

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1089 Relating to East Mulloch Drainage District, Lee County  
**SPONSOR(S):** Rodrigues  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Miller	Miller
2) Ways & Means Committee	16 Y, 0 N	Curry	Langston
3) Government Accountability Committee	21 Y, 0 N	Miller	Williamson

### SUMMARY ANALYSIS

The East Mulloch Drainage District is an independent special district in south central Lee County. Created in 1963 under chapter 298, F.S., this water control district is responsible for maintaining canals, water retention ponds, and drainage structures in an area of approximately 3,000 acres, primarily an area known as San Carlos Park. Under its charter, the district may impose an annual maintenance tax not exceeding \$30.10 per acre to fund the district costs.

In 2008, the Lee County Board of County Commissioners engaged an engineering firm to study and report on the condition of drainage structures in the district. The 2008 report estimated the cost at that time to return the district drainage structures to their original, "as built" condition would cost over \$5 million and the annual cost to maintain the refurbished structures would be approximately \$140,000.

The bill dissolves the current district and creates the East Mulloch Water Control District as a dependent district of Lee County. The new charter of the dependent district provides:

- The district will be administered by a three-member board of supervisors appointed by the Lee County Board of County Commissioners. The supervisors of the present district will act as the supervisors for the dependent district until the earlier of the expiration of their current terms, January 1, 2019, or the appointment of new supervisors by the Board of County Commissioners. The supervisors of the dependent district must reside in the district and will be appointed to staggered 3-year terms.
- The supervisors of the dependent district will receive a per diem of \$5 for attending board meetings, up to \$25 per month, and be reimbursed for expenses pursuant to s. 112.061, F.S. This schedule is identical to the per diem and expenses provided under the current charter of the independent district.
- The district must comply with all requirements for public records, public meetings, and financial disclosures.
- The charter provides the powers and authority of the dependent district.
- The cap of \$30.10 per acre on annual assessments is retained. The district may not levy ad valorem taxes.

The bill provides the East Mulloch Drainage District is dissolved as of October 1, 2018. All assets and liabilities of the former independent district are transferred to the dependent district and do not become liabilities of Lee County. All present contracts and obligations remain in full force and effect as obligations of the dependent district. All special acts forming the charter of the independent district are repealed.

**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) appear to apply to this bill.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The East Mulloch Drainage District is an independent special district<sup>1</sup> comprised of approximately 3,046 acres located in south central Lee County, southwest of Lehigh Acres and west of the Village of Estero.<sup>2</sup> The district was created in 1963 by special act for “the purpose of draining and conserving the lands (described in the act)...for controlling and conserving water...and the water tables...for agricultural and sanitary purposes, and for the public health....”<sup>3</sup> The boundaries of the district have been adjusted four times since its creation, resulting in its present configuration.<sup>4</sup> As of July 2008, approximately 2,220 acres in the district were developed. The district is responsible for maintaining approximately 21 miles of canals, 20 retention ponds, and nine developed drainage structures including swales and a number of culverts.<sup>5</sup>

The district is governed by a three member Board of Supervisors serving staggered three year terms, with one supervisor elected at each annual meeting of the district.<sup>6</sup> The annual meeting of district landowners is to be held each February in a public location within Lee County pursuant to published notice. Each landowner in the district is entitled to cast a number of votes equal to the total acres in the district owned, on a one-acre/one vote basis.<sup>7</sup> Votes may be cast in person or by proxy. The elected board members choose the board president and appoint a district secretary and district engineer. A competent outside individual, bank, or trust company may be employed as treasurer.<sup>8</sup>

The board has extensive powers to develop, operate, and maintain drainage structures throughout the district, including the power to contract,<sup>9</sup> to make necessary alterations to canals and other drainage structures,<sup>10</sup> to move water onto or from district lands into drainage structures,<sup>11</sup> and to make other changes as necessary to maintain structures in the district.<sup>12</sup> In addition to these enumerated powers, the board may exercise all powers and authority provided to water control districts in ch. 298, F.S.<sup>13</sup> The board may also purchase tax certificates sold to the state, county, or other governmental agency, which include taxes levied for the district.<sup>14</sup> Other powers include the authority to pledge maintenance tax receipts as security for a loan not exceeding five years.<sup>15</sup>

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<sup>1</sup> See s. 189.012, F.S.

