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HOUSE OF REPRESENTATIVES
COMMITTEE ON
Water & Resource Management
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 3421

RELATING TO: Water control districts

SPONSOR(S): Committee on Water & Resource Management, Representatives Putnam and Feeney

COMPANION BILL(S): SB 1596 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) Water & Resource Management YEAS 10 NAYS 0
(2) General Government - Appropriations
(3)
(4)
(5)

I. SUMMARY:

CS/HB 3421 unanimously passed the House Committee on Water and Resource Management on February 18, 1998. A number of amendments to the bill were adopted on the same date.

CS/HB 3421 amends Chapter 298, F.S., which establishes the basic legal framework for water control districts (WCDs). This bill proposes to make a number of changes, mostly technical corrections and deletions. These technical changes consist of eliminating obsolete language, clarifying existing provisions, and providing for cross-references.

However, CS/HB 3421 also proposes changes in Chapter 298, F.S., with broader implications. For example, this bill changes the quorum requirements for holding elections for the boards of supervisors which govern WCDs. Also, in amending s. 298.301(1), F.S., CS/HB 3421 apparently attempts to provide protection to at least one WCD whose boundaries underwent modification through court order, a process not recognized by existing law. In addition, the bill changes the requirement that water control plans contain minimum criteria to the requirement that the plans contain only applicable criteria.

In one instance, CS/HB 3421 appears to conflict with the general legal principle that property assessments bear a fair and reasonable relation to the benefits received. The bill provides that WCD bonds may be paid for by assessments imposed on more than one administrative unit. If the improvements financed by a WCD bond work to benefit only a single administrative unit, then CS/HB 3421 may unlawfully authorize WCDs to collect assessments from administrative units not receiving any benefit.

Likewise, in recognition of the same legal principle that assessments to bear a fair and reasonable relation between benefits and burdens, CS/HB 3421 repeals s. 298.337, F.S. This statute mandates that WCDs assess fractional acre lots as a full acre.

CS/HB 3421 would take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The origin of WCDs dates back to Florida's earliest days. In 1834, before Florida achieved statehood, the Territorial Legislature recognized the public's interest in draining land of water. As a result, it enacted a special act authorizing property owners to construct drainage ditches across adjacent lands to handle excess water. Under this act, the clerk of the court in the applicable county would appoint commissioners to design and route drainage infrastructure as well as determine the amount of compensation for affected landowners.

Later, in 1913, the Legislature enacted the General Drainage Act. This act set forth the procedure for the establishment of special districts called drainage districts. If the majority of landowners of any contiguous body of wet or overflowed lands filed a petition with the clerk of the circuit court where the majority of the land was located, then the circuit court was authorized to create a water control district by court decree. The board of drainage commissioners could also petition for a court decree. Such districts were often created to serve as special taxing districts to finance drainage and reclamation projects.

These drainage districts later became known as the water control districts, and were generally governed by Chapter 298, F.S. Created either through special act or by judicial decree, the WCDs were intended to address the drainage needs of agricultural areas. Of the 97 WCDs that currently exist in Florida (primarily in the southern half of the state), 28 formed as a result of judicial decree and the other 54 from special legislation.

WCDs represent only one type of special district. In basic terms, special districts constitute limited purpose local government units that exist separately from municipal or county governments and the state government. Typically, they provide financing or maintain infrastructure in areas where the cities and counties do not provide the needed capital or services.

In the case of the WCDs, their role in financing and maintaining infrastructure has expanded over the years. Although originally created to serve agricultural areas, the WCDs, in response to urban growth, now frequently manage stormwater, lighting and other non-agricultural infrastructure. In fact, a significant portion of the existing WCDs primarily serve non-agricultural areas. According to a 1994 House Committee on Natural Resources interim project report, entitled Program Review of Water Control Districts, roughly 40 percent of the WCDs provide more than half of their services to residential development.

