

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 465 Haines City Water Control District  
**SPONSOR(S):** Bowen  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** (I) SB 1582

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Smith</u>	<u>Cutchins</u>
2) <u>Local Governement &amp; Veterans' Affairs</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

This bill provides for codification of all previous special acts related to the Haines City Water Control District, an independent water control district located in Polk County, as required by Chapter 189, Florida Statutes.

The bill preserves the District's current authority to levy special assessments.

No fiscal impacts are anticipated for either fiscal year 2004-05 or 2005-06 according to the Economic Impact Statement.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

This bill provides for codification of all previous special acts related to the Haines City Water Control District, an independent water control district located in Polk County, as required by Chapter 189, F.S.

Pursuant to s. 298.001, F.S., the District is designated as a water control district.

The Haines City Drainage District No. 1 of Polk County, Florida, was created by Chapter 13649 (1929), Laws of Florida. The District is authorized to levy a special assessment and a maintenance assessment.

The assessment fees for 2004-2006 are \$3.00 per acre, or portion thereof. This assessment fee is being discontinued in year 2007. The current maintenance fee is \$2.00 per acre, which is a continuing assessment. These assessments and the 2003-2004 budget were approved by the board of the District on January 26, 2004.<sup>1</sup> The bill preserves the District's current authority to levy special assessments, which is \$5 per acre.

#### Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was authorized by the 1997 Legislature when it amended ch. 189, F.S., to provide for codification of all special district charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first.

The 1998 Legislature amended s. 189.429, F.S., to: (1) extend the codification deadline to December 1, 2004; (2) allow 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; (3) remove the prohibition of substantive amendments in a district's codification bill; and (4) remove 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. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district.

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<sup>1</sup> E-mail from Mr. Wes Wheeler, Esq., with the law firm of Wheeler & Traviss, P.A., representing the District (Feb. 3, 2004, 1:53 PM EST)(on file with the Committee on Local Government & Veterans' Affairs).

Additionally, the 2001 Legislature amended s. 189.429, F.S., creating subsections (2) and (3). The subsections provide that reenactment of existing law pursuant to section 189.429: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

According to the schedule of submittals, Special Fire Control Districts are to submit their charters during the 2004 Legislative Session.

## **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, F.S., 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, F.S., 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, F.S., (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, F.S.

### **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, notice of the first landowners' meeting shall be given. The notice shall be published once a week for two consecutive weeks 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 the county in which the district is located, unless a district's special act provides otherwise. The Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting if acreage owned by the state is subject to assessment by the district.

## One-Acre, One-Vote

Section 298.11(2), F.S., provides that every acre of assessable land within a district represents one share, or vote. Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well. Landowners owning more than one acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowners' acreage has been aggregated for purposes of voting.

## Role of the Circuit Courts

Prior to July 1, 1980, when a water control district was formed, the circuit court of the county where the majority of the land is located had exclusive jurisdiction within the boundaries of the district. Circuit courts served several functions in the creation and governance of water control districts. After a board of supervisors adopted a plan of reclamation, it petitioned the circuit court to appoint three commissioners to appraise the lands that would be acquired to implement the plan of reclamation. A circuit court may have required the report on assessment of benefits and damages to be amended to include condemned lands needed to construct the district's works. In the event a circuit court determined that the value of land within the district had changed and additional conditions were met, the court was required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

## Water Control Plans

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan". The approval and implementation process has been removed from the purview of the circuit court.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider adoption of the plan or plan amendment. The board of supervisors shall publish notice of a public hearing once a week for 3 consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission of the county and any municipality in which the District is located.

At the public hearing on the proposed plan or plan amendment the board of supervisors will consider any objections to the plan and then shall determine whether or not to proceed with the plan. In the event the board proceeds forward, it will then direct the District Engineer to prepare a report in writing to the board of supervisors complete with maps and surveys. The report shall include a full and complete water control plan for draining and reclaiming the lands described in the petition. Further, the report must contain an estimate of the costs of carrying out the completing the water control plan and an estimate of the benefits derived from the water control plan.

A final hearing on approval of the water control plan and the engineer's report, is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the engineer's report with the secretary of the district.

Before final adoption of the engineer's report and water control plan or plan amendment under section 298.301, F.S., the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment is less than the benefits determined for the lands.

The board of supervisors must review the water control plan at least every 5 years following its adoption.

