sections shall
2684 take effect upon approval by a majority vote of the owners of
2685 land within the district who are not exempt from ad valorem
2686 taxes or non-ad valorem assessments and who are present in
2687 person or by proxy at a landowners' meeting to be held within 90
2688 days after the effective date of this act. Such landowners'
2689 meeting shall be noticed as provided in section 5 for the
2690 initial landowners' meeting and may be combined with such
2691 meeting. However, the provisions of this act which authorize the
2692 levy of ad valorem taxation and issuance of general obligation

2693 bonds shall take effect only upon express approval by a majority
2694 vote of those qualified electors of the Viera Stewardship
2695 District voting in a referendum election held at such time as
2696 all members of the board are qualified electors who are elected
2697 by qualified electors of the district as provided in this act.

HB 7131

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7131 PCB ENVR 06-02 Brownfields
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
1) Finance & Tax Committee		Levin	Diez-Arguelles
2) Transportation & Economic Development Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

This bill amends various provisions of the Florida Brownfield Redevelopment Act.

Specifically, the bill:

- Increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the amount of tax credit that may be granted to a tax credit applicant per year from $250,000 to $500,000;
- Increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup. The percentage is increased from 10 percent to 25 percent and the amount is increased from $50,000 to $500,000;
- Increases the total amount of tax credits which may be granted for brownfield cleanup from $2 million annually to $5 million annually;
- Expands the Voluntary Cleanup Tax Credit program to provide incentives for cleaning unlicensed, or promiscuous solid waste dumpsites;
- Requires Enterprise Florida, Inc., to aggressively market brownfields;
- Increases the amount of the brownfields loan guarantee from 10 to 25 percent; and,
- Repeals the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

The fiscal impact of this bill is expected to be approximately negative ($3 million) in state revenues in both FY 2006-07 and FY 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes:
The bill provides an increase for the percentage of costs of voluntary cleanup activity from 35 percent to 50 percent eligible for a tax credit against intangible personal property tax or corporate income tax. The bill increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields. Florida followed suit in 1997 and enacted the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned or underused real property, the development of which was complicated by real or perceived environmental contamination.

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act, also known as the "Brownfields Amendments." The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

The Florida Brownfield Redevelopment Act, consisting of ss. 376.77-376.85, F.S., provides legislative intent, a brownfield area designation process, environmental cleanup criteria, program eligibility and liability protections, and economic and financial incentives. Furthermore, s. 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Program, and ss. 376.87 and 376.875, F.S., provide for brownfield property ownership clearance assistance and the creation of the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

Legislative intent

As provided in s. 376.78, F.S., the Legislature declared that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to their use and reuse as sources of employment.

Designation and administration—Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map or a detailed legal description of the brownfield area. The designation of a brownfield area may be initiated in one of two ways:

- By a local government to encourage redevelopment of an area of specific interest to the community; or
- By an individual with a redevelopment plan in mind.

In determining the area to be designated, the local government must consider:

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities;
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage;
- Whether the area has potential to interest the private sector in participating in rehabilitation; and
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes. See, Section 376.80(2), F.S.

A local government shall designate a brownfield area if:

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site;
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 10 new permanent jobs at the brownfield site;[1]
- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations;
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated; and
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield site rehabilitation agreement with the DEP or an approved local program. The person responsible for rehabilitation must enter into a brownfield site rehabilitation agreement with the DEP or an approved local program to be eligible for certain benefits associated with the brownfields redevelopment program. As of February 1, 2006, there were 125 designated brownfield areas in Florida. According to information reported by the Governor's Office of Tourism, Trade, and Economic Development to the DEP in January 2006, the cumulative totals for new job creation and capital investment attributable to the Brownfields Redevelopment program from inception of the program until December 31, 2005 are: 6,656 new direct jobs, 5,935 new indirect jobs, and $546,913,933 of capital investment in designated brownfields areas.

Cleanup criteria

Risk-based corrective-action principles apply, to the maximum extent feasible, to the cleanup activities on a brownfield site within a designated brownfield area. These principles are designed to achieve protection of human health and safety and the environment in a cost-effective manner by taking into account natural attenuation, individual site characteristics, and the use of engineering and institutional controls.

Eligibility and liability protection

A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program. Certain specified sites are not eligible for the program. Those sites include brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, or sites that have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA.

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1 As specified in s. 376.80(2)(b), F.S., the 10 new permanent jobs may be full- or part-time and cannot be associated with the rehabilitation agreement or redevelopment project demolition or construction activities.

After July 1, 1997, petroleum and drycleaning contamination sites in a brownfield area cannot receive both funding assistance for the cleanup of the discharge that is available under the underground storage tank cleanup program or the drycleaning cleanup program and any state assistance available under s. 288.107, F.S., relating to brownfield redevelopment bonus refunds.

If a state or local government has acquired a contaminated site within a brownfield area, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants at the brownfield site. Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.

Economic and financial incentives

Since the Brownfields Redevelopment Act was envisioned to emphasize economic redevelopment, local governments were expected to play a significant role in the process. As a result, state and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance. Other economic and financial incentives available to brownfield sites are tax refunds for qualified target industries located in a brownfield area, brownfield redevelopment bonus refunds, and partial voluntary cleanup tax credits.

The tax refunds available may be for corporate income taxes, insurance premium taxes, sales and use taxes, intangible personal property taxes, emergency excise taxes, documentary stamp taxes, and ad valorem taxes.

The brownfield redevelopment bonus refunds of $2,500 are available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target industry's annual refund claim. Section 288.107, F.S., provides the minimum criteria for participation in the brownfield redevelopment bonus refund program.

Voluntary cleanup tax credit

One of the financial incentives that is getting increased attention as the brownfield program matures and gains in popularity is the voluntary cleanup tax credit or VCTC. This is a tax credit available for site rehabilitation conducted at eligible drycleaning sites and brownfield sites in designated brownfield areas. To be eligible, the responsible party must execute a Brownfield Site Rehabilitation Agreement with the DEP.

The VCTC can apply toward either the intangible personal property tax or the corporate income tax. The amount of the credit is 35 percent of the costs of the voluntary cleanup activity that is integral to site rehabilitation. The maximum tax credit an applicant can receive is $250,000 per year. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. However, the total amount of the tax credit that may be granted each year under the program is $2 million. To date, however, the total amount of applications for the tax credits has not reached the $2 million cap in any one year. DEP reports that from creation of the tax credit program in 1998 through FY 02-03, the total value of tax credits issued annually has nearly doubled each year. A total of $3,867,638 in tax credits have been issued since its inception in 1998. Of the total amount of tax credits issued, $3,098,752 (80 percent) have been issued for brownfield sites and $768,886 (20 percent) have been issued for drycleaning solvent cleanup sites. Table A below, illustrates the fiscal year history associated with the voluntary tax credit program administered by DEP:

Table A

Fiscal Year	# Voluntary Cleanup Tax Credit Certificates Issued	Total $ Issued
FY 1998-1999	1	$30,228.13
FY 1999-2000	3	$118,438.25
FY 2000-2001	6	$213,851.71
FY 2001-2002	9	$494,193.72
FY 2002-2003	13	$1,068,049.29
FY 2003-2004	16	$1,014,834.47
FY 2004-2005	10	$928,042.19
FY 2005-2006	9	$1,010,086.10

As an inducement to complete the voluntary cleanup, the tax credit applicant may claim an additional 10 per cent of the total cleanup costs, not to exceed $50,000 in the final year of cleanup. The tax credits may be transferred once to another entity in whole or in units of not less than 25 percent of the remaining credit.

According to industry representatives and the DEP, there are brownfield sites that are impacted by solid waste; however, due to a lack of "contamination" as defined by statute and rule the DEP lacks authorization to award tax credits associated with the solid waste cleanup.

Brownfield Areas Loan Guarantee Program

The Brownfield Areas Loan Guarantee Program was created in 1998. A Brownfield Areas Loan Guarantee Council was created to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. A loan guarantee may only be for a period of not more than 5 years.

The limited state loan guarantee applies to 10 percent of the primary lender's loans for redevelopment projects in brownfields areas. The loan guarantee holds until permanent financing is acquired or until the project is sold. Section 376.86, F.S., provides that no more than $5 million of the balance of the Inland Protection Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. The loan guarantee mechanism worked as it was designed to do. With the loan guarantee, the developer has more financial flexibility because the initial cash flow is not as great.

Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund

Section 376.87, F.S., provides for brownfield property ownership clearance assistance. The Legislature recognized that some brownfield redevelopment projects are more difficult to redevelop due to the existence of various types of liens on the property and complications from previous ownership having declared bankruptcy. The Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund was created to assist in the early stages of redeveloping brownfields by helping to clear prior liens on the property through a negotiated process. The loans would be repaid in later years from the resale of the brownfield properties following site rehabilitation and other activities that will enhance the property's ultimate value. This trust fund has never been capitalized and used for its intended purposes.

Enterprise Florida, Inc.:

Enterprise Florida, Inc. (EFI) is the public-private partnership responsible for leading Florida's statewide economic development efforts. EFI was formed in July 1996, when Florida became the first state in the nation to replace its Commerce Department with a public-private organization that is responsible for economic development, international trade and statewide business marketing. EFI's mission is to diversify Florida's economy and create better-paying jobs for its citizens by supporting, attracting and helping to create businesses in innovative, high-growth industries. [2] Currently, brownfields are not included in the types of communities that EFI is required to aggressively assist in economic development and jog growth.

Effect of Proposed Changes

- Increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the amount of tax credit that may be granted to a tax credit applicant per year from $250,000 to $500,000;
- Increases the percentage and amount of tax credit that may be received by the taxpayer in the final year of the cleanup as an incentive to complete the cleanup. The percentage is increased from 10 percent to 25 percent and the amount is increased from $50,000 to $500,000;
- Increases the total amount of tax credits which may be granted for brownfield cleanup from $2 million annually to $5 million annually;
- Expands the Voluntary Cleanup Tax Credit program to provide incentives for cleaning unlicensed, or historic solid waste dumpsites;
- Requires Enterprise Florida, Inc., to aggressively market brownfields;
- Increases the amount of the brownfields loan guarantee from 10 to 25 percent; and,
- Repeals the Brownfield Property Ownership Clearance Assistance Program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund.

C. SECTION DIRECTORY:

Sections 1, 2, and 3. Sections 199.1055, 220.1845, and 376.30781, F.S., are amended to increase the tax credit that is available against either the intangible personal property tax or the corporate income tax for costs incurred for voluntary cleanup activity integral to site rehabilitation from 35 percent to 50 percent. Also, the amount of tax credit that may be granted to a tax credit applicant per year is increased from $250,000 to $500,000. Eligible sites are expended to include certain solid waste facilities.

To encourage completion of site rehabilitation at contaminated sites being voluntarily cleaned up, current law allows the applicant to claim an additional 10 percent of the total cleanup costs in the final year of cleanup up to $50,000. These sections are amended to increase the percentage to 25 percent and the maximum amount from $50,000 to $500,000. The total amount of the tax credit that may be granted annually is increased from $2 million to $5 million.

Section 4. Part VII of ch. 288, F.S., creates Enterprise Florida, Inc., as the principle economic development organization for the state. It is Enterprise Florida, Inc.'s responsibility to aggressively market Florida's rural communities, distressed urban communities, and enterprise zones as locations for potential new investment, to aggressively assist these communities in the identification and development of new economic opportunities for job creation, and to fully market state incentive programs such as the Qualified Target Industry Tax Refund Program and the Quick Action Closing Fund in economically distressed areas. This section amends s. 288.9015, F.S., to require Enterprise Florida, Inc., to aggressively market brownfields as locations for potential new investment.

Section 5. This section amends s. 376.86, F.S., to increase the amount of the Brownfield Areas Loan Guarantee from 10 percent to 25 percent.

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2 http://www.eflorida.com/aboutus/default.asp?tn=3

Section 6. This section repeals ss. 376.87 and 376.875, F.S., which relate to the brownfield property ownership clearance assistance program and the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund. This program has never been capitalized and used for its intended purposes.