In 1997, the Legislature significantly amended Chapter 298, F.S., to modernize the law and better reflect how WCDs currently operate. See, Chapter 97-40, L.O.F. As a result of these amendments, state oversight of WCDs shifted from the Department of Environmental Protection to the water management districts and the Governor; the WCDs' water control plans were required to meet certain criteria and achieve consistency with applicable parts of the WMDs' water resource plans; and only the Legislature, not the courts, could amend WCD boundaries.

After the passage of Chapter 97-40, L.O.F., some concern emerged regarding the tax assessment of less than 1-acre tracts. Section 298.337, F.S., as amended in 1997, provides that each tract less than 1 acre is to be assessed as a full acre. Apparently, the county property appraiser in Lee County pointed out that s. 298.337, F.S., appears to violate Florida case law that property assessments bear a fair and reasonable relation to the benefits received. See, Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 183-84 (Fla. 1995), where the Court stated that a special assessment must be fairly and reasonably apportioned according to the benefits received. Even though s. 298.337, F.S., required WCDs to levy assessments in such a manner, no person ever received a notice to pay a full-acre assessment on a less than 1-acre parcel.

CS/HB 3421 was filed to address this and other issues that arose after the passage of Chapter 97-40, L.O.F.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3421 provides for a number of technical changes to Chapter 298, F.S. These changes include corrections to obsolete references and the addition of clarifying language. For instance, CS/HB 3421 changes references to the "chief engineer" to "district engineer." It also reduces some requirements relating to the awarding of contracts and certain planning requirements. Throughout CS/HB 3421, there are numerous corrections and clarifications to Chapter 298, F.S.

On the more substantive side, CS/HB 3421:

-- Eliminates the requirement that landowners holding a majority of the acreage in the district be present or duly represented in order to hold an election. Instead, those landowners and proxy holders present at a duly noticed landowners' meeting constitute a quorum.

-- Removes the language requiring the Governor, in the event no elections are held, to appoint supervisors if requested by an interested person.

-- Provides that landowners with more than 1 acre receive one additional vote for any fraction of an acre greater than a half-acre.

-- Provides that WCD bonds may be paid for by assessments imposed on more than one administrative unit. Section 298.353, F.S., authorizes WCDs to divide themselves into separate administrative units. The impact of this language remains unclear. While the drafter intends this language to clarify that bonds can be paid by multiple administrative units, the language also may be read to permit WCDs to impose assessments on properties outside the area or unit benefiting from the capital improvement provided by the bond. If so, then CS/HB 3421 may conflict with general principles of Florida case law that property assessments bear a reasonable relation to the benefits received.

-- Provides that the district engineer's report, upon approval by the board of supervisors, conclusively establish the amount and apportionment of the WCDs' assessments unless appealed within 30 days of approval. If a court reduces or abates an assessment against any land, then HB 3241 requires the board of supervisors to adjust the district engineer's report accordingly. The bill eliminates language specifying that no assessment shall be levied against property in those cases where a court order determines the tract will not benefit from a water control plan or an amendment, or will be burdened disproportionately.

-- Ensures that WCD landowners pay once for district works authorized by a water control plan. The bill provides that a landowner whose land is assessed for water control benefits cannot be required to pay an additional fee for the connection to or use of district works authorized by a water control plan.

-- No longer mandates that water control plans contain certain minimum criteria. Instead, the bill requires that the plans contain these criteria if applicable.

-- Apparently attempts to grandfather-in at least one WCD that recently amended its boundaries through a court order. Prior to the 1997 amendments to Chapter 298, WCD boundaries could be changed by petitioning the courts (<u>See</u> s.298.07, F.S., 1995 Statutes.) Chapter 97-40, L.O.F., repealed s. 298.07, F.S., and amended s. 298.301(1), F.S., to specify that, "Lands may be added to or deleted from a district only by legislative modification of the special act that contains the charter of the district." The 1997 law did not address whether WCDs in the process of having their boundaries modified through a court petition could continue, or have to start over with a special legislative act.

