

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1009 Fellsmere Water Control District, Indian River County

**SPONSOR(S):** Local and Federal Affairs Committee; Mayfield

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Dougherty	Rojas
2) State Affairs Committee	16 Y, 0 N	Stramski	Camechis

### SUMMARY ANALYSIS

This bill codifies, amends, and reenacts the special acts relating to the Fellsmere Water Control District (District), a water control district in Indian River County. Additionally, this bill changes the District to an independent improvement district; renames it the Fellsmere Improvement District; grants it additional powers; and represents a total rewrite of its charter.

The bill provides an effective date of upon becoming 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) apply to this bill.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### History of Water Control Districts

In 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 created the state's first general drainage law, the "General Drainage Act of 1913," to establish one procedure for creating these districts – through circuit court decree – and to provide general law provisions governing their operation.

Between 1913 and 1972, the General Drainage Act remained for the most part unchanged. In 1972 and 1978, respectively, the Legislature amended the act to change the name of these districts to "water management districts" and then to "water control districts." A 1979 bill repealed provisions authorizing the creation of water control districts by circuit court decree.

###### Powers of Water Control Districts

Chapter 298, F.S., governs water control districts. A water control district created pursuant to this chapter has full power and authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan adopted by that district.<sup>1</sup>

A water control district may be authorized to engage in various water control activities,<sup>2</sup> including:<sup>3</sup>

- (1) To employ persons and purchase machinery to directly supervise, construct, maintain and operate the works and improvements described in the water control plan, or contract with others for the same.
- (2) To clean out, straighten, open up, widen or change the course and flow, alter or deepen any canal, ditch, drain, river, watercourse or natural stream; and concentrate, divert or divide the flow of water in or out of the district; construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and siphons, and may connect the same, with any canals, drains, ditches, levees, or other works, and with any natural stream, lake or watercourse.
- (3) To build and construct other works and improvements to preserve and maintain the works in or out of the district; acquire, construct, operate, maintain, use, purchase, sell, lease, convey or transfer real or personal property, including pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment.
- (4) To contract for the purchase, construction, operation, maintenance, use, sale, conveyance and transfer of pumping stations, machinery, motive equipment, electric lines and appurtenant equipment, including the purchase of electric power and energy for the operation of the same.
- (5) To construct or enlarge, or cause to be constructed or enlarged, bridges that may be needed in or out of the district, across any drain, ditch, canal, floodway, holding basin,

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<sup>1</sup> Section 298.22, F.S.

<sup>2</sup> Subject to the applicable provisions of chs. 373 and 403, F.S., the "Florida Water Resources Act of 1972" and the "Florida Air and Water Pollution Control Act", respectively.

<sup>3</sup> See s. 298.22, F.S.

excavation, public highway, railroad right-of-way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of said works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut, in or out of the district; remove any fence, building or other improvements, in or out of the district.

- (6) To hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right-of-way, sluice, reservoir, holding basin or franchise, in or out of said district, for right-of-way, holding basin, or for material to be used in constructing and maintaining said works and improvements for implementation of the district water control plan.
- (7) To condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court as identified in the engineer's report, and follow the procedure set out in ch. 73, F.S., relating to eminent domain.
- (8) To adopt resolutions and policies.
- (9) To assess and collect reasonable fees for the connection to and use of the works of the district.
- (10) To implement comprehensive water control activities, including flood protection, water quantity management, and water quality protection and improvement, described in the water control plan.
- (11) To construct and operate facilities for the purpose of controlling and preventing the spread or introduction of agricultural pests and diseases.
- (12) To construct, manage or authorize construction and management of resource-based recreational facilities that may include greenways, trails and associated facilities.

#### The Uniform Special District Accountability Act

The 1989 Legislature enacted ch. 189, F.S., the "Uniform Special District Accountability Act," to consolidate and unify the provisions of existing law relating to the creation and accountability of special districts. The act continues to provide for the general governance of special districts, addressing issues such as the creation and operation of special districts, financial reporting requirements, funding authority, election of board members, compliance with general law provisions such as public records and meetings requirements, and comprehensive planning within special districts.

#### The Fellsmere Water Control District

A 1919 circuit court decree created the District and gave it a 99 year lifespan. Its original purposes were to reclaim land and provide water control in order to make these lands available, acceptable, and habitable for settlement and agriculture. Today, the District provides water control services and infrastructure to maintain its approximately 27,000 acres for residential and agricultural purposes. The majority of this acreage is in the municipal limits of the Town of Fellsmere.

Various special acts gave the District a limited number of powers, including the power:

- (1) To provide drainage and land reclamation services.
- (2) To issue notes or certificates of indebtedness.
- (3) To maintain, preserve, repair, and restore the ditches, drains, and other improvements of the District.