Section 7. This section provides an effective date of July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-2007	FY 2007-2008
General Revenue	($3 million)	($3 million)

2. Expenditures:

a. Non-recurring Effects:

The bill will require DEP to amend an existing rule detailing the tax credit application process.

b. Recurring Effects: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

a. Non-recurring Effects:

None.

b. Recurring Effects:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the amount of credit, from 35 percent to 50 percent, that may be applied against intangible personal property tax and corporate income tax for the voluntary cleanup costs of a contaminated brownfield or dry-cleaning site, and increases the completion incentive cap from 10 percent to 25 percent. The amount of tax credit that may be granted to a tax credit applicant per year is increased from $250,000 to $500,000. These changes may result in increased participation in the Florida Brownfields Redevelopment Program and in voluntary cleanup of drycleaning solvent contaminated sites. Direct benefits may include employment opportunities for environmental cleanup contractors, future job opportunities for area residents, opportunity for developers to realize profits on property investments, the possibility of an increase in surrounding property value, and a reduction or elimination of risk to public health and the environment resulting from cleaning up contamination in the area.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties

2. Other:

   None

B. RULE-MAKING AUTHORITY:

The bill will require DEP to amend an existing rule detailing the tax credit application process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Language concerning the additional 25 percent of total clean up costs eligible for tax credits during the final year of cleanup under sections 199.1055, 220.1845 and 376.30781(2), F.S., <u>but</u> <u>not</u> s. 376.3078(13), F.S., could be clarified.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to the redevelopment of brownfields;
3 amending ss. 199.1055, 220.1845, and 376.30781, F.S.;
4 increasing the amount and percentage of the credit that
5 may be applied against the intangible personal property
6 tax and the corporate income tax for the cost of voluntary
7 cleanup of a contaminated site; increasing the amount that
8 may be received by the taxpayer as an incentive to
9 complete the cleanup in the final year; increasing the
10 total amount of credits that may be granted in any year;
11 providing tax credits for voluntary cleanup activities
12 related to solid waste disposal facilities; providing
13 criteria for eligible sites and activities; directing the
14 Department of Environmental Protection to apply certain
15 criteria, requirements, and limitations for implementation
16 of such provisions; providing certain exceptions; amending
17 s. 288.9015, F.S.; requiring Enterprise Florida, Inc., to
18 aggressively market brownfields; amending s. 376.86, F.S.;
19 increasing the percentage of loans for redevelopment
20 projects in brownfield areas to which the state loan
21 guarantee applies under the Brownfield Areas Loan
22 Guarantee Program; repealing s. 376.87, F.S., relating to
23 the Brownfield Property Ownership Clearance Assistance;
24 repealing s. 376.875, F.S., relating to the Brownfield
25 Property Ownership Clearance Assistance Revolving Loan
26 Trust Fund; amending s. 14.2015, F.S.; deleting a
27 reference to the trust fund to conform; providing an
28 effective date.

29

30 Be It Enacted by the Legislature of the State of Florida:

31

32 Section 1. Subsection (1) of section 199.1055, Florida
33 Statutes, is amended to read:
34 199.1055 Contaminated site rehabilitation tax credit.--
35 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
36 (a) A credit in the amount of 50 ~~35~~ percent of the costs
37 of voluntary cleanup activity that is integral to site
38 rehabilitation at the following sites is available against any
39 tax due for a taxable year under s. 199.032, less any credit
40 allowed by former s. 220.68 for that year:
41 1. A drycleaning-solvent-contaminated site eligible for
42 state-funded site rehabilitation under s. 376.3078(3);
43 2. A drycleaning-solvent-contaminated site at which
44 cleanup is undertaken by the real property owner pursuant to s.
45 376.3078(11), if the real property owner is not also, and has
46 never been, the owner or operator of the drycleaning facility
47 where the contamination exists; or
48 3. A brownfield site in a designated brownfield area under
49 s. 376.80.
50 (b) A tax credit applicant, or multiple tax credit
51 applicants working jointly to clean up a single site, may not be
52 granted more than $500,000 ~~$250,000~~ per year in tax credits for
53 each site voluntarily rehabilitated. Multiple tax credit
54 applicants shall be granted tax credits in the same proportion
55 as their contribution to payment of cleanup costs. Subject to
56 the same conditions and limitations as provided in this section,

57 a municipality, county, or other tax credit applicant which
58 voluntarily rehabilitates a site may receive not more than
59 $500,000 ~~$250,000~~ per year in tax credits which it can
60 subsequently transfer subject to the provisions in paragraph
61 (g).
62 (c) If the credit granted under this section is not fully
63 used in any one year because of insufficient tax liability on
64 the part of the tax credit applicant, the unused amount may be
65 carried forward for a period not to exceed 5 years. Five years
66 after the date a credit is granted under this section, such
67 credit expires and may not be used. However, if during the 5-
68 year period the credit is transferred, in whole or in part,
69 pursuant to paragraph (g), each transferee has 5 years after the
70 date of transfer to use its credit.
71 (d) A taxpayer that receives a credit under s. 220.1845 is
72 ineligible to receive credit under this section in a given tax
73 year.
74 (e) A tax credit applicant that receives state-funded site
75 rehabilitation pursuant to s. 376.3078(3) for rehabilitation of
76 a drycleaning-solvent-contaminated site is ineligible to receive
77 credit under this section for costs incurred by the tax credit
78 applicant in conjunction with the rehabilitation of that site
79 during the same time period that state-administered site
80 rehabilitation was underway.
81 (f) The total amount of the tax credits which may be
82 granted under this section and s. 220.1845 is $5 ~~$2~~ million
83 annually.

84 (g)1. Tax credits that may be available under this section
85 to an entity eligible under s. 376.30781 may be transferred
86 after a merger or acquisition to the surviving or acquiring
87 entity and used in the same manner with the same limitations.
88 2. The entity or its surviving or acquiring entity as
89 described in subparagraph 1., may transfer any unused credit in
90 whole or in units of no less than 25 percent of the remaining
91 credit. The entity acquiring such credit may use it in the same
92 manner and with the same limitation as described in this
93 section. Such transferred credits may not be transferred again
94 although they may succeed to a surviving or acquiring entity
95 subject to the same conditions and limitations as described in
96 this section.
97 3. In the event the credit provided for under this section
98 is reduced either as a result of a determination by the
99 Department of Environmental Protection or an examination or
100 audit by the Department of Revenue, such tax deficiency shall be
101 recovered from the first entity, or the surviving or acquiring
102 entity, to have claimed such credit up to the amount of credit
103 taken. Any subsequent deficiencies shall be assessed against any
104 entity acquiring and claiming such credit, or in the case of
105 multiple succeeding entities in the order of credit succession.
106 (h) In order to encourage completion of site
107 rehabilitation at contaminated sites being voluntarily cleaned
108 up and eligible for a tax credit under this section, the tax
109 credit applicant may claim an additional 25 ~~10~~ percent of the
110 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
111 final year of cleanup as evidenced by the Department of

112 Environmental Protection issuing a "No Further Action" order for
113 that site.
114 Section 2. Subsection (1) of section 220.1845, Florida
115 Statutes, is amended to read:
116 220.1845 Contaminated site rehabilitation tax credit.--
117 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
118 (a) A credit in the amount of 50 ~~35~~ percent of the costs
119 of voluntary cleanup activity that is integral to site
120 rehabilitation at the following sites is available against any
121 tax due for a taxable year under this chapter:
122 1. A drycleaning-solvent-contaminated site eligible for
123 state-funded site rehabilitation under s. 376.3078(3);
124 2. A drycleaning-solvent-contaminated site at which
125 cleanup is undertaken by the real property owner pursuant to s.
126 376.3078(11), if the real property owner is not also, and has
127 never been, the owner or operator of the drycleaning facility
128 where the contamination exists; or
129 3. A brownfield site in a designated brownfield area under
130 s. 376.80.
131 (b) A tax credit applicant, or multiple tax credit
132 applicants working jointly to clean up a single site, may not be
133 granted more than $500,000 ~~$250,000~~ per year in tax credits for
134 each site voluntarily rehabilitated. Multiple tax credit
135 applicants shall be granted tax credits in the same proportion
136 as their contribution to payment of cleanup costs. Subject to
137 the same conditions and limitations as provided in this section,
138 a municipality, county, or other tax credit applicant which
139 voluntarily rehabilitates a site may receive not more than

140 $500,000 ~~$250,000~~ per year in tax credits which it can
141 subsequently transfer subject to the provisions in paragraph
142 (h).
143 (c) If the credit granted under this section is not fully
144 used in any one year because of insufficient tax liability on
145 the part of the corporation, the unused amount may be carried
146 forward for a period not to exceed 5 years. The carryover credit
147 may be used in a subsequent year when the tax imposed by this
148 chapter for that year exceeds the credit for which the
149 corporation is eligible in that year under this section after
150 applying the other credits and unused carryovers in the order
151 provided by s. 220.02(8). Five years after the date a credit is
152 granted under this section, such credit expires and may not be
153 used. However, if during the 5-year period the credit is
154 transferred, in whole or in part, pursuant to paragraph (h),
155 each transferee has 5 years after the date of transfer to use
156 its credit.
157 (d) A taxpayer that files a consolidated return in this
158 state as a member of an affiliated group under s. 220.131(1) may
159 be allowed the credit on a consolidated return basis up to the
160 amount of tax imposed upon the consolidated group.
161 (e) A taxpayer that receives credit under s. 199.1055 is
162 ineligible to receive credit under this section in a given tax
163 year.
164 (f) A tax credit applicant that receives state-funded site
165 rehabilitation under s. 376.3078(3) for rehabilitation of a
166 drycleaning-solvent-contaminated site is ineligible to receive
167 credit under this section for costs incurred by the tax credit

168 applicant in conjunction with the rehabilitation of that site
169 during the same time period that state-administered site
170 rehabilitation was underway.
171 (g) The total amount of the tax credits which may be
172 granted under this section and s. 199.1055 is $5 ~~$2~~ million
173 annually.
174 (h)1. Tax credits that may be available under this section
175 to an entity eligible under s. 376.30781 may be transferred
176 after a merger or acquisition to the surviving or acquiring
177 entity and used in the same manner and with the same
178 limitations.
179 2. The entity or its surviving or acquiring entity as
180 described in subparagraph 1., may transfer any unused credit in
181 whole or in units of no less than 25 percent of the remaining
182 credit. The entity acquiring such credit may use it in the same
183 manner and with the same limitation as described in this
184 section. Such transferred credits may not be transferred again
185 although they may succeed to a surviving or acquiring entity
186 subject to the same conditions and limitations as described in
187 this section.
188 3. In the event the credit provided for under this section
189 is reduced either as a result of a determination by the
190 Department of Environmental Protection or an examination or
191 audit by the Department of Revenue, such tax deficiency shall be
192 recovered from the first entity, or the surviving or acquiring
193 entity, to have claimed such credit up to the amount of credit
194 taken. Any subsequent deficiencies shall be assessed against any

195 entity acquiring and claiming such credit, or in the case of
196 multiple succeeding entities in the order of credit succession.
197 (i) In order to encourage completion of site
198 rehabilitation at contaminated sites being voluntarily cleaned
199 up and eligible for a tax credit under this section, the tax
200 credit applicant may claim an additional 25 ~~10~~ percent of the
201 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
202 final year of cleanup as evidenced by the Department of
203 Environmental Protection issuing a "No Further Action" order for
204 that site.
205 Section 3. Section 376.30781, Florida Statutes, is amended
206 to read:
207 376.30781 Partial tax credits for rehabilitation of
208 drycleaning-solvent-contaminated sites and brownfield sites in
209 designated brownfield areas; application process; rulemaking
210 authority; revocation authority.--
211 (1) The Legislature finds that:
212 (a) To facilitate property transactions and economic
213 growth and development, it is in the interest of the state to
214 encourage the cleanup, at the earliest possible time, of
215 drycleaning-solvent-contaminated sites and brownfield sites in
216 designated brownfield areas.
217 (b) It is the intent of the Legislature to encourage the
218 voluntary cleanup of drycleaning-solvent-contaminated sites and
219 brownfield sites in designated brownfield areas by providing a
220 partial tax credit for the restoration of such property in
221 specified circumstances.