<sup>2</sup> “East Mulloch Drainage District Facility Analysis Report, Volume 1,” prepared for the Lee County Board of County Commissioners by Boyle Engineering Corporation (July 1980), herein “2008 Report,” 1. According to the 2008 Report, the district lies within the natural basin of Mulloch Creek and the developed area is known generally as San Carlos Park. 2008 Report, 4. The 2008 Report is available at <https://www.leegov.com/naturalresources/Documents/East%20Mullock%20Report.pdf> (last accessed 1/21/2018).

<sup>3</sup> Ch. 63-930, s. 1, Laws of Fla. Until 1980, drainage districts were created either by special act or circuit court decree. See s. 298.01, F.S., and historical note. Since 1978, all existing drainage districts operating under the authority of ch. 298, F.S., are legally designated as water control districts. Section 298.001, F.S.

<sup>4</sup> See chs. 83-443, 84-464, 86-425, 88-480, Laws of Fla.

<sup>5</sup> 2008 Report, 2. At the time of the report, the Three Oaks and Caloosa Trace subdivisions, both located outside the district, were paying district assessments and the district maintained their drainage structures as well. 2008 Report, 10.

<sup>6</sup> Ch. 63-930, s. 3(1), Laws of Fla.

<sup>7</sup> Ch. 63-930, s. 3(3), Laws of Fla.

<sup>8</sup> Ch. 63-930, s. 14, Laws of Fla.

<sup>9</sup> Ch. 63-930, s. 4(1), Laws of Fla.

<sup>10</sup> Ch. 63-930, s. 4(2), Laws of Fla.

<sup>11</sup> Ch. 63-930, s. 4(3), Laws of Fla.

<sup>12</sup> Ch. 63-930, s. 4(6), Laws of Fla.

<sup>13</sup> Ch. 63-930, s. 4(5), Laws of Fla. The powers enumerated in ch. 63-930, s. 4, effectively are included within the statute and applicable to the district. See s. 298.22, F.S.

<sup>14</sup> Ch. 63-930, s. 12, Laws of Fla.

<sup>15</sup> Ch. 63-930, s. 13, Laws of Fla.

Under the present charter, the board must divide the district into four approximately equal sections designated A, B, C, D. District work benefitting only those lands in a particular section may not be assessed against any land in the three other sections. The cost of district work benefitting lands in more than one section is to be apportioned between those sections only.<sup>16</sup> The district may impose an annual maintenance tax not to exceed \$30.10 per acre to pay the costs for district administration, operations, and maintenance.<sup>17</sup> As with other real property taxes, the maintenance tax creates a lien on the property assessed as of January 1.<sup>18</sup>

Maintenance taxes are deposited by the district in the maintenance fund and the money distributed only for district purposes.<sup>19</sup> The board must prepare an annual budget and the district's fiscal year begins November 1 and ends the following October 31.<sup>20</sup> District assessments are collected through the Lee County Tax Collector.<sup>21</sup>

The charter makes willfully damaging a ditch, canal, or other structure constructed by the district punishable as a misdemeanor.<sup>22</sup>

### Charter Issues

The present charter of the district contains several archaic references to ch. 298, F.S., pertaining to drainage and water control. The charter excepts the district from the applicability of ss. 298.30, 298.31, 298.32, 298.33,<sup>23</sup> 298.42, 298.43, 298.44, 298.45, and 298.46,<sup>24</sup> F.S., all of which have been repealed.<sup>25</sup> The charter also incorporates text subsequently added to ch. 298, F.S., making the charter now duplicative of the controlling law.<sup>26</sup>

In 1997, the Legislature required each special district to draft a codified charter comprised of the special acts creating and empowering the district.<sup>27</sup> The district never submitted a codified charter for reenactment by the Legislature and its charter remains a collection of its special acts.<sup>28</sup>

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<sup>16</sup> Ch. 63-930, s. 6(1), Laws of Fla.