- (4) To levy a drainage tax and an annual maintenance tax.
- (5) To sell, assign, or authorize redemption of any drainage tax certificates for less than face value; and to accept unpaid bonds for drainage tax payment.
- (6) To manage, conserve, and control drainage waters; to construct and install works of improvement necessary to accomplish this; and to modify any plan of reclamation, plan of improvement, or facilities if approved by landowners and the board of supervisors.
- (7) To acquire land, easements, or rights of way to provide continuous and adequate facilities for improvement outfall drainage.

### **Effect of Proposed Changes**

This bill codifies all previous special acts and court decrees relating to the District into one unified document.<sup>4</sup> In addition to codification, this bill amends the District's charter. These changes include:

- (1) Revising the District's boundaries to reflect the St. Johns River Water Management District's acquisitions of former District lands.
- (2) Removing the current sunset date of 2018 in order to ensure the continued water control services of the District.
- (3) Renaming the District as the "Fellsmere Improvement District."
- (4) Granting the District all powers and authorities of ch. 298, F.S.,<sup>5</sup>
- (5) Subjecting the District to ch. 189.<sup>6</sup>
- (6) Granting community development authority to the District.<sup>7</sup>

This community development authority allows the District to provide services beyond drainage and flood control. The bill authorizes the District:

- (1) To sue and be sued in its name in any court of law or in equity, to make contracts, to adopt and use a corporate seal, and to alter the same at pleasure.
- (2) To acquire by purchase, gift, or condemnation real and personal property, either or both, within or without the district, and to convey and dispose of such real and personal property, either or both, as may be necessary or convenient to carry out any of the purposes of this act and ch. 298, F.S.
- (3) To finance, fund, plan, establish, construct, equip, operate, and maintain canals, ditches, drains, levees, lakes, ponds, control structures, or similar devices for water control and diversion and other works for water management and control purposes.
- (4) To acquire, purchase, finance, fund, plan, establish, equip, operate, and maintain pumps, plants, and pumping systems for water management and control purposes.
- (5) To finance, fund, plan, establish, construct, equip, operate, and maintain irrigation works, machinery, and plants.

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<sup>4</sup> Pursuant to s. 189.429, F.S.

<sup>5</sup> Chapter 298, F.S. governs water control districts.

<sup>6</sup> Uniform Special District Accountability Act.

<sup>7</sup> Similar to the authority of Community Development Districts created pursuant to ch. 190, F.S.

- (6) To finance, fund, plan, establish, construct, improve, pave, equip, operate, and maintain roadways and roads necessary and convenient for the exercise of any of the powers or duties of said district or the supervisors thereof and to include parkways, bridges, landscaping, irrigation, drainage, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system as a component of such roadways and roads.
- (7) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for providing transportation throughout the district, including private or contract carriers, buses, vehicles, railroads, and other transportation facilities, to meet the transportation requirements of the district in activities conducted within the district.
- (8) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain parking facilities within the district boundaries.
- (9) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses.
- (10) To acquire, construct, finance, fund, plan, establish, equip, operate, and maintain water plants and systems to produce, purify, and distribute water for consumption.
- (11) To acquire, construct, finance, fund, establish, plan, equip, operate, and maintain sewer systems for the collection, disposal, and reuse of waste and wastewater and to prevent water pollution in the district.
- (12) To levy non-ad valorem assessments; to prescribe, fix, establish, and collect rates, fees, rentals, fares, or other charges; and to revise the same from time to time for the facilities and services furnished or to be furnished by the district and to recover the cost of making connection to any district facility or system.
- (13) To provide for the discontinuance of service and reasonable penalties, including attorney fees, against any user or property for any such rates, fees, rentals, fares, or other charges that become delinquent and require collection. However, no charges or fees shall be established until after a public hearing of the board of supervisors of the district at which all affected persons shall be given an opportunity to be heard.
- (14) To enter into agreements with any person, firm, or corporation for the furnishing by such person, firm, or corporation of any facilities and services of the type provided for in this act.
- (15) To enter into impact fee credit agreements with local general purpose governments. In the event the district enters into an impact fee credit agreement with a local general purpose government where the district constructs or makes contributions for public facilities for which impact fee credits would be available, the agreement may provide that such impact fee credits shall inure to the landowners within the district in proportion to their relative assessments, and the district shall, from time to time, execute such instruments, such as assignments of impact fee credits, as may be necessary or desirable to accomplish or confirm the foregoing.
- (16) To finance, fund, plan, establish, equip, construct, operate, and maintain facilities and take measures to control mosquitoes and other arthropods of public health importance.
- (17) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities 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.