222 (2)(a) A credit in the amount of 50 ~~35~~ percent of the
223 costs of voluntary cleanup activity that is integral to site
224 rehabilitation at the following sites is allowed pursuant to ss.
225 199.1055 and 220.1845:
226 1. A drycleaning-solvent-contaminated site eligible for
227 state-funded site rehabilitation under s. 376.3078(3);
228 2. A drycleaning-solvent-contaminated site at which
229 cleanup is undertaken by the real property owner pursuant to s.
230 376.3078(11), if the real property owner is not also, and has
231 never been, the owner or operator of the drycleaning facility
232 where the contamination exists; or
233 3. A brownfield site in a designated brownfield area under
234 s. 376.80.
235 (b) A tax credit applicant, or multiple tax credit
236 applicants working jointly to clean up a single site, may not be
237 granted more than $500,000 ~~$250,000~~ per year in tax credits for
238 each site voluntarily rehabilitated. Multiple tax credit
239 applicants shall be granted tax credits in the same proportion
240 as their contribution to payment of cleanup costs. Tax credits
241 are available only for site rehabilitation conducted during the
242 calendar year for which the tax credit application is submitted.
243 (c) In order to encourage completion of site
244 rehabilitation at contaminated sites that are being voluntarily
245 cleaned up and that are eligible for a tax credit under this
246 section, the tax credit applicant may claim an additional 25 ~~10~~
247 percent of the total cleanup costs, not to exceed $500,000
248 ~~$50,000~~, in the final year of cleanup as evidenced by the

249 Department of Environmental Protection issuing a "No Further
250 Action" order for that site.
251 (3) The Department of Environmental Protection shall be
252 responsible for allocating the tax credits provided for in ss.
253 199.1055 and 220.1845, not to exceed a total of $5 ~~$2~~ million in
254 tax credits annually.
255 (4) To claim the credit for site rehabilitation conducted
256 during the current calendar year, each tax credit applicant must
257 apply to the Department of Environmental Protection for an
258 allocation of the $5 ~~$2~~ million annual credit by January 15 of
259 the following year on a form developed by the Department of
260 Environmental Protection in cooperation with the Department of
261 Revenue. The form shall include an affidavit from each tax
262 credit applicant certifying that all information contained in
263 the application, including all records of costs incurred and
264 claimed in the tax credit application, are true and correct. If
265 the application is submitted pursuant to subparagraph (2)(a)2.,
266 the form must include an affidavit signed by the real property
267 owner stating that it is not, and has never been, the owner or
268 operator of the drycleaning facility where the contamination
269 exists. Approval of partial tax credits must be accomplished on
270 a first-come, first-served basis based upon the date complete
271 applications are received by the Division of Waste Management. A
272 tax credit applicant shall submit only one complete application
273 per site for each calendar year's site rehabilitation costs.
274 Incomplete placeholder applications shall not be accepted and
275 will not secure a place in the first-come, first-served

276 application line. To be eligible for a tax credit, the tax
277 credit applicant must:
278 (a) Have entered into a voluntary cleanup agreement with
279 the Department of Environmental Protection for a drycleaning-
280 solvent-contaminated site or a Brownfield Site Rehabilitation
281 Agreement, as applicable; and
282 (b) Have paid all deductibles pursuant to s.
283 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
284 sites.
285 (5) To obtain the tax credit certificate, a tax credit
286 applicant must annually file an application for certification,
287 which must be received by the Division of Waste Management of
288 the Department of Environmental Protection by January 15 of the
289 year following the calendar year for which site rehabilitation
290 costs are being claimed in a tax credit application. The tax
291 credit applicant must provide all pertinent information
292 requested on the tax credit application form, including, at a
293 minimum, the name and address of the tax credit applicant and
294 the address and tracking identification number of the eligible
295 site. Along with the tax credit application form, the tax credit
296 applicant must submit the following:
297 (a) A nonrefundable review fee of $250 made payable to the
298 Water Quality Assurance Trust Fund to cover the administrative
299 costs associated with the department's review of the tax credit
300 application;
301 (b) Copies of contracts and documentation of contract
302 negotiations, accounts, invoices, sales tickets, or other
303 payment records from purchases, sales, leases, or other

304 transactions involving actual costs incurred for that tax year
305 related to site rehabilitation, as that term is defined in ss.
306 376.301 and 376.79;
307 (c) Proof that the documentation submitted pursuant to
308 paragraph (b) has been reviewed and verified by an independent
309 certified public accountant in accordance with standards
310 established by the American Institute of Certified Public
311 Accountants. Specifically, the certified public accountant must
312 attest to the accuracy and validity of the costs incurred and
313 paid by conducting an independent review of the data presented
314 by the tax credit applicant. Accuracy and validity of costs
315 incurred and paid would be determined once the level of effort
316 was certified by an appropriate professional registered in this
317 state in each contributing technical discipline. The certified
318 public accountant's report would also attest that the costs
319 included in the application form are not duplicated within the
320 application. A copy of the accountant's report shall be
321 submitted to the Department of Environmental Protection with the
322 tax credit application; and
323 (d) A certification form stating that site rehabilitation
324 activities associated with the documentation submitted pursuant
325 to paragraph (b) have been conducted under the observation of,
326 and related technical documents have been signed and sealed by,
327 an appropriate professional registered in this state in each
328 contributing technical discipline. The certification form shall
329 be signed and sealed by the appropriate registered professionals
330 stating that the costs incurred were integral, necessary, and

331 required for site rehabilitation, as that term is defined in ss.
332 376.301 and 376.79.
333 (6) The certified public accountant and appropriate
334 registered professionals submitting forms as part of a tax
335 credit application must verify such forms. Verification must be
336 accomplished as provided in s. 92.525(1)(b) and subject to the
337 provisions of s. 92.525(3).
338 (7) The Department of Environmental Protection shall
339 review the tax credit application and any supplemental
340 documentation that the tax credit applicant may submit prior to
341 the annual application deadline in order to have the application
342 considered complete, for the purpose of verifying that the tax
343 credit applicant has met the qualifying criteria in subsections
344 (2) and (4) and has submitted all required documentation listed
345 in subsection (5). Upon verification that the tax credit
346 applicant has met these requirements, the department shall issue
347 a written decision granting eligibility for partial tax credits
348 (a tax credit certificate) in the amount of 50 ~~35~~ percent of the
349 total costs claimed, subject to the $500,000 ~~$250,000~~
350 limitation, for the calendar year for which the tax credit
351 application is submitted based on the report of the certified
352 public accountant and the certifications from the appropriate
353 registered technical professionals.
354 (8) On or before March 1, the Department of Environmental
355 Protection shall inform each eligible tax credit applicant of
356 the amount of its partial tax credit and provide each eligible
357 tax credit applicant with a tax credit certificate that must be
358 submitted with its tax return to the Department of Revenue to

359 claim the tax credit or be transferred pursuant to s.
360 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in
361 the payment of refunds if total credits exceed the amount of tax
362 owed.
363 (9) If a tax credit applicant does not receive a tax
364 credit allocation due to an exhaustion of the $5 ~~$2~~ million
365 annual tax credit authorization, such application will then be
366 included in the same first-come, first-served order in the next
367 year's annual tax credit allocation, if any, based on the prior
368 year application.
369 (10) The Department of Environmental Protection may adopt
370 rules to prescribe the necessary forms required to claim tax
371 credits under this section and to provide the administrative
372 guidelines and procedures required to administer this section.
373 (11) The Department of Environmental Protection may revoke
374 or modify any written decision granting eligibility for partial
375 tax credits under this section if it is discovered that the tax
376 credit applicant submitted any false statement, representation,
377 or certification in any application, record, report, plan, or
378 other document filed in an attempt to receive partial tax
379 credits under this section. The Department of Environmental
380 Protection shall immediately notify the Department of Revenue of
381 any revoked or modified orders affecting previously granted
382 partial tax credits. Additionally, the tax credit applicant must
383 notify the Department of Revenue of any change in its tax credit
384 claimed.
385 (12) A tax credit applicant who receives state-funded site
386 rehabilitation under s. 376.3078(3) for rehabilitation of a

387 drycleaning-solvent-contaminated site is ineligible to receive a
388 tax credit under s. 199.1055 or s. 220.1845 for costs incurred
389 by the tax credit applicant in conjunction with the
390 rehabilitation of that site during the same time period that
391 state-administered site rehabilitation was underway.
392 (13) At eligible sites listed in paragraph (2)(a), in
393 addition to any tax credits that may be claimed for site
394 rehabilitation as defined in s. 376.301, a tax credit applicant
395 may also claim tax credits pursuant to the requirements of this
396 section for voluntary cleanup activity that addresses a solid
397 waste disposal facility, subject to the following criteria:
398 (a) For purposes of this subsection, "solid waste" and
399 "solid waste disposal facility" have the same meanings as
400 defined in s. 403.703, but shall not include sites that merely
401 have litter or debris scattered on the surface of the land;
402 (b) The solid waste disposal facility must have ceased
403 operation prior to 1988 and must not have been or must not
404 currently be subject to any department solid waste permit;
405 (c) Tax credits may be claimed for one or more of the
406 following activities:
407 1. Removing all solid waste from the solid waste disposal
408 facility and disposing of it in a permitted solid waste
409 management facility;
410 2. Closing the solid waste disposal facility, which may
411 include partial removal and disposal of solid waste in a
412 permitted solid waste management facility, in accordance with
413 the requirements of chapter 62-701, Florida Administrative Code,
414 including grading the facility to achieve appropriate side

415 slopes, installing final cover, controlling stormwater, and
416 providing gas management, if necessary;
417 3. Performing long-term care for the solid waste disposal
418 facility in accordance with the requirements of chapter 62-701,
419 Florida Administrative Code, after the facility has been
420 properly closed; and
421 4. Performing groundwater evaluation and assessment after
422 removal of all solid waste or after the solid waste disposal
423 facility has been properly closed;
424 (d) If the solid waste disposal facility is closed as
425 described in subparagraph (c)2., the redevelopment of the
426 property containing the solid waste disposal facility shall be
427 limited to commercial or industrial land use only and shall be
428 subject to appropriate engineering and institutional controls,
429 and tax credits shall be awarded only after a restrictive
430 covenant limiting future uses of the property has been reviewed
431 and approved by the department and properly recorded;
432 (e) Costs for crushing or compacting the solid waste in
433 place solely to make it suitable for future development shall
434 not be eligible for tax credits pursuant to this section; and
435 (f) Any activity conducted in accordance with this
436 subsection shall not be considered site rehabilitation.
437 (14) In implementing subsection (13), the department shall
438 use the same criteria, requirements, and limitations detailed in
439 subsections (1)-(12) of this section and ss. 199.1055 and
440 220.1845, with the following exceptions:
441 (a) Where reference is made to "site rehabilitation," the
442 department shall consider whether the costs claimed are for

443 voluntary cleanup activity that addresses a solid waste disposal
444 facility as outlined in subsection (13);
445 (b) In lieu of the certification requirements of paragraph
446 (5)(d), a tax credit applicant seeking a tax credit pursuant to
447 subsection (13) shall include in the tax credit application:
448 1. A certification that the applicant has determined,
449 after consultation with local government officials and the
450 department, that the solid waste disposal facility ceased
451 operating prior to January 1, 1974, and is not or has never been
452 subject to a solid waste permit;
453 2. A certification signed and sealed by an appropriate
454 registered professional and previously approved by the
455 department that the solid waste disposal facility has been
456 properly closed pursuant to chapter 62-701, Florida
457 Administrative Code, or that all solid waste was removed and
458 properly disposed of; and
459 3. A certification signed and sealed by an appropriate
460 registered professional that costs incurred and claimed in the
461 tax credit application were integral, necessary, and required to
462 conduct those activities listed in paragraph (13)(c), as
463 applicable;
464 (c) Tax credit applications in which costs are claimed
465 pursuant to subparagraphs (13)(c)1. and 2. shall not be subject
466 to the calendar-year limitation and January 15 annual
467 application deadline, but the department shall accept a one-time
468 application filed after the tax credit applicant has completed
469 all requirements listed in subsection (13) and this subsection;

470 (d) Notwithstanding the tax credit percentage established
471 in subsections (2) and (7) and ss. 199.1055 and 220.1845, the
472 tax credit for activities conducted pursuant to subparagraphs
473 (13)(c)2.-4. relating to closure of a solid waste disposal
474 facility shall be limited to 25 percent;
475 (e) The additional percentage allowed by paragraph (2)(c)
476 and ss. 199.1055(1)(h) and 220.1845(1)(i) is not applicable to
477 tax credits claimed pursuant to subsection (13); and
478 (f) The department shall have 60 days after the date of
479 receipt of any application claiming tax credits pursuant to
480 subsection (13) to process the application and grant or deny the
481 claimed tax credits.
482 Section 4. Subsection (2) of section 288.9015, Florida
483 Statutes, is amended to read:
484 288.9015 Enterprise Florida, Inc.; purpose; duties.--
485 (2) It shall be the responsibility of Enterprise Florida,
486 Inc., to aggressively market Florida's rural communities,
487 distressed urban communities, brownfields, and enterprise zones
488 as locations for potential new investment, to aggressively
489 assist in the retention and expansion of existing businesses in
490 these communities, and to aggressively assist these communities
491 in the identification and development of new economic
492 development opportunities for job creation, fully marketing
493 state incentive programs such as the Qualified Target Industry
494 Tax Refund Program under s. 288.106 and the Quick Action Closing
495 Fund under s. 288.1088 in economically distressed areas.
496 Section 5. Subsection (1) of section 376.86, Florida
497 Statutes, is amended to read:

