

STORAGE NAME: h1619a.ca
DATE: April 20, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Community Affairs
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1619
RELATING TO: County Line Drainage District in Lee County
SPONSOR(S): Representative C. Green
COMPANION BILL(S): SB 2580 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 6 NAYS 0
 - (2) WATER & RESOURCE MANAGEMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill codifies all prior special acts relating to the County Line Drainage District in Lee County into one special act.

The bill declares that the District is an independent special district.

The bill provides for minimum charter requirements.

The bill removes obsolete charter language which was preempted by applicable general law chapters.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1997 Legislature amended chapter 189, Florida Statutes, to provide for codification of all special districts' charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. In addition, section 189.429, Florida Statutes, requires that no changes be made to a district's charter as it exists on October 1, 1997, in the codifying legislation and that all prior Legislative acts relating to the district be repealed.

The 1998 Legislature further amended section 189.429, Florida Statutes, by (i) extending the deadline to codify to December 1, 2004, (ii) allowing for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs, (iii) removing the prohibition of substantive amendments in a district's codification bill, and (iv) removing the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline.

SCHEDULE OF SUBMITTALS OF SPECIAL DISTRICTS' CHARTERS

Special Districts with 2 special acts (45 districts)	1999 Legislative Session
Special Districts with 3 or 4 special acts (63 districts)	2000 Legislative Session
Special Districts with 5, 6 or 7 special acts (53 districts)	2001 Legislative Session
Special Districts with 8, 9, 10, 11 or 12 special acts (56 districts)	2002 Legislative Session
Special Districts with 13 or more (54 districts)	2003 Legislative Session
Special Fire Control Districts (47 districts)	2004 Legislative Session

Also, section 189.404(5), Florida Statutes, provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform with the department's determination or declaratory statement regarding the status of the district.

History of Water Control Districts

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts--through circuit court decree--and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act,

although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

Chapter 298, Florida Statutes

Chapter 298, Florida Statutes, contains provisions governing the creation and operation of water control districts. Some of these provisions are briefly described below.

Creation of Water Control Districts

Section 298.01, Florida Statutes, restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of section 125.01, Florida Statutes (dependent water control districts). Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by chapter 298, Florida Statutes

Election of Board of Supervisors

Upon the formation of a water control district, the circuit court where the majority of the land is located has jurisdiction within the boundaries of the district. Once a district is organized, the clerk of the circuit court with jurisdiction over the district must announce the first landowners' meeting in a newspaper. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve 3-year rotating terms, with one supervisor elected each year at a required annual meeting. To qualify as a supervisor, a person must own property in the district and be a resident of county in which the district is located. In the event a quorum is not present, the Department of Environmental Protection (DEP) is required to fill the vacant seat.

One-Acre One-Vote

Section 298.11, Florida Statutes, provides for every acre of land within a district to represent one share, or vote. Each landowner within a district is entitled to one vote per acre of land they own. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well.

Role of the Circuit Courts

As noted, once a water control district is formed, the circuit court of the county where the majority of the land is located has exclusive jurisdiction within the boundaries of the district. Circuit courts serve several functions in the creation and governance of water control districts. After a board of supervisors adopts a plan of reclamation, it must petition the circuit court to appoint three commissioners to appraise the lands that will be acquired to implement the plan of reclamation. A circuit court may require the report on assessment of benefits and damages to be amended and it must condemn lands described in the report that are needed to construct the district's works. In the event a circuit court determines that the value of land within the district has changed and additional conditions are met, the court is required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

Revenue Sources

The primary funding source for water control district activities is special assessments. Once a circuit court has issued its decree on the report on assessments of benefits and damages, a board of supervisors may levy a tax on the land that will be benefited by the works. This tax must be "apportioned to, and levied on, each tract of land in said district in proportion to the benefits assessed, and not in excess thereof," as provided for in section 298.50, Florida Statutes. A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of assessments levied. A board of supervisors also may levy an annual maintenance tax on each tract of land in the district to maintain and preserve the district's works once they are completed. This tax also must be apportioned on the basis of the net benefits accruing to the individual parcels.

Limitation on Special Acts

Paragraph (21) of Subsection 11(a), Article III of the State Constitution, prohibits special laws or general laws of local application pertaining to "any subject when prohibited by general law passed by a three-fifths vote of the membership of each house." Furthermore, "such law may be amended or repealed by like vote."

Section 298.76, Florida Statutes, was adopted pursuant to this authority. The section provides "there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to this chapter." However, this subsection does not prohibit special or local legislation that:

- (a) Amends an existing special act which provides for the levy of an annual maintenance tax of a district;
- (b) Extends the corporate life of a district;
- (c) Consolidates adjacent districts; or
- (d) Authorizes the construction or maintenance of roads for agricultural purposes as outlined in this chapter.