CS/HB 3421 amends s. 298.301(1), F.S., to read: "<u>After January 1, 1998</u>, lands may be added to or deleted from a district only by legislative modification of the special act <u>or order</u> that contains the charter of the district." What this sentence means is open to interpretation, as discussed in the Comments section.

Finally, in another substantive change, CS/HB 3421 repeals s. 298.337, F.S., which mandates that WCDs assess fractional acre lots as a full acre. As discussed in the Present Situation section, Florida case law provides that property assessments must bear a fair and reasonable relationship between the burden placed on a parcel of property and the benefits that property receives. In light of this case law, it appeared that s. 298.337, F.S., required WCDs to unfairly and disproportionally assess fractional acre lots. CS/HB 3421 removes the authority for WCDs to assess fractional acre lots in this manner.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Potentially yes. CS/HB 3421 authorizes WCDs to pay for bonds with assessments from more than one administrative unit. To the extent that WCDs use this statutory authority, landowners outside an administrative unit benefiting from the capital improvements may see increases in property assessments. However, it can be argued that this language is unlawful because these landowners may be required to pay a disproportionate share of the assessment based on the benefits received.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

Yes. The bill authorizes WCDs to pay for bonds with assessments from more than one administrative unit. Potentially, this provision in CS/HB 3421 may lead to an

increase in assessments for certain landowners within WCDs.

3. Personal Responsibility:

   Not applicable.

4. Individual Freedom:

   Not applicable.

5. Family Empowerment:

   Not applicable.

D. STATUTE(S) AFFECTED:

Amends ss. 298.005(3), 298.005(4), 298.11(2), 298.11(3), 298.12(1), 298.16, 298.22, 298.225, 298.26, 298.301(1), 298.301(2), 298.301(4), 298.301(5), 298.301(6), 298.301(8), 298.301(9), 298.329(1) and 298.353, F.S. Repeals s. 298.337, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 298.005(3), F.S., to delete the reference to definition of "water control district." Amends s. 298.005(4), F.S., to include in the definition of "water control plan" any plan of reclamation, water management plan, or plan of improvement that details the system of improvements implemented by the water control district.

Section 2: Amends s. 298.11(2), F.S., to remove from directory language an obsolete reference to the Governor. Provides that landowners with more than 1 acre are entitled to one additional vote for any fraction of an acre greater than a half-acre. Provides that owners and proxy holders of district acreage who are present at a duly noticed landowners' meeting constitute a quorum for elections. Eliminates language that where the owners of a majority of the acreage in the district are not present or duly represented that no election shall be held; and, in this event, the Governor shall appoint such supervisors if requested in writing by an interested person.

Section 3: Amends s. 298.12(1), F.S., to delete cross-reference to s. 298.11, F.S.

Section 4: Amends s. 298.16, F.S., to change references to chief engineer to district engineer. Eliminates any reference to district engineer's bond and the requirement that the district engineer enter into a bond with good surety to be approved by the board of supervisors.

Section 5: Amends s. 298.22, F.S., to delete reference to excavate in the powers of the board of supervisors. Provides that the board of supervisors is empowered to operate, maintain, repair and replace any and all works and improvements necessary to execute the water control plan. Requires that contracts for the construction of district facilities are to be awarded under s. 255.20, F.S., and applicable general law. Eliminates existing requirements pertaining to contracts. Clarifies that the right to hold, control, acquire and condemn any land, easement, etc. is for the implementation of the district water control plan. Deletes an obsolete reference to the report of the commissioners and inserts a reference to the engineer's report. Provides that a landowner within a district whose land is assessed for water control benefits may be not be required to pay an additional fee for connection to or use of district works authorized by a water control plan.