498 376.86 Brownfield Areas Loan Guarantee Program.--
499 (1) The Brownfield Areas Loan Guarantee Council is created
500 to review and approve or deny by a majority vote of its
501 membership, the situations and circumstances for participation
502 in partnerships by agreements with local governments, financial
503 institutions, and others associated with the redevelopment of
504 brownfield areas pursuant to the Brownfields Redevelopment Act
505 for a limited state guaranty of up to 5 years of loan guarantees
506 or loan loss reserves issued pursuant to law. The limited state
507 loan guaranty applies only to 25 ~~10~~ percent of the primary
508 lenders loans for redevelopment projects in brownfield areas. A
509 limited state guaranty of private loans or a loan loss reserve
510 is authorized for lenders licensed to operate in the state upon
511 a determination by the council that such an arrangement would be
512 in the public interest and the likelihood of the success of the
513 loan is great.
514 Section 6. Sections 376.87 and 376.875, Florida Statutes,
515 are repealed.
516 Section 7. Paragraph (f) of subsection (2) of section
517 14.2015, Florida Statutes, is amended to read:
518 14.2015 Office of Tourism, Trade, and Economic
519 Development; creation; powers and duties.--
520 (2) The purpose of the Office of Tourism, Trade, and
521 Economic Development is to assist the Governor in working with
522 the Legislature, state agencies, business leaders, and economic
523 development professionals to formulate and implement coherent
524 and consistent policies and strategies designed to provide
525 economic opportunities for all Floridians. To accomplish such

526 purposes, the Office of Tourism, Trade, and Economic Development
527 shall:
528 (f)1. Administer the Florida Enterprise Zone Act under ss.
529 290.001-290.016, the community contribution tax credit program
530 under ss. 220.183 and 624.5105, the tax refund program for
531 qualified target industry businesses under s. 288.106, the tax-
532 refund program for qualified defense contractors under s.
533 288.1045, contracts for transportation projects under s.
534 288.063, the sports franchise facility program under s.
535 288.1162, the professional golf hall of fame facility program
536 under s. 288.1168, the expedited permitting process under s.
537 403.973, the Rural Community Development Revolving Loan Fund
538 under s. 288.065, the Regional Rural Development Grants Program
539 under s. 288.018, the Certified Capital Company Act under s.
540 288.99, the Florida State Rural Development Council, the Rural
541 Economic Development Initiative, and other programs that are
542 specifically assigned to the office by law, by the
543 appropriations process, or by the Governor. Notwithstanding any
544 other provisions of law, the office may expend interest earned
545 from the investment of program funds deposited in the Grants and
546 Donations Trust Fund ~~and the Brownfield Property Ownership~~
547 ~~Clearance Assistance Revolving Loan Trust Fund~~ to contract for
548 the administration of the programs, or portions of the programs,
549 enumerated in this paragraph or assigned to the office by law,
550 by the appropriations process, or by the Governor. Such
551 expenditures shall be subject to review under chapter 216.
552 2. The office may enter into contracts in connection with
553 the fulfillment of its duties concerning the Florida First

554 Business Bond Pool under chapter 159, tax incentives under
555 chapters 212 and 220, tax incentives under the Certified Capital
556 Company Act in chapter 288, foreign offices under chapter 288,
557 the Enterprise Zone program under chapter 290, the Seaport
558 Employment Training program under chapter 311, the Florida
559 Professional Sports Team License Plates under chapter 320,
560 Spaceport Florida under chapter 331, Expedited Permitting under
561 chapter 403, and in carrying out other functions that are
562 specifically assigned to the office by law, by the
563 appropriations process, or by the Governor.
564 Section 8. This act shall take effect July 1, 2006.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill:
2 Representative(s) offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 199.1055, Florida Statutes, is amended
7 to read:
8 199.1055 Contaminated site rehabilitation tax credit.--
9 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
10 (a) A credit in the amount of 50 ~~35~~ percent of the costs
11 of voluntary cleanup activity that is integral to site
12 rehabilitation at the following sites is available against any
13 tax due for a taxable year under s. 199.032, less any credit
14 allowed by former s. 220.68 for that year:
15 1. A drycleaning-solvent-contaminated site eligible for
16 state-funded site rehabilitation under s. 376.3078(3);
17 2. A drycleaning-solvent-contaminated site at which
18 cleanup is undertaken by the real property owner pursuant to s.
19 376.3078(11), if the real property owner is not also, and has
20 never been, the owner or operator of the drycleaning facility
21 where the contamination exists; or

22 3. A brownfield site in a designated brownfield area under
23 s. 376.80.
24 (b) A tax credit applicant, or multiple tax credit
25 applicants working jointly to clean up a single site, may not be
26 granted more than $500,000 ~~$250,000~~ per year in tax credits for
27 each site voluntarily rehabilitated. Multiple tax credit
28 applicants shall be granted tax credits in the same proportion
29 as their contribution to payment of cleanup costs. Subject to
30 the same conditions and limitations as provided in this section,
31 a municipality, county, or other tax credit applicant which
32 voluntarily rehabilitates a site may receive not more than
33 $500,000 ~~$250,000~~ per year in tax credits which it can
34 subsequently transfer subject to the provisions in paragraph
35 (g).
36 (c) If the credit granted under this section is not fully
37 used in any one year because of insufficient tax liability on
38 the part of the tax credit applicant, the unused amount may be
39 carried forward for a period not to exceed 5 years. Five years
40 after the date a credit is granted under this section, such
41 credit expires and may not be used. However, if during the 5-
42 year period the credit is transferred, in whole or in part,
43 pursuant to paragraph (g), each transferee has 5 years after the
44 date of transfer to use its credit.
45 (d) A taxpayer that receives a credit under s. 220.1845 is
46 ineligible to receive credit under this section in a given tax
47 year.
48 (e) A tax credit applicant that receives state-funded site
49 rehabilitation pursuant to s. 376.3078(3) for rehabilitation of
50 a drycleaning-solvent-contaminated site is ineligible to receive
51 credit under this section for costs incurred by the tax credit
52 applicant in conjunction with the rehabilitation of that site

53 during the same time period that state-administered site
54 rehabilitation was underway.
55 (f) The total amount of the tax credits which may be
56 granted under this section and s. 220.1845 is $5 ~~$2~~ million
57 annually.
58 (g)1. Tax credits that may be available under this section
59 to an entity eligible under s. 376.30781 may be transferred
60 after a merger or acquisition to the surviving or acquiring
61 entity and used in the same manner with the same limitations.
62 2. The entity or its surviving or acquiring entity as
63 described in subparagraph 1., may transfer any unused credit in
64 whole or in units of no less than 25 percent of the remaining
65 credit. The entity acquiring such credit may use it in the same
66 manner and with the same limitation as described in this
67 section. Such transferred credits may not be transferred again
68 although they may succeed to a surviving or acquiring entity
69 subject to the same conditions and limitations as described in
70 this section.
71 3. In the event the credit provided for under this section
72 is reduced either as a result of a determination by the
73 Department of Environmental Protection or an examination or
74 audit by the Department of Revenue, such tax deficiency shall be
75 recovered from the first entity, or the surviving or acquiring
76 entity, to have claimed such credit up to the amount of credit
77 taken. Any subsequent deficiencies shall be assessed against any
78 entity acquiring and claiming such credit, or in the case of
79 multiple succeeding entities in the order of credit succession.
80 (h) In order to encourage completion of site
81 rehabilitation at contaminated sites being voluntarily cleaned
82 up and eligible for a tax credit under this section, the tax
83 credit applicant may claim an additional 25 ~~10~~ percent of the

84 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
85 final year of cleanup as evidenced by the Department of
86 Environmental Protection issuing a "No Further Action" order for
87 that site.
88 (i) In order to encourage the construction of housing that
89 meets the definition of affordable provided in s. 420.0004(3),
90 an applicant for the tax credit may claim an additional 25
91 percent of the total site-rehabilitation costs that are eligible
92 for tax credits under this section, not to exceed $500,000. In
93 order to receive this additional tax credit, the applicant must
94 provide a certification letter from the Florida Housing Finance
95 Corporation, the local housing authority, or other governmental
96 agency that is a party to the use agreement, indicating that the
97 construction on the brownfield site is complete, the brownfield
98 site has received a certificate of occupancy, and the brownfield
99 site has a properly recorded instrument that limits the use of
100 the property to housing that meets the definition of affordable
101 provided in s. 420.0004(3).
102 (2) FILING REQUIREMENTS.--Any taxpayer that wishes to
103 obtain credit under this section must submit with its return a
104 tax credit certificate approving partial tax credits issued by
105 the Department of Environmental Protection under s. 376.30781.
106 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
107 FORFEITURE.--
108 (a) The Department of Revenue may adopt rules to prescribe
109 any necessary forms required to claim a tax credit under this
110 section and to provide the administrative guidelines and
111 procedures required to administer this section.
112 (b) In addition to its existing audit and investigation
113 authority relating to chapters 199 and 220, the Department of
114 Revenue may perform any additional financial and technical

115 audits and investigations, including examining the accounts,
116 books, or records of the tax credit applicant, which are
117 necessary to verify the site rehabilitation costs included in a
118 tax credit return and to ensure compliance with this section.
119 The Department of Environmental Protection shall provide
120 technical assistance, when requested by the Department of
121 Revenue, on any technical audits performed under this section.
122 (c) It is grounds for forfeiture of previously claimed and
123 received tax credits if the Department of Revenue determines, as
124 a result of either an audit or information received from the
125 Department of Environmental Protection, that a taxpayer received
126 tax credits under this section to which the taxpayer was not
127 entitled. In the case of fraud, the taxpayer shall be prohibited
128 from claiming any future tax credits under this section or s.
129 220.1845.
130 1. The taxpayer is responsible for returning forfeited tax
131 credits to the Department of Revenue, and such funds shall be
132 paid into the General Revenue Fund of the state.
133 2. The taxpayer shall file with the Department of Revenue
134 an amended tax return or such other report as the Department of
135 Revenue prescribes by rule and shall pay any required tax within
136 60 days after the taxpayer receives notification from the
137 Department of Environmental Protection pursuant to s. 376.30781
138 that previously approved tax credits have been revoked or
139 modified, if uncontested, or within 60 days after a final order
140 is issued following proceedings involving a contested revocation
141 or modification order.
142 3. A notice of deficiency may be issued by the Department
143 of Revenue at any time within 5 years after the date the
144 taxpayer receives notification from the Department of
145 Environmental Protection pursuant to s. 376.30781 that

146 previously approved tax credits have been revoked or modified.
147 If a taxpayer fails to notify the Department of Revenue of any
148 change in its tax credit claimed, a notice of deficiency may be
149 issued at any time. In either case, the amount of any proposed
150 assessment set forth in such notice of deficiency shall be
151 limited to the amount of any deficiency resulting under this
152 section from the recomputation of the taxpayer's tax for the
153 taxable year.
154 4. Any taxpayer that fails to report and timely pay any
155 tax due as a result of the forfeiture of its tax credit is in
156 violation of this section and is subject to applicable penalty
157 and interest.
158 Section 2. Section 220.1845, Florida Statutes, is amended
159 to read:
160 220.1845 Contaminated site rehabilitation tax credit.--
161 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--
162 (a) A credit in the amount of 50 ~~35~~ percent of the costs
163 of voluntary cleanup activity that is integral to site
164 rehabilitation at the following sites is available against any
165 tax due for a taxable year under this chapter:
166 1. A drycleaning-solvent-contaminated site eligible for
167 state-funded site rehabilitation under s. 376.3078(3);
168 2. A drycleaning-solvent-contaminated site at which
169 cleanup is undertaken by the real property owner pursuant to s.
170 376.3078(11), if the real property owner is not also, and has
171 never been, the owner or operator of the drycleaning facility
172 where the contamination exists; or
173 3. A brownfield site in a designated brownfield area under
174 s. 376.80.
175 (b) A tax credit applicant, or multiple tax credit
176 applicants working jointly to clean up a single site, may not be

177 granted more than $500,000 ~~$250,000~~ per year in tax credits for
178 each site voluntarily rehabilitated. Multiple tax credit
179 applicants shall be granted tax credits in the same proportion
180 as their contribution to payment of cleanup costs. Subject to
181 the same conditions and limitations as provided in this section,
182 a municipality, county, or other tax credit applicant which
183 voluntarily rehabilitates a site may receive not more than
184 $500,000 ~~$250,000~~ per year in tax credits which it can
185 subsequently transfer subject to the provisions in paragraph
186 (h).
187 (c) If the credit granted under this section is not fully
188 used in any one year because of insufficient tax liability on
189 the part of the corporation, the unused amount may be carried
190 forward for a period not to exceed 5 years. The carryover credit
191 may be used in a subsequent year when the tax imposed by this
192 chapter for that year exceeds the credit for which the
193 corporation is eligible in that year under this section after
194 applying the other credits and unused carryovers in the order
195 provided by s. 220.02(8). Five years after the date a credit is
196 granted under this section, such credit expires and may not be
197 used. However, if during the 5-year period the credit is
198 transferred, in whole or in part, pursuant to paragraph (h),
199 each transferee has 5 years after the date of transfer to use
200 its credit.
201 (d) A taxpayer that files a consolidated return in this
202 state as a member of an affiliated group under s. 220.131(1) may
203 be allowed the credit on a consolidated return basis up to the
204 amount of tax imposed upon the consolidated group.
205 (e) A taxpayer that receives credit under s. 199.1055 is
206 ineligible to receive credit under this section in a given tax
207 year.