- (18) To borrow money and issue negotiable or other bonds of said district as hereinafter provided; to borrow money, from time to time, and issue negotiable or other notes of said district therefor, bearing interest at not exceeding the maximum interest allowable by law, in anticipation of the collection of levies and assessments or revenues of said district; to pledge or hypothecate such levies, assessments, and revenues to secure such bonds, notes, or obligations; and to sell, discount, negotiate, and dispose of the same.
- (19) To provide public safety, including, but not limited to, security, 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 police power but may contract with the appropriate local general purpose government agencies for an increased level of such service within the district boundaries.
- (20) To provide systems and facilities for fire prevention and control and emergency medical services, including the construction or purchase of fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
- (21) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities 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.
- (22) To establish and create such departments, committees, boards, or other agencies, including a public relations committee, as from time to time the board of supervisors may deem necessary or desirable in the performance of the acts or other things necessary to the exercise of the powers provided in this act, and to delegate to such departments, committees, boards, or other agencies such administrative duties and other powers as the board of supervisors may deem necessary or desirable.
- (23) To exercise all other powers necessary, convenient, or proper in connection with any of the powers or duties of the Fellsmere Water Control District. The powers and duties of the Fellsmere Water Control District shall be exercised by and through the board of supervisors of the district, which board of supervisors shall have the authority to employ engineers, attorneys, agents, employees, and representatives as the board of supervisors may, from time to time, determine and to fix their compensation and duties. In addition thereto, said district shall have all of the powers provided for in ch. 298, F.S. All powers and authority of the district shall extend and apply to the district as a whole and to each unit of development as, from time to time, may be designated by the board of supervisors.

#### B. SECTION DIRECTORY:

**Section 1:** Provides that the reenactment of existing law in this act does not grant additional authorities to any entity and does not modify the District's bonded indebtedness obligations.

**Section 2:** Codifies, reenacts, amends, and repeals chs. 8877 (1921), 11555 (1925), 12023 (1927), 14719 (1931), 16998 (1935), 28418 (1953), 61-1414, and 69-1161, L.O.F.

**Section 3:** Renames the Fellsmere Water Control District as the Fellsmere Improvement District; recreates and reenacts the District's charter.

- Section 4:** Ratifies all prior acts and circuit court decrees relating to the District; provides that inconsistent acts and court decrees inapplicable
- Section 5:** Repeals chs. 8877 (1921), 11555 (1925), 12023 (1927), 14719 (1931), 16998 1935), 28418 (1953), 61-1414, and 69-1161, L.O.F.
- Section 6:** Provides for severability of this act if any provision contained therein is held unconstitutional.
- Section 7:** Provides that this act shall take effect upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 24, 2013

WHERE? The *Indian River Press Journal*, a daily newspaper published in Vero Beach in Indian River 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:

Section 11(a)(21), Art. III of the Florida Constitution, provides that no special law or general law of local application may be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house.

Adopted pursuant to this provision, s. 298.76, F.S., 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 ch. 298, F.S.,<sup>8</sup> with some exceptions not relevant here.<sup>9</sup>

This bill grants broad powers to the District not included in its previous special acts or ch. 298, F.S. Due to the grant of these additional powers, this bill requires a three-fifths vote by both houses to become law.

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<sup>8</sup> This includes the District. Although the District was originally created by circuit court decree, it is encompassed by ch. 298, F.S., according to that statute's legislative intent.

<sup>9</sup> 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. Additionally, s. 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. This section provides that any special or local law enacted by the Legislature pertaining to a water control district shall prevail as to that district and have the same force and effect as though it had been a part of ch. 298, F.S., at the time the district was created and organized.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Other Comments: Comments Received by the House Local & Federal Affairs Committee:

Proponents argue that this authority change will encourage sustainable growth and balance the needs of urban and rural uses. Furthermore, they allege this will avoid creating a patchwork of community development districts within the District boundaries with overlapping layers of bureaucracy, elected officials, and cost.

Proponents claim that this bill will have no immediate economic impact and the District will be able to provide the infrastructure (roads, streetlights, sewer systems, parks, etc.) to support future development. The landowners benefitting from the improvements will shoulder the expense.

Similar legislation was passed in recent years in Indian River and St. Lucie counties for other water control districts.<sup>10</sup>

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the House Local & Federal Affairs Committee adopted a technical amendment to correct the District's legal description and passed the bill as amended.

This analysis has been updated to reflect the amendment adopted by the Local & Federal Affairs Committee.

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<sup>10</sup> See chs. 2007-298 and 2007-309, L.O.F.