

Reply To: West Palm Beach Office

MEMORANDUM

TO: South Indian River Water Control District – Board of Supervisors
FROM: Seth Behn; Zoe Weiser-Dalton 
DATE: June 12, 2026
SUBJECT: Memorandum Regarding Road Paving Policy

I. Introduction

The South Indian River Water Control District (the “District”) adopted a policy and procedures manual, the latest version of which became effective February 15, 2024, and was last revised on February 20, 2025. Section 7.3.3, titled “Road Paving,” establishes the procedures, requirements, and considerations governing the paving of District-owned roads (the “Road Paving Policy”). Under the Road Paving Policy, landowners may petition the District to upgrade the surface of roads maintained by the District. To succeed, however, a petition must be approved through a referendum by at least 90% of the benefited landowners. The District undertakes road paving only after a petition has been successfully approved through this process.

II. Question Presented

May South Indian River Water Control District adopt and implement a policy requiring a referendum approved by at least 90% of the benefited landowners before paving District-owned roads?

III. Short Answer

Yes, the District may adopt and implement a policy requiring a referendum approved by at least 90% of the benefited landowners before paving District-owned roads.

01862158-1

JACKSONVILLE
245 Riverside Ave.
Suite 510
Jacksonville, FL 32202
T: 904.353.6410
F: 904.353.7619

ST. PETERSBURG
100 Second Ave. South
Suite 501-S
St. Petersburg, FL 33701
T: 727.245.0820
F: 727.290.4057

TALLAHASSEE
106 East College Ave.
Suite 1500
Tallahassee, FL 32301
T: 850.222.5702
F: 850.224.9242

TAMPA
301 West Platt St.
Suite 364
Tampa, FL 33606
T: 813.775.2331

WEST PALM BEACH
360 South Rosemary Ave.
Suite 1100
West Palm Beach, FL 33401
T: 561.640.0820
F: 561.640.8202

IV. Discussion

A. The District has the Authority to Adopt and Implement the Road Paving Policy.

South Indian River Water Control District is an independent water control district created by the Florida Legislature. It is governed by Chapter 189 and 298, Florida Statutes, as well as the special acts relating to the District, particularly Chapter 2001-313, Laws of Florida, as amended (the “Special Act”). As an independent special district, South Indian River Water Control District possesses the powers expressly conferred to the District by the Legislature, as well as the powers necessarily or reasonably implied from the express powers granted. *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 (Fla. 2019) (“As a “special tax district,” ... Halifax has only the powers granted to it by legislative enactment, either expressly or by necessary implication.”); *Bd. of Com'rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 532 (Fla. 4th DCA 2007) (“...independent special districts are created by the legislature... and, like agencies, their powers are limited to those granted them.”); *Hall v. Career Serv. Com'n*, 478 So. 2d 1111, 1112 (Fla. 1st DCA 1985); *Forbes Pioneer Boat Line v. Bd. of Com'rs of Everglades Drainage Dist.*, 82 So. 346 (Fla. 1919). Accordingly, any action taken by the District must be authorized by its Special Act, Chapters 189 or 298, Florida Statutes, or by powers necessarily implied therefrom.

Through the Special Act, the legislature expressly granted the District’s Board of Supervisors (the “Board”) the powers to “...formulate a road plan..., to implement and authorize construction and maintenance of those improvements outlined in the road plan, ...and...take any and all actions necessary to implement the road plan of the District....” *Ch. 2001-313, § 10, Laws of Fla.* An express grant of authority includes, by implication, the authority to employ reasonable means necessary to effectuate the Legislature’s purpose. *See Att’y Gen. Op. 2003-49* (“an express power duly conferred may include the implied authority to use the means necessary to make the express power effective”); *Molwin Inv. Co. v. Turner*, 167 So. 33, 33 (Fla. 1936).

Notably, the Legislature broadly authorized the Board to take “any and all” actions to implement the road plan as well as the power to implement and authorize road improvements. *Ch. 2001-313, § 10, Laws of Fla.* This grant of authority is analogous to *State v. Dade County*, in which a county’s charter granted the county “all implied powers necessary and proper to carry out such powers.” *State v. Dade Cnty.*, 142 So. 2d 79, 89 (Fla. 1962). Because the charter also expressly authorized the county to provide and operate a public transportation system, the Supreme Court of Florida found that the county had the authority to regulate the system. *State v. Dade Cnty.*, 142 So. 2d 79, 89 (Fla. 1962). Accordingly, South Indian River Water Control District has the power to make rules and policies regarding the road plan or road improvements, such as the paving of District-owned roads. *See also State ex rel. Hathaway v. Smith*, 35 So. 2d 650, 652 (Fla. 1948) (“Administrative agencies, when empowered to do so, may make and enforce regulations to carry out powers definitely conferred on them...”).