208 (f) A tax credit applicant that receives state-funded site
209 rehabilitation under s. 376.3078(3) for rehabilitation of a
210 drycleaning-solvent-contaminated site is ineligible to receive
211 credit under this section for costs incurred by the tax credit
212 applicant in conjunction with the rehabilitation of that site
213 during the same time period that state-administered site
214 rehabilitation was underway.
215 (g) The total amount of the tax credits which may be
216 granted under this section and s. 199.1055 is $5 ~~$2~~ million
217 annually.
218 (h)1. Tax credits that may be available under this section
219 to an entity eligible under s. 376.30781 may be transferred
220 after a merger or acquisition to the surviving or acquiring
221 entity and used in the same manner and with the same
222 limitations.
223 2. The entity or its surviving or acquiring entity as
224 described in subparagraph 1., may transfer any unused credit in
225 whole or in units of no less than 25 percent of the remaining
226 credit. The entity acquiring such credit may use it in the same
227 manner and with the same limitation as described in this
228 section. Such transferred credits may not be transferred again
229 although they may succeed to a surviving or acquiring entity
230 subject to the same conditions and limitations as described in
231 this section.
232 3. In the event the credit provided for under this section
233 is reduced either as a result of a determination by the
234 Department of Environmental Protection or an examination or
235 audit by the Department of Revenue, such tax deficiency shall be
236 recovered from the first entity, or the surviving or acquiring
237 entity, to have claimed such credit up to the amount of credit
238 taken. Any subsequent deficiencies shall be assessed against any

239 entity acquiring and claiming such credit, or in the case of
240 multiple succeeding entities in the order of credit succession.
241 (i) In order to encourage completion of site
242 rehabilitation at contaminated sites being voluntarily cleaned
243 up and eligible for a tax credit under this section, the tax
244 credit applicant may claim an additional 25 ~~10~~ percent of the
245 total cleanup costs, not to exceed $500,000 ~~$50,000~~, in the
246 final year of cleanup as evidenced by the Department of
247 Environmental Protection issuing a "No Further Action" order for
248 that site.
249 (j) In order to encourage the construction of housing that
250 meets the definition of affordable provided in s. 420.0004(3),
251 an applicant for the tax credit may claim an additional 25
252 percent of the total site-rehabilitation costs that are eligible
253 for tax credits under this section, not to exceed $500,000. In
254 order to receive this additional tax credit, the applicant must
255 provide a certification letter from the Florida Housing Finance
256 Corporation, the local housing authority, or other governmental
257 agency that is a party to the use agreement, indicating that the
258 construction on the brownfield site is complete, the brownfield
259 site has received a certificate of occupancy, and the brownfield
260 site has a properly recorded instrument that limits the use of
261 the property to housing that meets the definition of affordable
262 provided in s. 420.0004(3).
263 (2) FILING REQUIREMENTS.--Any corporation that wishes to
264 obtain credit under this section must submit with its return a
265 tax credit certificate approving partial tax credits issued by
266 the Department of Environmental Protection under s. 376.30781.
267 (3) ADMINISTRATION; AUDIT AUTHORITY; TAX CREDIT
268 FORFEITURE.--

269 (a) The Department of Revenue may adopt rules to prescribe
270 any necessary forms required to claim a tax credit under this
271 section and to provide the administrative guidelines and
272 procedures required to administer this section.
273 (b) In addition to its existing audit and investigation
274 authority relating to chapter 199 and this chapter, the
275 Department of Revenue may perform any additional financial and
276 technical audits and investigations, including examining the
277 accounts, books, or records of the tax credit applicant, which
278 are necessary to verify the site rehabilitation costs included
279 in a tax credit return and to ensure compliance with this
280 section. The Department of Environmental Protection shall
281 provide technical assistance, when requested by the Department
282 of Revenue, on any technical audits performed pursuant to this
283 section.
284 (c) It is grounds for forfeiture of previously claimed and
285 received tax credits if the Department of Revenue determines, as
286 a result of either an audit or information received from the
287 Department of Environmental Protection, that a taxpayer received
288 tax credits pursuant to this section to which the taxpayer was
289 not entitled. In the case of fraud, the taxpayer shall be
290 prohibited from claiming any future tax credits under this
291 section or s. 199.1055.
292 1. The taxpayer is responsible for returning forfeited tax
293 credits to the Department of Revenue, and such funds shall be
294 paid into the General Revenue Fund of the state.
295 2. The taxpayer shall file with the Department of Revenue
296 an amended tax return or such other report as the Department of
297 Revenue prescribes by rule and shall pay any required tax within
298 60 days after the taxpayer receives notification from the
299 Department of Environmental Protection pursuant to s. 376.30781

300 that previously approved tax credits have been revoked or
301 modified, if uncontested, or within 60 days after a final order
302 is issued following proceedings involving a contested revocation
303 or modification order.
304 3. A notice of deficiency may be issued by the Department
305 of Revenue at any time within 5 years after the date the
306 taxpayer receives notification from the Department of
307 Environmental Protection pursuant to s. 376.30781 that
308 previously approved tax credits have been revoked or modified.
309 If a taxpayer fails to notify the Department of Revenue of any
310 change in its tax credit claimed, a notice of deficiency may be
311 issued at any time. In either case, the amount of any proposed
312 assessment set forth in such notice of deficiency shall be
313 limited to the amount of any deficiency resulting under this
314 section from the recomputation of the taxpayer's tax for the
315 taxable year.
316 4. Any taxpayer that fails to report and timely pay any
317 tax due as a result of the forfeiture of its tax credit is in
318 violation of this section and is subject to applicable penalty
319 and interest.
320 Section 3. Section 376.30781, Florida Statutes, is amended
321 to read:
322 376.30781 Partial tax credits for rehabilitation of
323 drycleaning-solvent-contaminated sites and brownfield sites in
324 designated brownfield areas; application process; rulemaking
325 authority; revocation authority.--
326 (1) The Legislature finds that:
327 (a) To facilitate property transactions and economic
328 growth and development, it is in the interest of the state to
329 encourage the cleanup, at the earliest possible time, of

330 drycleaning-solvent-contaminated sites and brownfield sites in
331 designated brownfield areas.
332 (b) It is the intent of the Legislature to encourage the
333 voluntary cleanup of drycleaning-solvent-contaminated sites and
334 brownfield sites in designated brownfield areas by providing a
335 partial tax credit for the restoration of such property in
336 specified circumstances.
337 (2) Notwithstanding the requirements of subsection (5),
338 tax credits allowed pursuant to ss. 199.1055 and 220.1845 are
339 available for any site rehabilitation conducted during the
340 calendar year in which the applicable voluntary cleanup
341 agreement or brownfield site rehabilitation agreement is
342 executed, even if the site rehabilitation is conducted prior to
343 the execution of that agreement or the designation of the
344 brownfield area.
345 (3) ~~(2)~~(a) A credit in the amount of 50 ~~35~~ percent of the
346 costs of voluntary cleanup activity that is integral to site
347 rehabilitation at the following sites is allowed pursuant to ss.
348 199.1055 and 220.1845:
349 1. A drycleaning-solvent-contaminated site eligible for
350 state-funded site rehabilitation under s. 376.3078(3);
351 2. A drycleaning-solvent-contaminated site at which
352 cleanup is undertaken by the real property owner pursuant to s.
353 376.3078(11), if the real property owner is not also, and has
354 never been, the owner or operator of the drycleaning facility
355 where the contamination exists; or
356 3. A brownfield site in a designated brownfield area under
357 s. 376.80.
358 (b) A tax credit applicant, or multiple tax credit
359 applicants working jointly to clean up a single site, may not be
360 granted more than $500,000 ~~$250,000~~ per year in tax credits for

361 each site voluntarily rehabilitated. Multiple tax credit
362 applicants shall be granted tax credits in the same proportion
363 as their contribution to payment of cleanup costs. Tax credits
364 are available only for site rehabilitation conducted during the
365 calendar year for which the tax credit application is submitted.
366 (c) In order to encourage completion of site
367 rehabilitation at contaminated sites that are being voluntarily
368 cleaned up and that are eligible for a tax credit under this
369 section, the tax credit applicant may claim an additional 25 ~~10~~
370 percent of the total cleanup costs, not to exceed $500,000
371 ~~$50,000~~, in the final year of cleanup as evidenced by the
372 Department of Environmental Protection issuing a "No Further
373 Action" order for that site.
374 (d) In order to encourage the construction of housing that
375 meets the definition of affordable provided in s. 420.0004(3),
376 an applicant for the tax credit may claim an additional 25
377 percent of the total site-rehabilitation costs that are eligible
378 for tax credits under this section, not to exceed $500,000. In
379 order to receive this additional tax credit, the applicant must
380 provide a certification letter from the Florida Housing Finance
381 Corporation, the local housing authority, or other governmental
382 agency that is a party to the use agreement, indicating that the
383 construction on the brownfield site is complete, the brownfield
384 site has received a certificate of occupancy, and the brownfield
385 site has a properly recorded instrument that limits the use of
386 the property to housing that meets the definition of affordable
387 provided in s. 420.0004(3). Notwithstanding the limitation that
388 only one application shall be submitted each year for each site,
389 an application for the additional credit provided for in this
390 paragraph shall be submitted as soon as all requirements to
391 obtain this additional tax credit have been met.