<sup>17</sup> Ch. 63-930, s. 6(2), Laws of Fla., imposing an original annual cap of \$15.00 per acre. Chapter 84-464, s. 2, Laws of Fla., increased the annual cap to \$29.29 per acre, subject to the approval of the district voters in a referendum. The present maximum assessment is \$30.10 per acre, as provided in ch. 86-425, s. 2, Laws of Fla., and approved by the district voters in a referendum. The charter still contains the provision authorizing the initial board to levy a tax of \$1.00 per acre for the initial expenses of starting up the district after its creation. Ch. 63-930, s. 15, Laws of Fla.

<sup>18</sup> Ch. 63-930, s. 16, Laws of Fla.

<sup>19</sup> Ch. 63-930, s. 7, Laws of Fla.

<sup>20</sup> Ch. 63-930, s. 8, Laws of Fla., as amended by ch. 65-912, s. 2, Laws of Fla. The original chapter law for the district inadvertently had two sections numbered 8. The second section 8 described procedures for the board to create a list of all assessable district lands to be transmitted to the county tax assessor. This process appeared duplicative of the statutory procedures and duties of county property appraisers and tax collectors and was repealed two years later. Ch. 65-912, s. 3, Laws of Fla.

<sup>21</sup> Ch. 63-930, s. 9, Laws of Fla., as amended by ch. 65-912, s. 4, Laws of Fla. The charter later reiterates the responsibility of the tax collector, and anyone else responsible for the assessment and collection of taxes, to remit the taxes and assessments collected to the district treasurer. Ch. 63-930, s. 11, Laws of Fla. This general responsibility for all water control districts is now stated in s. 298.365, F.S.

<sup>22</sup> Ch. 63-930, s. 17, Laws of Fla. These would be punishable as second degree misdemeanors under s. 775.081(2), F.S., with maximum imprisonment of 60 days and maximum fine of \$500. Sections 775.082(4)(b), 775.083(1)(e), F.S.

<sup>23</sup> Ch. 63-930, s. 18, Laws of Fla.

<sup>24</sup> Ch. 63-930, s. 9(1), and s. 10, as amended by ch. 65-912, s. 5, Laws of Fla. The charter also excepts the district from s. 298.73, F.S., which is still in effect.

<sup>25</sup> See ch. 72-291 & ch. 97-40, Laws of Fla.

<sup>26</sup> Ch. 63-930, s. 10, as amended by ch. 65-912, s. 5, Laws of Fla., pertains to the subject of collection and enforcement of taxes, within the scope of s. 298.465, F.S., which became statute in 1972. See ch. 72-291, s. 19, Laws of Fla. Ch. 63-930, s. 19, as amended by ch. 65-912, s. 6, Laws of Fla., is identical to s. 298.366, F.S., which also became statute in 1972. See ch. 72-291, s. 17, Laws of Fla.

<sup>27</sup> Ch. 97-255, s. 24, Laws of Fla. Under the original law the bill proposed to recodify a charter could not contain amendments, a provision subsequently removed. See ch. 98-320, s. 3, Laws of Fla.; s. 189.019, F.S.

<sup>28</sup> The original deadline to submit charters for recodification was December 1, 2001. The next year the deadline was changed to December 1, 2004. Ch. 98-320, s. 3, Laws of Fla.

## Financial Issues

As early as 1983, the Legislature recognized problems within the district and provided for the automatic repeal of all acts enabling the district, and the dissolution of the district without further action, if Lee County by ordinance took responsibility for the drainage and maintaining the district structures.<sup>29</sup> Twenty-five years later, the County explored this option by commissioning the 2008 report. According to the 2008 report, the cost at that time to return the drainage structures to “as built” condition was \$5,003,079, and the annual cost of maintenance and operation of the district was \$140,000.<sup>30</sup> In the general election held in 2006, the qualified voters in the district rejected having the County assume responsibility for the operations of the district.<sup>31</sup>