## Revenue Sources

The primary funding source for water control district activities is special assessments, which must be imposed on the property so that the burden on every parcel will bear a just proportion to that imposed on every other. In other words, the assessment of the particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. Special assessments may be determined legislatively or judicially.

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

## Limitation on Special Acts

Section 11(a)(21), Article III of the State Constitution, provides that no special law or general law of local application shall be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house. However, such a general law may be amended or repealed by like vote.

Section 298.76, F.S., is an example of such a general law passed by a three-fifths vote of the membership of each house. The statute provides that 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 chapter 298, F.S. Section 298.76 F.S., does not prohibit special or local legislation that:

- (a) Amends an existing special act that 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.

Section 298.76 F.S., authorizes special or local legislation:

- (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, section 298.76, F.S., 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 chapter 298, F.S., at the time the district was created and organized.

## C. SECTION DIRECTORY:

**Section 1.** Provides that this act is the codification required under section 189.429, Florida Statutes; states the Legislative intent for the act; and preserves all district authority in addition to any authority contained in chapter 298, F.S.

**Section 2.** Amends, codifies, reenacts, and repeals chapters 13649 (1929) and 14517 (1929), Laws of Florida.

**Section 3.** Re-creates the Haines City Water Control District and re-creates and re-enacts the district charter as follows:

- Section 1. Provides for the purposes of the District.
- Section 2. Restates section 1 of chapter 14517 (1929), Laws of Florida, providing for the boundaries of the District.
- Section 3. Restates section 1 of chapter 13649 (1929), Laws of Florida, authorizing the District to levy a special assessment and a maintenance assessment.
- Section 4. Restates section 2 of chapter 13649 (1929), Laws of Florida, providing for the levy and collection of assessments.
- Section 5. Restates section 3 of chapter 13649 (1929), Laws of Florida, providing for the collection of said assessments; and providing for the compensation of the Tax Assessor, Tax Collector, and Clerk of the Circuit Court of Polk County.
- Section 6. Restates section 4 of chapter 13649 (1929), Laws of Florida, providing for the duty of the Chief Financial Officer to assess all real estate which benefits have been assessed and within the District belonging to a railroad company or companies.
- Section 7. Restates section 5 of chapter 13649 (1929), Laws of Florida, prohibiting the impairment of contractual obligation of the District due to this bill.
- Section 8. Restates section 6 of chapter 13649, (1929), Laws of Florida, providing this act in no way repeals any of the drainage laws of the state relating to the assessment, collection and enforcement of the payment of taxes.
- Section 9. Provides the Haines City Water Control District is an independent water control district and a public corporation of the state.
- Section 10. Provides for the minimum charter requirements pursuant to s. 189.404(3), F.S., describes the purpose for the District; describes the powers, functions, and duties of the district regarding ad valorem taxation, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other similar issues; describes the method for amending the charter of the District; describes the membership and organization of the governing board of the district; describes the compensation of a governing board member; describes the administrative duties of the governing board of the District; describes the applicable financial disclosure, noticing, and reporting, requirements; describes the procedures and requirements for issuing bonds; the procedures for conducting any district elections or referendum and the qualifications of an elector of the district; describes the methods for financing the district; describes the methods for collecting non-ad valorem assessments, fees, or service charges; describes the District planning requirements; and describes that the geographic boundary limitations are provided in this act.
- Section 11. Provides for the severability of any invalid provisions.
- Section 12. Provides that this act shall be liberally construed as a remedial act for the purposes for which it was intended.

**Section 4.** Repeals chapters 13649 (1929) and 14517 (1929), Laws of Florida.

**Section 5.** Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 11, 2003

WHERE? *The Ledger*, Lakeland, Polk County, 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

## III. COMMENTS

A. CONSTITUTIONAL ISSUES: Not Applicable.

B. RULE-MAKING AUTHORITY: Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: The Sponsor may wish to offer two technical amendments: the first amendment removes an antiquated provision in section 6 of the charter as set forth in section 3 of the bill; the second amendment removes duplicative provisions in section 10 of the charter as set forth in section 3 of the bill.

## IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Local Affairs recommended two amendments on February 17, 2004. The first amendment removes an antiquated provision in section 6 of the charter as set forth in section 3 of the bill. The second amendment removes duplicative provisions in section 10 of the charter as set forth in section 3 of the bill.