392 (4) ~~(3)~~ The Department of Environmental Protection shall be
393 responsible for allocating the tax credits provided for in ss.
394 199.1055 and 220.1845, not to exceed a total of $5 ~~$2~~ million in
395 tax credits annually.
396 (5) ~~(4)~~ To claim the credit for site rehabilitation
397 conducted during the current calendar year, each tax credit
398 applicant must apply to the Department of Environmental
399 Protection for an allocation of the $5 ~~$2~~ million annual credit
400 by January 15 of the following year on a form developed by the
401 Department of Environmental Protection in cooperation with the
402 Department of Revenue. The form shall include an affidavit from
403 each tax credit applicant certifying that all information
404 contained in the application, including all records of costs
405 incurred and claimed in the tax credit application, are true and
406 correct. If the application is submitted pursuant to
407 subparagraph (2)(a)2., the form must include an affidavit signed
408 by the real property owner stating that it is not, and has never
409 been, the owner or operator of the drycleaning facility where
410 the contamination exists. Approval of partial tax credits must
411 be accomplished on a first-come, first-served basis based upon
412 the date complete applications are received by the Division of
413 Waste Management. A tax credit applicant shall submit only one
414 complete application per site for each calendar year's site
415 rehabilitation costs. Incomplete placeholder applications shall
416 not be accepted and will not secure a place in the first-come,
417 first-served application line. To be eligible for a tax credit,
418 the tax credit applicant must:
419 (a) Have entered into a voluntary cleanup agreement with
420 the Department of Environmental Protection for a drycleaning-
421 solvent-contaminated site or a Brownfield Site Rehabilitation
422 Agreement, as applicable; and

423 (b) Have paid all deductibles pursuant to s.
424 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
425 sites.
426 (6) ~~(5)~~ To obtain the tax credit certificate, a tax credit
427 applicant must annually file an application for certification,
428 which must be received by the Division of Waste Management of
429 the Department of Environmental Protection by January 15 of the
430 year following the calendar year for which site rehabilitation
431 costs are being claimed in a tax credit application. The tax
432 credit applicant must provide all pertinent information
433 requested on the tax credit application form, including, at a
434 minimum, the name and address of the tax credit applicant and
435 the address and tracking identification number of the eligible
436 site. Along with the tax credit application form, the tax credit
437 applicant must submit the following:
438 (a) A nonrefundable review fee of $250 made payable to the
439 Water Quality Assurance Trust Fund to cover the administrative
440 costs associated with the department's review of the tax credit
441 application;
442 (b) Copies of contracts and documentation of contract
443 negotiations, accounts, invoices, sales tickets, or other
444 payment records from purchases, sales, leases, or other
445 transactions involving actual costs incurred for that tax year
446 related to site rehabilitation, as that term is defined in ss.
447 376.301 and 376.79;
448 (c) Proof that the documentation submitted pursuant to
449 paragraph (b) has been reviewed and verified by an independent
450 certified public accountant in accordance with standards
451 established by the American Institute of Certified Public
452 Accountants. Specifically, the certified public accountant must
453 attest to the accuracy and validity of the costs incurred and

454 paid by conducting an independent review of the data presented
455 by the tax credit applicant. Accuracy and validity of costs
456 incurred and paid would be determined once the level of effort
457 was certified by an appropriate professional registered in this
458 state in each contributing technical discipline. The certified
459 public accountant's report would also attest that the costs
460 included in the application form are not duplicated within the
461 application. A copy of the accountant's report shall be
462 submitted to the Department of Environmental Protection with the
463 tax credit application; and
464 (d) A certification form stating that site rehabilitation
465 activities associated with the documentation submitted pursuant
466 to paragraph (b) have been conducted under the observation of,
467 and related technical documents have been signed and sealed by,
468 an appropriate professional registered in this state in each
469 contributing technical discipline. The certification form shall
470 be signed and sealed by the appropriate registered professionals
471 stating that the costs incurred were integral, necessary, and
472 required for site rehabilitation, as that term is defined in ss.
473 376.301 and 376.79.
474 (7) ~~(6)~~ The certified public accountant and appropriate
475 registered professionals submitting forms as part of a tax
476 credit application must verify such forms. Verification must be
477 accomplished as provided in s. 92.525(1)(b) and subject to the
478 provisions of s. 92.525(3).
479 (8) ~~(7)~~ The Department of Environmental Protection shall
480 review the tax credit application and any supplemental
481 documentation that the tax credit applicant may submit prior to
482 the annual application deadline in order to have the application
483 considered complete, for the purpose of verifying that the tax
484 credit applicant has met the qualifying criteria in subsections

485 (2) and (4) and has submitted all required documentation listed
486 in subsection (5). Upon verification that the tax credit
487 applicant has met these requirements, the department shall issue
488 a written decision granting eligibility for partial tax credits
489 (a tax credit certificate) in the amount of 50 ~~35~~ percent of the
490 total costs claimed, subject to the $500,000 ~~$250,000~~
491 limitation, for the calendar year for which the tax credit
492 application is submitted based on the report of the certified
493 public accountant and the certifications from the appropriate
494 registered technical professionals.
495 (9) ~~(8)~~ On or before March 1, the Department of
496 Environmental Protection shall inform each eligible tax credit
497 applicant of the amount of its partial tax credit and provide
498 each eligible tax credit applicant with a tax credit certificate
499 that must be submitted with its tax return to the Department of
500 Revenue to claim the tax credit or be transferred pursuant to s.
501 199.1055(1)(g) or s. 220.1845(1)(h). Credits will not result in
502 the payment of refunds if total credits exceed the amount of tax
503 owed.
504 (10) ~~(9)~~ If a tax credit applicant does not receive a tax
505 credit allocation due to an exhaustion of the $5 ~~$2~~ million
506 annual tax credit authorization, such application will then be
507 included in the same first-come, first-served order in the next
508 year's annual tax credit allocation, if any, based on the prior
509 year application.
510 (11) ~~(10)~~ The Department of Environmental Protection may
511 adopt rules to prescribe the necessary forms required to claim
512 tax credits under this section and to provide the administrative
513 guidelines and procedures required to administer this section.
514 (12) ~~(11)~~ The Department of Environmental Protection may
515 revoke or modify any written decision granting eligibility for

516 partial tax credits under this section if it is discovered that
517 the tax credit applicant submitted any false statement,
518 representation, or certification in any application, record,
519 report, plan, or other document filed in an attempt to receive
520 partial tax credits under this section. The Department of
521 Environmental Protection shall immediately notify the Department
522 of Revenue of any revoked or modified orders affecting
523 previously granted partial tax credits. Additionally, the tax
524 credit applicant must notify the Department of Revenue of any
525 change in its tax credit claimed.
526 (13) ~~(12)~~ A tax credit applicant who receives state-funded
527 site rehabilitation under s. 376.3078(3) for rehabilitation of a
528 drycleaning-solvent-contaminated site is ineligible to receive a
529 tax credit under s. 199.1055 or s. 220.1845 for costs incurred
530 by the tax credit applicant in conjunction with the
531 rehabilitation of that site during the same time period that
532 state-administered site rehabilitation was underway.
533 (14) At eligible sites listed in paragraph (2)(a), in
534 addition to any tax credits that may be claimed for site
535 rehabilitation as defined in s. 376.301, a tax credit applicant
536 may also claim tax credits pursuant to the requirements of this
537 section for voluntary cleanup activity that addresses a solid
538 waste disposal facility, subject to the following criteria:
539 (a) For purposes of this subsection, "solid waste" and
540 "solid waste disposal facility" have the same meanings as
541 defined in s. 403.703, but shall not include sites that merely
542 have litter or debris scattered on the surface of the land;
543 (b) The solid waste disposal facility must have ceased
544 operation prior to 1988 and must not have been or must not
545 currently be subject to any department solid waste permit;

546 (c) Tax credits may be claimed for one or more of the
547 following activities:
548 1. Removing all solid waste from the solid waste disposal
549 facility and disposing of it in a permitted solid waste
550 management facility;
551 2. Closing the solid waste disposal facility, which may
552 include partial removal and disposal of solid waste in a
553 permitted solid waste management facility, in accordance with
554 the requirements of chapter 62-701, Florida Administrative Code,
555 including grading the facility to achieve appropriate side
556 slopes, installing final cover, controlling stormwater, and
557 providing gas management, if necessary;
558 3. Performing long-term care for the solid waste disposal
559 facility in accordance with the requirements of chapter 62-701,
560 Florida Administrative Code, after the facility has been
561 properly closed; and
562 4. Performing groundwater evaluation and assessment after
563 removal of all solid waste or after the solid waste disposal
564 facility has been properly closed;
565 (d) If the solid waste disposal facility is closed as
566 described in subparagraph (c)2., the redevelopment of the
567 property containing the solid waste disposal facility shall be
568 limited to commercial or industrial land use only and shall be
569 subject to appropriate engineering and institutional controls,
570 and tax credits shall be awarded only after a restrictive
571 covenant limiting future uses of the property has been reviewed
572 and approved by the department and properly recorded;
573 (e) Costs for crushing or compacting the solid waste in
574 place solely to make it suitable for future development shall
575 not be eligible for tax credits pursuant to this section; and

576 (f) Any activity conducted in accordance with this
577 subsection shall not be considered site rehabilitation.
578 (15) In implementing subsection (13), the department shall
579 use the same criteria, requirements, and limitations detailed in
580 subsections (1)-(12) of this section and ss. 199.1055 and
581 220.1845, with the following exceptions:
582 (a) Where reference is made to "site rehabilitation," the
583 department shall consider whether the costs claimed are for
584 voluntary cleanup activity that addresses a solid waste disposal
585 facility as outlined in subsection (13);
586 (b) In lieu of the certification requirements of paragraph
587 (5)(d), a tax credit applicant seeking a tax credit pursuant to
588 subsection (13) shall include in the tax credit application:
589 1. A certification that the applicant has determined, after
590 consultation with local government officials and the department,
591 that the solid waste disposal facility ceased operating prior to
592 January 1, 1974, and is not or has never been subject to a solid
593 waste permit;
594 2. A certification signed and sealed by an appropriate
595 registered professional and previously approved by the
596 department that the solid waste disposal facility has been
597 properly closed pursuant to chapter 62-701, Florida
598 Administrative Code, or that all solid waste was removed and
599 properly disposed of; and
600 3. A certification signed and sealed by an appropriate
601 registered professional that costs incurred and claimed in the
602 tax credit application were integral, necessary, and required to
603 conduct those activities listed in paragraph (13)(c), as
604 applicable;
605 (c) Tax credit applications in which costs are claimed
606 pursuant to subparagraphs (13)(c)1. and 2. shall not be subject

607 to the calendar-year limitation and January 15 annual
608 application deadline, but the department shall accept a one-time
609 application filed after the tax credit applicant has completed
610 all requirements listed in subsection (13) and this subsection;
611 (d) Notwithstanding the tax credit percentage established
612 in subsections (2) and (7) and ss. 199.1055 and 220.1845, the
613 tax credit for activities conducted pursuant to subparagraphs
614 (13)(c)2.-4. relating to closure of a solid waste disposal
615 facility shall be limited to 25 percent;
616 (e) The additional percentage allowed by paragraph (2)(c)
617 and ss. 199.1055(1)(h) and 220.1845(1)(i) is not applicable to
618 tax credits claimed pursuant to subsection (13); and
619 (f) The department shall have 60 days after the date of
620 receipt of any application claiming tax credits pursuant to
621 subsection (13) to process the application and grant or deny the
622 claimed tax credits.
623 Section 4. Subsections (15) and (16) of section 196.012,
624 Florida Statutes, are amended to read:
625 196.012 Definitions.--For the purpose of this chapter, the
626 following terms are defined as follows, except where the context
627 clearly indicates otherwise:
628 (15) "New business" means:
629 (a)1. A business establishing 10 or more jobs to employ 10
630 or more full-time employees in this state, which manufactures,
631 processes, compounds, fabricates, or produces for sale items of
632 tangible personal property at a fixed location and which
633 comprises an industrial or manufacturing plant;
634 2. A business establishing 25 or more jobs to employ 25 or
635 more full-time employees in this state, the sales factor of
636 which, as defined by s. 220.15(5), for the facility with respect
637 to which it requests an economic development ad valorem tax

638 exemption is less than 0.50 for each year the exemption is
639 claimed; or
640 3. An office space in this state owned and used by a
641 corporation newly domiciled in this state; provided such office
642 space houses 50 or more full-time employees of such corporation;
643 provided that such business or office first begins operation on
644 a site clearly separate from any other commercial or industrial
645 operation owned by the same business.
646 (b) Any business located in an enterprise zone <u>or</u>
647 <u>brownfield area</u> that first begins operation on a site clearly
648 separate from any other commercial or industrial operation owned
649 by the same business.
650 (c) A business that is situated on property annexed into a
651 municipality and that, at the time of the annexation, is
652 receiving an economic development ad valorem tax exemption from
653 the county under s. 196.1995.
654 (16) "Expansion of an existing business" means:
655 (a)1. A business establishing 10 or more jobs to employ 10
656 or more full-time employees in this state, which manufactures,
657 processes, compounds, fabricates, or produces for sale items of
658 tangible personal property at a fixed location and which
659 comprises an industrial or manufacturing plant; or
660 2. A business establishing 25 or more jobs to employ 25 or
661 more full-time employees in this state, the sales factor of
662 which, as defined by s. 220.15(5), for the facility with respect
663 to which it requests an economic development ad valorem tax
664 exemption is less than 0.50 for each year the exemption is
665 claimed; provided that such business increases operations on a
666 site colocated with a commercial or industrial operation owned
667 by the same business, resulting in a net increase in employment

668 of not less than 10 percent or an increase in productive output
669 of not less than 10 percent.
670 (b) Any business located in an enterprise zone or
671 brownfield area that increases operations on a site colocated
672 with a commercial or industrial operation owned by the same
673 business.
674 Section 5. Section 196.1995, Florida Statutes, is amended
675 to read:
676 196.1995 Economic development ad valorem tax exemption.--
677 (1) The board of county commissioners of any county or the
678 governing authority of any municipality shall call a referendum
679 within its total jurisdiction to determine whether its
680 respective jurisdiction may grant economic development ad
681 valorem tax exemptions under s. 3, Art. VII of the State
682 Constitution if:
683 (a) The board of county commissioners of the county or the
684 governing authority of the municipality votes to hold such
685 referendum; or
686 (b) The board of county commissioners of the county or the
687 governing authority of the municipality receives a petition
688 signed by 10 percent of the registered electors of its
689 respective jurisdiction, which petition calls for the holding of
690 such referendum.
691 (2) The ballot question in such referendum shall be in
692 substantially the following form:
693
694 Shall the board of county commissioners of this county (or the
695 governing authority of this municipality, or both) be authorized
696 to grant, pursuant to s. 3, Art. VII of the State Constitution,
697 property tax exemptions to new businesses and expansions of
698 existing businesses?