Despite maintaining a positive net assets balance, in recent years the district apparently has struggled to maintain the drainage structures and fulfill its responsibilities. In its five most recent annual financial reports filed with the Department of Financial Services (DFS)<sup>32</sup> the district reported the following totals:

Year	Beginning Net Assets	Revenues	Expenses	Ending Net Assets
2012	\$171,916	\$66,155	\$55,622	\$182,449
2013	\$182,449	\$66,213	\$62,730	\$185,932
2014	\$185,932	\$65,423	\$61,616	\$189,739
2015	\$189,739	\$65,423	\$53,532	\$201,802
2016	\$201,802	\$64,604	\$72,545	\$193,861

Until Fiscal Year 2016, the district maintained a growing fund reserve and expended less than annual revenues. In 2016, expenses exceeded revenues. However, the amount spent annually on maintenance is less than one-half the amount recommended for annual maintenance (if the drainage structures were returned to “as built” condition) in the 2008 report.

### **Effect of Bill**

The bill achieves a compromise between continuing the present independent special district operating under an outdated charter and complete elimination of the district. The bill dissolves the independent district and creates the East Mulloch Water Control District as a dependent district of Lee County. The bill provides a complete new charter for the dependent district, requires the Lee County Board of County Commissioners (County Commission) to appoint the three members of the district board of supervisors, and provides the dependent district with the authority necessary to maintain and improve the district’s drainage structures. The old independent district is dissolved, its assets and liabilities are transferred to the dependent district and do not become liabilities of the county, and all existing contracts remain in full force and effect as obligations of the dependent district.

The new charter creates the dependent district within the same boundaries as the old district. The powers and authority of the district include those necessary for operation of a dependent special district<sup>33</sup> and for imposition and collection of special assessments.<sup>34</sup> The charter provides the dependent district with the authority, power, and duty to provide drainage and water control, and grants

<sup>29</sup> Ch. 83-455, Laws of Fla.

<sup>30</sup> 2008 Report, 53. However, even if repaired and maintained, the existing improvements would not solve the flooding issues in the district according to the authors of the report. *See* 2008 Report, 58.

<sup>31</sup> Lee County Supervisor of Elections archive page, at <http://docs.lee.vote/history/elhis06/download/elhis06/061107/result2.html> (last accessed 1/21/2018).

<sup>32</sup> *See* s. 218.32, F.S.

<sup>33</sup> *See* ch. 189, F.S.

<sup>34</sup> *See* ch. 197, F.S.

authority provided in specific sections of ch. 298, F.S., but the district is not created as a water control district under that chapter.<sup>35</sup>

The new charter authorizes the dependent district to employ a district manager and such other professionals and employees as necessary to implement its powers and fulfill its duties. The district is authorized to operate and maintain pumping facilities and to have its agents and employees at reasonable times enter lands adjacent to the district's drainage works as necessary to maintain and operate these structures. Subject to general law and county ordinance, the district may borrow money and issue notes for such debts. Also as provided by law or ordinance, the district may grant permits to district landowners to install drainage structures.

Under the new charter, the dependent district is governed by a board of three supervisors who reside in the district and are appointed by the County Commission to three-year terms. The terms must be staggered so that only one supervisor is appointed in a given year. If a vacancy occurs on the board, the County Commission will appoint a replacement for the remainder of the term. The board members will choose their own officers. The new charter retains the provisions in the charter of the old district for supervisor compensation. Supervisors of the dependent district will receive a \$5 per diem for each board meeting attended, not to exceed \$25 in any one month. Supervisors also will be reimbursed their expenses according to general law for government officials and employees.<sup>36</sup> The board is authorized to administer the district, including the power to contract, sue and be sued, and acquire or dispose of any interest in property. The charter requires the board to comply with all requirements for financial disclosure, public meetings, public records, and expense reimbursement for employees and officers.