Following the grants of power above, the legislature further clarified their conferral of power to the Board through the following prohibition:

...the Board of Supervisors is prohibited from constructing any new road or increasing the quality of any existing road within the District.... until there has first been a vote in favor of the construction or improvement by the owners of a majority of the parcels represented in the voting after notice has been duly given to all of the owners of the lands within the area to be benefited in the same manner as notice is given and vote taken in the Annual Landowners Meeting. A petition signed by the owners of 51 percent of the parcels to be assessed and certified by the county Supervisor of Elections will satisfy each of the above requirements.

Ch. 2001-313, § 11, Laws of Fla.

However, this language prohibiting the Board from constructing or increasing the quality of roads without a referendum does not remove the above grants of authority. It simply prohibits the Board from increasing the quality of an existing road before meeting the minimum threshold requirement.

B. South Indian River Water Control District is Not Obligated to Pave Roads.

Although the Special Act grants the Board the authority to construct and improve roads of the District, South Indian River Water Control District is not required to construct or pave these roads. This determination is left to the discretion of the Board.

As discussed above, the Special Act states that the “Board of supervisors is hereby given the additional authority...to implement and authorize construction and maintenance of those improvements outlined in the road plan” as well as “to take any and all actions necessary to implement the road plan.” *Ch. 2001-313, § 10, Laws of Fla.* However, the Special Act never states that the Board is required to use these powers in any particular manner, nor does it use any terms which tend to impose an obligation on the Board or the District. For example, the Special Act does not state that the Board “shall” or “must” pave roads. *See Sarasota Doctors Hosp., Inc. v. Sarasota Cnty.*, 396 So. 3d 648, 665 (Fla. 2d DCA 2024) (“The Special Act describes the County’s duty in mandatory terms (that the County ‘shall ... make remittance of money)’); *DeGregorio v. Balkwill*, 853 So. 2d 371 (Fla. 2003) (“‘shall’ has a mandatory connotation”); *Sch. Bd. of Palm Beach Cnty. v. Groover*, 337 So. 3d 799, 808 (Fla. 4th DCA 2022) (“The word “must” in a statute “typically suggests a command or requirement.”).

Instead, the Special Act clearly gives the Board the “additional authority” to undertake specified actions, including road improvements. *Ch. 2001-313, § 10, Laws of Fla.* That language is clear and unambiguous. By its plain terms, the Special Act confers this authority to the Board in addition

to the Boards other enumerated powers; no reasonable alternative interpretation can be derived from the text. See *Florida Dept. of Transp. v. Clipper Bay Investments, LLC*, 160 So. 3d 858, 862 (Fla. 2015) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 455 (Fla.1992)). (“Ambiguity suggests that reasonable persons can find different meanings in the same language.”). Because the Special Act’s language conveys a clear and definite meaning, one must apply its plain terms and may not resort to rules of statutory construction to create uncertainty where none exists. *Florida Birth-Related Neurological Injury Comp. Ass’n v. Dep’t of Admin. Hearings*, 29 So. 3d 992, 997 (Fla. 2010) (“When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.”).

Likewise, the Special Act’s prohibition against constructing new roads or improving the quality of existing roads absent a satisfactory referendum **does not create a corresponding duty** for South Indian River Water Control District to construct, pave, or improve roads. A restriction on the exercise of authority is not the same as a mandate to act. See *Fla. Att’y Gen. Op. 2004-21* (“While the provisions of sections 112.311, 112.313 and 112.3143, Florida Statutes, are applicable to the board of trustees, they address prohibitions on voting but do not mandate that an officer must vote. Thus, the board of trustees may, in my opinion, adopt rules regulating when or if a board member may abstain from voting, provided such rules are not inconsistent with state law.”). Therefore, this prohibitory language does not impose an obligation on the Board or SIRWCD, it merely establishes a condition precedent that must be satisfied before the Board may exercise the restricted authority.

C. The Road Paving Policy is not Inconsistent with or Contrary to the Special Act.

Unlike special districts who may only exercise the power expressly conferred upon them by the legislature, counties and municipalities have broad governing authority. Counties have all the powers to carry on county government which are not “inconsistent” with state law. *Art. VIII, § 1, Fla. Const.; § 125.01, Fla. Stat.* Municipalities have all the powers to enable them to conduct municipal government “except when expressly prohibited by law.” *Art. VIII, § 1, Fla. Const.; § 166.021, Fla. Stat.* However, even when applying these restrictions to the Boards powers enumerate in the Special Act, the Road Paving Policy is not inconsistent with, does not conflict, with, and is not contrary to, the Special Act.