699 ____ Yes--For authority to grant exemptions.
700 ____ No--Against authority to grant exemptions.
701 (3) The board of county commissioners or the governing
702 authority of the municipality that ~~which~~ calls a referendum
703 within its total jurisdiction to determine whether its
704 respective jurisdiction may grant economic development ad
705 valorem tax exemptions may vote to limit the effect of the
706 referendum to authority to grant economic development tax
707 exemptions for new businesses and expansions of existing
708 businesses located in an enterprise zone or a brownfield area,
709 as defined in s. 376.79(4). If ~~In the event that~~ an area
710 nominated to be an enterprise zone pursuant to s. 290.0055 has
711 not yet been designated pursuant to s. 290.0065 or has not been
712 designated as a brownfield pursuant to s. 376.80, the board of
713 county commissioners or the governing authority of the
714 municipality may call such referendum prior to such designation;
715 however, the authority to grant economic development ad valorem
716 tax exemptions does ~~will~~ not apply until such area is designated
717 pursuant to s. 290.0065. The ballot question in such referendum
718 shall be in substantially the following form and shall be used
719 in lieu of the ballot question prescribed in subsection (2):
720
721 Shall the board of county commissioners of this county (or the
722 governing authority of this municipality, or both) be authorized
723 to grant, pursuant to s. 3, Art. VII of the State Constitution,
724 property tax exemptions for new businesses and expansions of
725 existing businesses which are located in an enterprise zone or a
726 brownfield area?
727 ____Yes--For authority to grant exemptions.
728 ____No--Against authority to grant exemptions.

729 (4) A referendum pursuant to this section may be called
730 only once in any 12-month period.
731 (5) Upon a majority vote in favor of such authority, the
732 board of county commissioners or the governing authority of the
733 municipality, at its discretion, by ordinance may exempt from ad
734 valorem taxation up to 100 percent of the assessed value of all
735 improvements to real property made by or for the use of a new
736 business and of all tangible personal property of such new
737 business, or up to 100 percent of the assessed value of all
738 added improvements to real property made to facilitate the
739 expansion of an existing business and of the net increase in all
740 tangible personal property acquired to facilitate such expansion
741 of an existing business, provided that the improvements to real
742 property are made or the tangible personal property is added or
743 increased on or after the day the ordinance is adopted. However,
744 if the authority to grant exemptions is approved in a referendum
745 in which the ballot question contained in subsection (3) appears
746 on the ballot, the authority of the board of county
747 commissioners or the governing authority of the municipality to
748 grant exemptions is limited solely to new businesses and
749 expansions of existing businesses that ~~which~~ are located in an
750 enterprise zone or brownfield area. Property acquired to replace
751 existing property shall not be considered to facilitate a
752 business expansion. The exemption applies only to taxes levied
753 by the respective unit of government granting the exemption.
754 The exemption does not apply, however, to taxes levied for the
755 payment of bonds or to taxes authorized by a vote of the
756 electors pursuant to s. 9(b) or s. 12, Art. VII of the State
757 Constitution. Any such exemption shall remain in effect for up
758 to 10 years with respect to any particular facility, regardless
759 of any change in the authority of the county or municipality to

760 grant such exemptions. The exemption shall not be prolonged or
761 extended by granting exemptions from additional taxes or by
762 virtue of any reorganization or sale of the business receiving
763 the exemption.
764 (6) With respect to a new business as defined by s.
765 196.012(15)(c), the municipality annexing the property on which
766 the business is situated may grant an economic development ad
767 valorem tax exemption under this section to that business for a
768 period that will expire upon the expiration of the exemption
769 granted by the county. If the county renews the exemption under
770 subsection (7), the municipality may also extend its exemption.
771 A municipal economic development ad valorem tax exemption
772 granted under this subsection may not extend beyond the duration
773 of the county exemption.
774 (7) The authority to grant exemptions under this section
775 will expire 10 years after the date such authority was approved
776 in an election, but such authority may be renewed for another
777 10-year period in a referendum called and held pursuant to this
778 section.
779 (8) Any person, firm, or corporation which desires an
780 economic development ad valorem tax exemption shall, in the year
781 the exemption is desired to take effect, file a written
782 application on a form prescribed by the department with the
783 board of county commissioners or the governing authority of the
784 municipality, or both. The application shall request the
785 adoption of an ordinance granting the applicant an exemption
786 pursuant to this section and shall include the following
787 information:
788 (a) The name and location of the new business or the
789 expansion of an existing business;

790 (b) A description of the improvements to real property for
791 which an exemption is requested and the date of commencement of
792 construction of such improvements;
793 (c) A description of the tangible personal property for
794 which an exemption is requested and the dates when such property
795 was or is to be purchased;
796 (d) Proof, to the satisfaction of the board of county
797 commissioners or the governing authority of the municipality,
798 that the applicant is a new business or an expansion of an
799 existing business, as defined in s. 196.012(15) or (16); and
800 (e) Other information deemed necessary by the department.
801 (9) Before it takes action on the application, the board
802 of county commissioners or the governing authority of the
803 municipality shall deliver a copy of the application to the
804 property appraiser of the county. After careful consideration,
805 the property appraiser shall report the following information to
806 the board of county commissioners or the governing authority of
807 the municipality:
808 (a) The total revenue available to the county or
809 municipality for the current fiscal year from ad valorem tax
810 sources, or an estimate of such revenue if the actual total
811 revenue available cannot be determined;
812 (b) Any revenue lost to the county or municipality for the
813 current fiscal year by virtue of exemptions previously granted
814 under this section, or an estimate of such revenue if the actual
815 revenue lost cannot be determined;
816 (c) An estimate of the revenue which would be lost to the
817 county or municipality during the current fiscal year if the
818 exemption applied for were granted had the property for which
819 the exemption is requested otherwise been subject to taxation;
820 and

821 (d) A determination as to whether the property for which
822 an exemption is requested is to be incorporated into a new
823 business or the expansion of an existing business, as defined in
824 s. 196.012(15) or (16), or into neither, which determination the
825 property appraiser shall also affix to the face of the
826 application. Upon the request of the property appraiser, the
827 department shall provide to him or her such information as it
828 may have available to assist in making such determination.
829 (10) An ordinance granting an exemption under this section
830 shall be adopted in the same manner as any other ordinance of
831 the county or municipality and shall include the following:
832 (a) The name and address of the new business or expansion
833 of an existing business to which the exemption is granted;
834 (b) The total amount of revenue available to the county or
835 municipality from ad valorem tax sources for the current fiscal
836 year, the total amount of revenue lost to the county or
837 municipality for the current fiscal year by virtue of economic
838 development ad valorem tax exemptions currently in effect, and
839 the estimated revenue loss to the county or municipality for the
840 current fiscal year attributable to the exemption of the
841 business named in the ordinance;
842 (c) The period of time for which the exemption will remain
843 in effect and the expiration date of the exemption; and
844 (d) A finding that the business named in the ordinance
845 meets the requirements of s. 196.012(15) or (16).
846 Section 6. Subsection (2) of section 288.9015, Florida
847 Statutes, is amended to read:
848 288.9015 Enterprise Florida, Inc.; purpose; duties.--
849 (2) It shall be the responsibility of Enterprise Florida,
850 Inc., to aggressively market Florida's rural communities,
851 distressed urban communities, <u>brownfields,</u> and enterprise zones

852 as locations for potential new investment, to aggressively
853 assist in the retention and expansion of existing businesses in
854 these communities, and to aggressively assist these communities
855 in the identification and development of new economic
856 development opportunities for job creation, fully marketing
857 state incentive programs such as the Qualified Target Industry
858 Tax Refund Program under s. 288.106 and the Quick Action Closing
859 Fund under s. 288.1088 in economically distressed areas.
860 Section 7. Section 376.80, Florida Statutes, is amended to
861 read:
862 376.80 Brownfield program administration process.--
863 (1) A local government with jurisdiction over the
864 brownfield area must notify the department of its decision to
865 designate a brownfield area for rehabilitation for the purposes
866 of ss. 376.77-376.85. The notification must include a
867 resolution, by the local government body, to which is attached a
868 map adequate to clearly delineate exactly which parcels are to
869 be included in the brownfield area or alternatively a less-
870 detailed map accompanied by a detailed legal description of the
871 brownfield area. If a property owner within the area proposed
872 for designation by the local government requests in writing to
873 have his or her property removed from the proposed designation,
874 the local government shall grant the request. For
875 municipalities, the governing body shall adopt the resolution in
876 accordance with the procedures outlined in s. 166.041, except
877 that the notice for the public hearings on the proposed
878 resolution must be in the form established in s. 166.041(3)(c)2.
879 For counties, the governing body shall adopt the resolution in
880 accordance with the procedures outlined in s. 125.66, except
881 that the notice for the public hearings on the proposed
882 resolution shall be in the form established in s. 125.66(4)(b)2.

883 (2)(a) If a local government proposes to designate a
884 brownfield area that is outside community redevelopment areas,
885 enterprise zones, empowerment zones, closed military bases, or
886 designated brownfield pilot project areas, the local government
887 must conduct at least one public hearing in the area to be
888 designated to provide an opportunity for public input on the
889 size of the area, the objectives for rehabilitation, job
890 opportunities and economic developments anticipated,
891 neighborhood residents' considerations, and other relevant local
892 concerns. Notice of the public hearing must be made in a
893 newspaper of general circulation in the area and the notice must
894 be at least 16 square inches in size, must be in ethnic
895 newspapers or local community bulletins, must be posted in the
896 affected area, and must be announced at a scheduled meeting of
897 the local governing body before the actual public hearing. In
898 determining the areas to be designated, the local government
899 must consider:
900 1. Whether the brownfield area warrants economic
901 development and has a reasonable potential for such activities;
902 2. Whether the proposed area to be designated represents a
903 reasonably focused approach and is not overly large in
904 geographic coverage;
905 3. Whether the area has potential to interest the private
906 sector in participating in rehabilitation; and
907 4. Whether the area contains sites or parts of sites
908 suitable for limited recreational open space, cultural, or
909 historical preservation purposes.
910 (b) A local government shall designate a brownfield area
911 under the provisions of this act provided that:

912 1. A person who owns or controls a potential brownfield
913 site is requesting the designation and has agreed to
914 rehabilitate and redevelop the brownfield site;
915 2. The rehabilitation and redevelopment of the proposed
916 brownfield site will result in economic productivity of the
917 area, along with the creation of at least 5 ~~10~~ new permanent
918 jobs at the brownfield site~~, whether full-time or part-time,~~
919 which are full-time equivalent positions not associated with the
920 implementation of the brownfield site rehabilitation agreement
921 and which are not associated with redevelopment project
922 demolition or construction activities pursuant to the
923 redevelopment agreement required under paragraph (5)(i).
924 However, the job-creation requirement may not apply to the
925 rehabilitation and redevelopment of a brownfield site that will
926 provide affordable housing as defined in s. 420.0004(3) or the
927 creation of recreational areas, conservation areas, or parks;
928 3. The redevelopment of the proposed brownfield site is
929 consistent with the local comprehensive plan and is a
930 permittable use under the applicable local land development
931 regulations;
932 4. Notice of the proposed rehabilitation of the brownfield
933 area has been provided to neighbors and nearby residents of the
934 proposed area to be designated, and the person proposing the
935 area for designation has afforded to those receiving notice the
936 opportunity for comments and suggestions about rehabilitation.
937 Notice pursuant to this subsection must be made in a newspaper
938 of general circulation in the area, at least 16 square inches in
939 size, and the notice must be posted in the affected area; and
940 5. The person proposing the area for designation has
941 provided reasonable assurance that he or she has sufficient