The new charter retains the cap of \$30.10 per acre for annual assessments provided in the current charter of the independent district. Within this limit, the board of supervisors must annually levy an amount sufficient to pay the district's obligations. The charter expressly finds the dependent district confers a benefit on all lands in the district at least equal to the assessments imposed.<sup>37</sup>

The new charter provides the annual assessments will be levied as provided in s. 298.36, F.S., and will be due and payable at the same time as county taxes. However, in lieu of the procedure required in s. 298.36(2), F.S., the board of supervisors of the dependent district must prepare a list of all assessments levied and store it in an electronic format.

The new charter creates a district maintenance fund, into which the district must deposit all assessments received and the funds of which may only be used for the purposes authorized in the charter. The fiscal year of the dependent district will be from October 1 to September 30 of the following year. The annual budget of the dependent district will be adopted by the board of supervisors and is not subject to final approval by the County Commission. The charter expressly prohibits the dependent district from imposing ad valorem taxes.

The new charter becomes an ordinance of Lee County, subject to subsequent amendment or repeal by the County Commission. The various special laws comprising the charter of the independent district<sup>38</sup> are repealed and the independent district dissolved. The bill provides for transition from the present independent district to the dependent district. The current supervisors of the independent district will constitute the board of supervisors for the dependent district as of July 1, 2018. They will so serve until the earlier of the expiration date of their current terms, January 1, 2019, or the appointment of new supervisors by the County Commission. As of July 1, 2018, all assets and liabilities of the independent district are transferred and vested directly in the dependent district and do not become liabilities of the

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<sup>35</sup> See s. 298.01, F.S. For example, the new charter provides for members of the board of supervisors to be appointed by the County Commission, not elected by the landowners of the district as required by s. 298.11, F.S.

<sup>36</sup> Section 112.061, F.S.

<sup>37</sup> Special assessments on property are not ad valorem taxes and thus are allowable only if 1) the property assessed derives a special benefit from the assessment, and 2) the assessment is fairly apportioned among all properties assessed. See *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

<sup>38</sup> Chs. 63-930, 65-912, 83-443, 83-455, 84-464, 86-425, 88-480, Laws of Fla.

County. All outstanding contracts and obligations of the independent district will continue in full force and effect as obligations of the dependent district. Also as of July 1, 2018, the independent district is authorized to take only those actions necessary to wind up its affairs, may not incur further obligations or debt, and must provide for the orderly transfer of its assets and liabilities to the dependent district.

**B. SECTION DIRECTORY:**

- Section 1: Creates the East Mulloch Water Control District as a dependent district of Lee County.
- Section 2: Makes the charter of the East Mulloch Water Control District, a dependent district of Lee County, provided in section 3 of the bill, a separate chapter of the Lee County Code of Ordinances, subject to revision, amendment, or repeal by the Board of County Commissioners.
- Section 3: Provides the charter for the East Mulloch Water Control District, a dependent district of Lee County.
- Section 4: Repeals chapters 63-930, 65-912, 83-443, 83-455, 84-464, 86-425, 88-480, Laws of Fla.
- Section 5: Dissolves the East Mulloch Drainage District as of October 1, 2018.
- Section 6: Provides the former members of the board of supervisors of the East Mulloch Drainage District will constitute the Board of Supervisors of the East Mulloch Water Control District as of July 1, 2018, until the earlier of the completion of their current terms, January 1, 2019, or the appointment of new supervisors by the Lee County Board of County Commissioners.
- Section 7: Transfers all assets and liabilities of the East Mulloch Drainage District to the East Mulloch Water Control District created by the bill, provides the liabilities are not liabilities of Lee County, and provides all contracts and obligations of the East Mulloch Drainage District remain in full force and effect as obligations of the East Mulloch Water Control District.
- Section 8: Authorizes the East Mulloch Drainage District as of July 1, 2018, to take only those actions necessary to wind up its affairs, prohibits the district from incurring further obligations or debt, and requires the district to provide for the orderly transfer of its assets and liabilities to the East Mulloch Water Control District.
- Section 9: Provides the act shall be liberally construed to carry out its purposes.
- Section 10: Requires the provisions of the act control over any other act to the extent of any conflict.
- Section 11: Provides an effective date of July 1, 2018.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 21, 2017

WHERE? News-Press in Fort Myers, Lee 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:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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) appear to apply to this bill.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