A local government action is inconsistent with state law if: (1) it directly conflicts with a state statute, or (2) the legislature has preempted a particular subject area. *Magnolia Florida Tax Certificates, LLC v. Florida Dep’t of Revenue*, 266 So. 3d 1190, 1193 (Fla. 1st DCA 2018); *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010). The Road Paving Policy does not conflict with the Special Act, nor does the language in the Special Act preempt the Road Paving Policy.

The test to determine whether a local government enactment conflicts with state law is whether one must violate one provision in order to comply with the other; essentially, a conflict exists when two enactments cannot co-exist. *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010); *Jass Properties, LLC v. City of N. Lauderdale*, 101 So. 3d 400 (Fla. 4th DCA 2012).

In *Sarasota Alliance for Fair Elections, Inc.*, the Board of County Commissioners of Sarasota County wanted to amend their county's charter to require the use of paper ballots in county elections. *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 884 (Fla. 2010). At the time, state statute specified that electronic voting systems would not be approved by the Department of State unless the systems met certain enumerated requirements. *Id.* at 888. The court found that amending the Sarasota county charter to require paper ballots did not conflict with these requirements for electronic voting systems. *Id.* at 888. The County could follow these "additional standards" for voting "without being in conflict with the *minimum* statutory requirements established by the Legislature." *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010).

Like the charter amendment in *Sarasota Alliance for Fair Elections, Inc.*, the Road Paving Policy does not conflict with the Special Act. The Special Act prohibits the Board from constructing or improving roads unless there has been a referendum in favor of the action, and clarifies that a "petition signed by the owners of 51 percent of the parcels...will satisfy each of the above requirements." Ch. 2001-313, § 10, Laws of Fla. The Road Paving Policy simply sets a higher standard than the minimum requirement in the Special Act, requiring approval from 90% of the landowners. The District can follow these "additional standards" while still complying with this "minimum" requirement. Thus, the Road Paving Policy does not conflict with the Special Act.

Additionally, the Special Act does not preempt the Road Paving Policy. Preemption can be express or implied. *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). There is no express preemption in the Special Act. "Implied preemption is found where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme." *Id.* The mere conferral of power and prohibition of use of power without a referendum are not a "pervasive regulatory scheme." See also *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1244 (Fla. 2006) ("the words 'shall utilize' alone do not express preemption"). **Moreover, the express conferral of this power to the Board to authorize and implement the road plan and improvements demonstrates that the legislature intended the Board to make decisions regarding paving roads.** See *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010) ("the Election Code specifically delegates certain responsibilities and powers to local authorities, including the choice of voting systems to be used in each locality as long as the system has been approved by the Department of State. This statutory scheme undoubtedly recognizes that local governments are in the

best position to make some decisions for their localities. In light of this, we conclude that the Election Code does not impliedly preempt the field of elections law.”).

Finally, courts have found that local governments may not act contrary to delegations of power. *See Metro-Dade Fire Rescue Serv. Dist. v. Metro. Dade Cnty.*, 616 So. 2d 966, 970 (Fla. 1993) (“the Commission cannot use its legislative authority contrary to the express terms of the Charter”). However, special districts may utilize a process separate from what the law requires, as long as the process meets the law’s requirements.

In *Florida Attorney General Opinion 2004-53*, a Mobile Home Recreational District sought to exclude non-qualified electors from participating in budget hearings. *Section 418.304(4), Florida Statutes*, stated: “the trustees shall hold a public hearing at which time qualified electors of the district may appear and be heard.” The Attorney General determined that because the statute does not prohibit nor require non-qualified electors from participating, the District could allow such non-qualified persons to make public comment, but could also adopt reasonable rules and regulations regarding orderly conduct. *Op. Att’y Gen. Fla. 2004-53*.

These cases illustrate that, although a special district must comply with express legislative limitations and mandates, it retains discretion in the exercise of its delegated powers. For South Indian River Water Control District, this means that the Board may exercise its authority to improve roads within the District provided that it does not violate the statutory requirement that no new road be constructed, and no existing road be improved beyond its current quality, without first obtaining approval through a referendum that satisfies the stated requirements.

IV. Conclusion

In conclusion, the Board has the authority to adopt and implement the Road Paving Policy. The Special Act expressly grants the Board broad authority to authorize and carry out road improvements. At the same time, nothing in the Special Act imposes a mandatory duty on the Board to pave or improve roads. Because the decision whether, when, and how to undertake such improvements is left to the Board’s discretion, the adoption of policies governing the implementation of road paving projects falls squarely within the Board’s delegated authority. Accordingly, the Road Paving Policy is consistent with, and neither conflicts with nor contravenes, the Special Act.