942 financial resources to implement and complete the rehabilitation
943 agreement and redevelopment plan.
944 (c) The designation of a brownfield area and the
945 identification of a person responsible for brownfield site
946 rehabilitation simply entitles the identified person to
947 negotiate a brownfield site rehabilitation agreement with the
948 department or approved local pollution control program.
949 (3) When there is a person responsible for brownfield site
950 rehabilitation, the local government must notify the department
951 of the identity of that person. If the agency or person who will
952 be responsible for the coordination changes during the approval
953 process specified in subsections (4), (5), and (6), the
954 department or the affected approved local pollution control
955 program must notify the affected local government when the
956 change occurs.
957 (4) Local governments or persons responsible for
958 rehabilitation and redevelopment of brownfield areas must
959 establish an advisory committee or use an existing advisory
960 committee that has formally expressed its intent to address
961 redevelopment of the specific brownfield area for the purpose of
962 improving public participation and receiving public comments on
963 rehabilitation and redevelopment of the brownfield area, future
964 land use, local employment opportunities, community safety, and
965 environmental justice. Such advisory committee should include
966 residents within or adjacent to the brownfield area, businesses
967 operating within the brownfield area, and others deemed
968 appropriate. The person responsible for brownfield site
969 rehabilitation must notify the advisory committee of the intent
970 to rehabilitate and redevelop the site before executing the
971 brownfield site rehabilitation agreement, and provide the
972 committee with a copy of the draft plan for site rehabilitation

973 which addresses elements required by subsection (5). This
974 includes disclosing potential reuse of the property as well as
975 site rehabilitation activities, if any, to be performed. The
976 advisory committee shall review the proposed redevelopment
977 agreement required pursuant to paragraph (5)(i) and provide
978 comments, if appropriate, to the board of the local government
979 with jurisdiction over the brownfield area. The advisory
980 committee must receive a copy of the executed brownfield site
981 rehabilitation agreement. When the person responsible for
982 brownfield site rehabilitation submits a site assessment report
983 or the technical document containing the proposed course of
984 action following site assessment to the department or the local
985 pollution control program for review, the person responsible for
986 brownfield site rehabilitation must hold a meeting or attend a
987 regularly scheduled meeting to inform the advisory committee of
988 the findings and recommendations in the site assessment report
989 or the technical document containing the proposed course of
990 action following site assessment.
991 (5) The person responsible for brownfield site
992 rehabilitation must enter into a brownfield site rehabilitation
993 agreement with the department or an approved local pollution
994 control program if actual contamination exists at the brownfield
995 site. The brownfield site rehabilitation agreement must include:
996 (a) A brownfield site rehabilitation schedule, including
997 milestones for completion of site rehabilitation tasks and
998 submittal of technical reports and rehabilitation plans as
999 agreed upon by the parties to the agreement;
1000 (b) A commitment to conduct site rehabilitation activities
1001 under the observation of professional engineers or geologists
1002 who are registered in accordance with the requirements of
1003 chapter 471 or chapter 492, respectively. Submittals provided by

1004 the person responsible for brownfield site rehabilitation must
1005 be signed and sealed by a professional engineer registered under
1006 chapter 471, or a professional geologist registered under
1007 chapter 492, certifying that the submittal and associated work
1008 comply with the law and rules of the department and those
1009 governing the profession. In addition, upon completion of the
1010 approved remedial action, the department shall require a
1011 professional engineer registered under chapter 471 or a
1012 professional geologist registered under chapter 492 to certify
1013 that the corrective action was, to the best of his or her
1014 knowledge, completed in substantial conformance with the plans
1015 and specifications approved by the department;
1016 (c) A commitment to conduct site rehabilitation in
1017 accordance with department quality assurance rules;
1018 (d) A commitment to conduct site rehabilitation consistent
1019 with state, federal, and local laws and consistent with the
1020 brownfield site contamination cleanup criteria in s. 376.81,
1021 including any applicable requirements for risk-based corrective
1022 action;
1023 (e) Timeframes for the department's review of technical
1024 reports and plans submitted in accordance with the agreement.
1025 The department shall make every effort to adhere to established
1026 agency goals for reasonable timeframes for review of such
1027 documents;
1028 (f) A commitment to secure site access for the department
1029 or approved local pollution control program to all brownfield
1030 sites within the eligible brownfield area for activities
1031 associated with site rehabilitation;
1032 (g) Other provisions that the person responsible for
1033 brownfield site rehabilitation and the department agree upon,

1034 that are consistent with ss. 376.77-376.85, and that will
1035 improve or enhance the brownfield site rehabilitation process;
1036 (h) A commitment to consider appropriate pollution
1037 prevention measures and to implement those that the person
1038 responsible for brownfield site rehabilitation determines are
1039 reasonable and cost-effective, taking into account the ultimate
1040 use or uses of the brownfield site. Such measures may include
1041 improved inventory or production controls and procedures for
1042 preventing loss, spills, and leaks of hazardous waste and
1043 materials, and include goals for the reduction of releases of
1044 toxic materials; and
1045 (i) Certification that an agreement exists between the
1046 person responsible for brownfield site rehabilitation and the
1047 local government with jurisdiction over the brownfield area.
1048 Such agreement shall contain terms for the redevelopment of the
1049 brownfield area.
1050 (6) Any contractor performing site rehabilitation program
1051 tasks must demonstrate to the department that the contractor:
1052 (a) Meets all certification and license requirements
1053 imposed by law; and
1054 (b) Has obtained the necessary approvals for conducting
1055 sample collection and analyses pursuant to department rules.
1056 (7) The contractor who is performing the majority of the
1057 site rehabilitation program tasks pursuant to a brownfield site
1058 rehabilitation agreement or supervising the performance of such
1059 tasks by licensed subcontractors in accordance with the
1060 provisions of s. 489.113(9) must certify to the department that
1061 the contractor:
1062 (a) Complies with applicable OSHA regulations.
1063 (b) Maintains workers' compensation insurance for all
1064 employees as required by the Florida Workers' Compensation Law.

1065 (c) Maintains comprehensive general liability coverage
1066 with limits of not less than $1 million per occurrence and $2
1067 million general aggregate for bodily injury and property damage
1068 and comprehensive automobile liability coverage with limits of
1069 not less than $2 million combined single limit. The contractor
1070 shall also maintain pollution liability coverage with limits of
1071 not less than $3 million aggregate for personal injury or death,
1072 $1 million per occurrence for personal injury or death, and $1
1073 million per occurrence for property damage. The contractor's
1074 certificate of insurance shall name the state as an additional
1075 insured party.
1076 (d) Maintains professional liability insurance of at least
1077 $1 million per claim and $1 million annual aggregate.
1078 (8) Any professional engineer or geologist providing
1079 professional services relating to site rehabilitation program
1080 tasks must carry professional liability insurance with a
1081 coverage limit of at least $1 million.
1082 (9) During the cleanup process, if the department or local
1083 program fails to complete review of a technical document within
1084 the timeframe specified in the brownfield site rehabilitation
1085 agreement, the person responsible for brownfield site
1086 rehabilitation may proceed to the next site rehabilitation task.
1087 However, the person responsible for brownfield site
1088 rehabilitation does so at its own risk and may be required by
1089 the department or local program to complete additional work on a
1090 previous task. Exceptions to this subsection include requests
1091 for "no further action," "monitoring only proposals," and
1092 feasibility studies, which must be approved prior to
1093 implementation.
1094 (10) If the person responsible for brownfield site
1095 rehabilitation fails to comply with the brownfield site

1096 rehabilitation agreement, the department shall allow 90 days for
1097 the person responsible for brownfield site rehabilitation to
1098 return to compliance with the provision at issue or to negotiate
1099 a modification to the brownfield site rehabilitation agreement
1100 with the department for good cause shown. If an imminent hazard
1101 exists, the 90-day grace period shall not apply. If the project
1102 is not returned to compliance with the brownfield site
1103 rehabilitation agreement and a modification cannot be
1104 negotiated, the immunity provisions of s. 376.82 are revoked.
1105 (11) The department is specifically authorized and
1106 encouraged to enter into delegation agreements with local
1107 pollution control programs approved under s. 403.182 to
1108 administer the brownfield program within their jurisdictions,
1109 thereby maximizing the integration of this process with the
1110 other local development processes needed to facilitate
1111 redevelopment of a brownfield area. When determining whether a
1112 delegation pursuant to this subsection of all or part of the
1113 brownfields program to a local pollution control program is
1114 appropriate, the department shall consider the following. The
1115 local pollution control program must:
1116 (a) Have and maintain the administrative organization,
1117 staff, and financial and other resources to effectively and
1118 efficiently implement and enforce the statutory requirements of
1119 the delegated brownfields program; and
1120 (b) Provide for the enforcement of the requirements of the
1121 delegated brownfields program, and for notice and a right to
1122 challenge governmental action, by appropriate administrative and
1123 judicial process, which shall be specified in the delegation.
1124
1125 The local pollution control program shall not be delegated
1126 authority to take action on or to make decisions regarding any

1127 brownfield site on land owned by the local government. Any
1128 delegation agreement entered into pursuant to this subsection
1129 shall contain such terms and conditions necessary to ensure the
1130 effective and efficient administration and enforcement of the
1131 statutory requirements of the brownfields program as established
1132 by the act and the relevant rules and other criteria of the
1133 department.
1134 (12) Local governments are encouraged to use the full
1135 range of economic and tax incentives available to facilitate and
1136 promote the rehabilitation of brownfield areas, to help
1137 eliminate the public health and environmental hazards, and to
1138 promote the creation of jobs and economic development in these
1139 previously run-down, blighted, and underutilized areas.
1140 Section 8. Subsection (1) of section 376.86, Florida
1141 Statutes, is amended to read:
1142 376.86 Brownfield Areas Loan Guarantee Program.--
1143 (1) The Brownfield Areas Loan Guarantee Council is created
1144 to review and approve or deny by a majority vote of its
1145 membership, the situations and circumstances for participation
1146 in partnerships by agreements with local governments, financial
1147 institutions, and others associated with the redevelopment of
1148 brownfield areas pursuant to the Brownfields Redevelopment Act
1149 for a limited state guaranty of up to 5 years of loan guarantees
1150 or loan loss reserves issued pursuant to law. The limited state
1151 loan guaranty applies only to 50 ~~10~~ percent of the primary
1152 lenders loans for redevelopment projects in brownfield areas. If
1153 the redevelopment project is for affordable housing, as defined
1154 in s. 420.0004(3), in a brownfield area, the limited state loan
1155 guaranty applies to 75 percent of the primary lender's loan. A
1156 limited state guaranty of private loans or a loan loss reserve
1157 is authorized for lenders licensed to operate in the state upon

1158 a determination by the council that such an arrangement would be
1159 in the public interest and the likelihood of the success of the
1160 loan is great.
1161 Section 9. Sections 376.87 and 376.875, Florida Statutes,
1162 are repealed.
1163 Section 10. This act shall take effect July 1, 2006.
1164
1165
1166 ========== T I T L E A M E N D M E N T ==========
1167 Remove the entire title and insert:
1168 An act relating to the redevelopment of brownfields; amending
1169 ss. 199.1055, 220.1845, and 376.30781, 376.80, and 376.86, F.S.;
1170 increasing the amount and percentage of the credit that may be
1171 applied against the intangible personal property tax and the
1172 corporate income tax for the cost of voluntary cleanup of a
1173 contaminated site; increasing the amount that may be received by
1174 the taxpayer as an incentive to complete the cleanup in the
1175 final year; increasing the total amount of credits that may be
1176 granted in any year; providing tax credits for voluntary cleanup
1177 activities related to solid waste disposal facilities; providing
1178 criteria for eligible sites and activities; increasing the
1179 amount of the Brownfield Areas Loan Guarantee; reducing the job
1180 creation requirements; directing the Department of Environmental
1181 Protection to apply certain criteria, requirements, and
1182 limitations for implementation of such provisions; providing
1183 certain exceptions; amending s. 288.9015, F.S.; requiring
1184 Enterprise Florida, Inc., to aggressively market brownfields;
1185 amending ss. 196.012 and 196.1995, F.S., to include brownfield
1186 areas in the implementation of the economic development ad
1187 valorem tax exemption authorized under s. 3, Art VII of the
1188 Florida Constitution; repealing s. 376.87, F.S., relating to the

1189 Brownfield Property Ownership Clearance Assistance; repealing s.
1190 376.875, F.S., relating to the Brownfield Property Ownership
1191 Clearance Assistance Revolving Loan Trust Fund; amending s.
1192 14.2015, F.S.; deleting a reference to the trust fund to
1193 conform; providing an effective date.