Section 6: Clarifies that effective October 1, 1998, any plan of improvement is considered a water control plan for purposes of Chapter 298, F.S. Provides that by October 1, 2000, the board of supervisors must develop or revise the water control plan to reflect the minimum applicable requirements set forth in s. 298.225(3), F.S., rather than the minimum requirements. Eliminates requirement that copies of any agreement between the water control district and other governmental entities be contained in the water control plan. Deletes requirement that engineer's report and the water control district's budget and revenue sources for the current year be included in the water control plan. Provides that information within the district's facilities plan prepared pursuant to s. 189.415, F.S., which satisfies any of the provisions of s. 298.225(3), F.S., may be used as part of the district water control plan. Clarifies that before final adoption of the water control plan or plan amendment, the proposed plan or amendment must be submitted to the jurisdictional water management district. Provides that the provisions of s. 298.301(2)-(9), F.S., do not apply if the preparation of a water control plan or amendment does not result in revision of the district's current plan or require the alteration or increase of any levy of assessments or taxes beyond the maximum amount previously authorized by general law, special law, or judicial proceeding. Provides that this s. 298.225, F.S., and s. 298.301(1)-(9), F.S., do not apply to minor, insubstantial amendments to district plans authorized by special law.

Section 7: Amends s. 298.26, F.S., to change any reference to chief engineer to district engineer. Eliminates language stating that the adopted district engineer's report shall be the plan for draining or reclaiming such lands from overflow or damage by water and it shall be part of the water control plan.

Section 8: Amends s. 298.301, F.S., to provide a reference in the directory language to district boundary modification. Clarifies that the board of supervisors may, by resolution at a regular or special meeting noticed pursuant to Chapter 189, F.S., consider the adoption of a district water control plan or plan amendment. Provides after January 1, 1998, lands may be added or deleted from a WCD only by legislative modification of the special act or order that created the WCD. Modifies some of the language required by statute to be contained in notices for public hearings. Provides that the district engineer, with the advice of the district attorney, staff and consultants, shall determine the amount of benefits and damages on each parcel from implementing the proposed plan or amendment. Changes some of headings of the report on benefits and damages. Eliminates language that where the engineer's estimate showed increased property value exceeding amount of assessment that the benefits are deemed to exceed damages. Modifies language required by statute to be in the notice of the filing of the engineer's report. Provides for discretionary review by the board of supervisors of engineer's report, under certain circumstances. Provides that the board of supervisors' approval of engineer's report finally and conclusively establishes the amount and apportionment of assessments unless appealed within 30 days. Corrects a misplaced "or" to "of." Provides that if the court reduces or abates an assessment against any land, then the board of supervisors must adjust the district engineer's report accordingly. Eliminates provision that if a court order determines certain tracts will not benefit from a water control plan or an amendment or will be burdened disproportionately, then the assessment may not be levied against the land.

Section 9: Amends s. 298.329, F.S., to change a cross-reference to s. 298.225, F.S.

Section 11: Repeals s. 298.337, F.S.

Section 12: Amends s. 298.353, F.S., to clarify that the board of supervisors may designate areas or parts of the district as separate administrative and financial "units." Clarifies that notices are to be sent to municipalities within whose boundaries unit lands are located when noticing for water control plans applicable to one or more units, but to less than the entire district, as required by s. 298.301, F.S. Eliminates requirement to notice immediately contiguous properties within the district in

the same instance. Provides that bonds may be payable from assessments imposed on more than one unit.

Section 13: Provides that this act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 3421 may increase private sector costs. Depending on how it's construed, the language in CS/HB 3421 that authorizes WCD to pay for bonds with assessments from more than one administrative unit may lead to higher private-sector costs. With this language, properties located in WCD administrative units not receiving the benefit of the capital infrastructure financed by a bond may, nevertheless, pay property assessments.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/HB 3421 does not invoke Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax revenue shared with counties and municipalities.