The section also authorizes special or local laws:

- (a) Changing the method of voting for a board of supervisors for any water control district;
- (b) Providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any water control district; and
- (c) Changing the governing authority or governing board of any water control district.

Finally, the section provides that any special or local laws enacted by the Legislature pertaining to any water control district shall prevail as to that district and shall have the same force and effect as though it had been a part of this chapter or any section thereof at the time the district was created and organized.

B. EFFECT OF PROPOSED CHANGES:

The bill codifies all prior special acts relating to the East Charlotte Drainage District in Charlotte County into a single act.

The bill declares that the District is an independent special district pursuant to section 189.404(5), Florida Statutes.

The bill states the District's minimum charter requirements pursuant to and provided by section 189.404(3), Florida Statutes, as the information is not provided for in the current charter.

The bill states that Chapters 289, 189, 170, and 197, Florida Statutes, are applicable to the District charter's provisions. The bill removes obsolete charter language which was preempted by the applicable general law chapters.

The bill does not remove language from the District's charter regarding qualifications of the board of supervisors. The District's bill exempts the District from the requirement that a member of its governing board must be a property owner and resident of the district if no such candidates qualifies. Section 298.11(1), Florida Statutes, requires a supervisor to be both a property owner and a resident of the district. However, section 298.76(3), Florida Statutes, allows a District, by special or local laws, to change the qualifications of the board of supervisors. This bill revises supervisor qualifications *only* if there are no qualifying candidates. If there are no property owners who are residents of Lee County who are running for the board of supervisors, then any district property owner who is a citizen of Florida, may qualify and stand for election. This language was amended onto the District's charter in 1986.

The bill removes obsolete language which was preempted by applicable chapters.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 67-723, Laws of Florida; Chapter 81-408, Laws of Florida; Chapter 86-417, Laws of Florida

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?
N/A
- (2) service providers?
N/A
- (3) government employees/agencies?
N/A

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides the charter for the County Line Drainage District in Lee County to read:

Section 1: Provides that this act is the codification required under section 189.429, Florida Statutes (1998).

Section 2: Codifies, reenacts, and amends special acts relating to the District's charter.

Section 3: Ratifies, confirms, and restates District formation by the Twelfth Judicial Circuit.

Section 4: Describes District's boundaries.

Section 5: Provides the minimum charter requirements pursuant to section 189.404(3), Florida Statutes, by providing for:

- (i) the District's purpose;
- (ii) the District's powers, functions, and duties relating to ad valorem taxation, bond issuance, other revenue raising capabilities, liens, budget;
- (iii) the District's creation by a judicial decree from the Twelfth Judicial Circuit;
- (iv) charter amendments by special acts;
- (v) the election and organization of the District's three member board;
- (vi) the compensation of board members;
- (vii) the administrative duties of the board;
- (viii) financial disclosure, meeting notices, public records, and per diem for officers and employees
- (ix) procedure and requirements governing bond and other indebtedness issuance;
- (x) procedures for conducting District elections and elector qualifications;
- (xi) methods by which the District may be financed;
- (xii) methods for assessing and collecting non-ad valorem assessments and fees;
- (xiii) the District's planning requirements; and
- (xiv) the District's boundaries.

Section 6: Exempts the District from the requirement that a member of its governing board must be a property owner and resident of the district if no such candidate qualifies; Provides that if there are no property owners who are residents of Lee County who are running for the board of supervisors, then any district property owner who is a citizen of Florida, may qualify and stand for election.

Section 7: Provides for the severability of any unconstitutional provision.

Section 8: Provides for act's control if there are conflicting provisions.

Section 2: Provides effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 29, 1999

WHERE? News-Press in Fort Myers, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The legal description of the District in this bill is different than the description found in chapter 67-723, Laws of Florida. However, this bill does not change the District's boundaries. It appears as though the original legal description was inaccurate. The District has, and continues to use the correct legal description which can be found in the District's Plan of Reclamation. Attached is a letter confirming that this bill does not change the District's boundaries.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs, at its meeting on April 20, 1999, adopted the following three technical amendments offered by Representative Green:

Amendment #1 -- Inserts "repealed" into the bill's charter provision which codifies, reenacts, and amends the District's charter.

Amendment #2 -- Inserts "citizen" of the state in place of "elector" due to the inconsistency with chapter 298, Florida Statutes, which provides that landowners are entitled to vote. There is no requirement that the landowners be electors of the state.

Amendment #3 -- Inserts a repealer provision into the bill. The amendment repeals *all* prior special acts relating to the District's charter, even those special acts which have previously been repealed by other special acts. The concern is that if a special act which contains a repealer provision is repealed, then the special act which was previously repealed no longer remains repealed. By repealing *all* special acts, the intent behind codifications is satisfied as all special acts relating to charter provisions are repealed.

VI. SIGNATURES:

COMMITTEE ON Community Affairs:

Prepared by:

Staff Director:

Laura L. Jacobs

Joan Highsmith-Smith