V. COMMENTS:

Generally characterized as a glitch bill, CS/HB 3421 nonetheless deals with several substantive issues. A key issue is the assessment of fractional parcels. Under Florida case law, special assessments (such as property assessments by WCDs) must exhibit a nexus between the amount of the assessment and the benefits received. Stated another way, the amount of the special assessment must roughly reflect the level of benefits provided to those paying the assessment. In contrast, governments levy taxes (as opposed to special assessments) without the obligation to establish a nexus, as taxes provide benefits to the community as a whole. As for WCDs, they levy special assessments on properties within their districts for the construction and operation of various infrastructure.

CS/HB 3421 touches upon this issue of the proportionality between the level of assessments and the benefits received. The bill authorizes WCDs to pay for bonds through assessments levied on more than one administrative unit. From the language in CS/HB 3421, it remains unclear whether such assessments are tied to bonds serving the entire district or just limited areas. This language may simply clarify that bonds may be paid by assessments from more than one unit without intending to undermine the requirement that assessments bear a reasonable relation to the benefits received. On the other hand, if CS/HB 3421 authorizes WCDs to levy assessments to pay for bonds exclusively serving a single administrative unit, then this bill appears to conflict with case law requiring property assessments to bear a reasonable relation to the benefits received.

Two other significant issues remain with CS/HB 3421. In changing the quorum requirements for the elections for the board of supervisors, this bill eliminates the existing requirement that those landowners with the majority of acreage in the WCD participate in the elections. Rather, for purposes of electing the board of supervisors, the bill provides that a quorum simply consist of those landowners present or represented at a duly noticed meeting. This provision potentially allows a small number of landowners to control the outcome of a WCD board of supervisors election.

Also, CS/HB 3421 no longer requires water control plans to contain certain minimum criteria. The criteria in question relate to descriptions of WCD facilities, environmental programs, plans for future facilities, and other planning information. The bill now only requires these plans to contain these criteria if applicable. While some of these criteria may not apply to all WCDs, this change in CS/HB 3421 may undermine the goal

of Chapter 97-40, L.O.F., to promote consistent planning and adherence to regulatory requirements.

Finally, there is the issue of what the amended language in s. 298.301(1), F.S., is intended to communicate. The sentence in question is: "After January 1, 1998, lands may be added to or deleted from a district only by legislative modification of the special act or order that contains the charter of the district." According to the bill's drafter, this sentence is intended to clarify that the boundaries of WCDs created by the Legislature can be modified by special act of the Legislature, and that the boundaries of WCDs created by court decree can be amended by the courts. Committee staff interprets the amended sentence differently -- that the Legislature has the sole authority to modify the boundaries of WCDs, whether they were created by legislative special act or by a court order. It would not, however, grandfather-in any WCD that tried to initiate or complete a court-approved modification of their boundaries on or after May 1, 1997, when Chapter 97-40, L.O.F., became law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 18, 1998, members of the House Committee on Water and Resource Management unanimously approved HB 3421 as a C/S. In voting to approve CS/HB 3421, the Committee members also adopted several amendments to the bill. Of the six amendments approved by the Committee, the majority constituted technical corrections relating to obsolete language, a misplaced word, and clarifications.

Yet, CS/HB 3421 also passed the Committee with two substantive amendments. Sponsored by Rep. Harrington, the amendments addressed the issue of proportionality between the level of assessments and the benefits accruing to a particular property. Existing law found in s. 298.337, F.S., requires WCDs to assess fractional acre lots as a full acre for purposes of making property assessments. Similarly, the original language in HB 3421 granted WCDs the discretion to assess fractional acres in this manner. But as discussed elsewhere in this analysis, both s. 298.337, F.S., and the original language in HB 3421 appeared to violate Florida case law mandating that property assessments bear a fair and reasonable relation between the burden and the benefits.

Accordingly, the Committee passed the following two amendments to CS/HB 3421. The first amendment removed the section of HB 3421 that authorized the WCDs to assess fractional acre lots as a full acre. Finally, the second amendment repealed s. 298.337, F.S.

VII. SIGNATURES:

COMMITTEE ON Water & Resource Management:

Prepared by:	Legislative Research Director:
E. Palmer Mason	Joyce Pugh