

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2698

SPONSOR: Senator Saunders

SUBJECT: The East County Water Control District in Hendry and Lee Counties

DATE: April 17, 2000 REVISED: 04/17/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill codifies all prior special acts relating to the East County Water Control District (district) in Hendry and Lee Counties into a single act and repeals all prior special acts relating to the district’s charter.

This bill makes substantive changes to the current charter of the district.

II. Present Situation:

In 1958, the circuit court in Lee County created the district. In 1961, the court extended the boundaries to include additional lands in Lee and Hendry Counties. In 1963, the Florida Legislature approved the district through special act (chapter 63-1549, L.O.F.).

In 1986, the Florida Legislature passed House Bill 1186, as chapter 86-460, L.O.F. This bill amended the district’s charter by providing for a five-member Board of Supervisors for the district and a three-member Board of Supervisors for the Hendry subdistrict of the district. The bill provided that the two boards be elected in different manners. The district’s governing board was elected by the electors residing in the district; whereas, the Hendry subdistrict’s governing board was elected on a one-acre, once-vote basis by landowners who own land within the Hendry subdistrict. Although a referendum was scheduled, the law was declared unconstitutional and the supervisor was ordered not to hold the election. In 1987, chapter 87-477 repealed chapter 86-460, L.O.F. Chapter 87-477, L.O.F., provided that the electors residing in the district elect the five-member board at large which governs the entire district. In addition, only those registered voters residing within the district were permitted to vote. Finally, chapter 87-477, L.O.F., provided that the Governor, for the remainder of the term, fills vacancies on the governing board. In 1990, chapter 87-477, L.O.F., was amended by chapter 90-393, L.O.F., which provided that a plurality, not majority, is needed to be elected to the governing board. The elimination of the annual landowners meeting pursuant to s. 298.12, F.S., occurred in 1993. Chapter 93-309, L.O.F., provided that the district would no longer hold annual landowners meetings since the

meetings were obsolete due to the election of supervisors by registered voters. Finally, there have been other additional changes to the governing board, such as whether the members are elected in even or odd-numbered years.

Vacancies on the district's governing board are provided for in chapter 87-477, L.O.F., which provides that the Governor for the remainder of the term fills vacancies on the governing board.

Codification

Codification is the process of bringing up-to-date a special act. Special acts are not codified and, after the Legislature passes the initial enabling act, special acts continuously amend or alter previously enacted special acts. To ascertain the current status of any special act, it is necessary to research all amendments or changes made to the act since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to go to one special act to determine the current charter of a district, instead of two, ten, twenty, or sometimes more special acts.

The 1997 Legislature amended chapter 189, F.S., 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, s. 189.429, F.S., 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 s. 189.429, F.S., by

- (1) extending the deadline to codify to December 1, 2004;
- (2) 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;
- (3) removing the prohibition of substantive amendments in a district's codification bill; and
- (4) 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 - 4 special acts (63 districts): 2000 Legislative Session
- Special districts with 5 - 7 special acts (53 districts): 2001 Legislative Session
- Special districts with 8 - 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

Since the enactment of ss.189.429 and 191.015, F.S., 36 special districts have codified their charters. In 1998, the Environmental Protection Commission in Hillsborough County unsuccessfully attempted to codify its charter. The district is scheduled to codify in 2002. In 1999, there were two unsuccessful codifications. Mid-Bay Bridge Authority's codification bill passed the Legislature, but was vetoed by the Governor. The authority was scheduled to codify its

charter in 1999. The South Walton Fire District's codification bill died on the House calendar on April 30, 1999. The district is scheduled to codify its charter in 2004.

According to the Schedule of Submissions of Special District Charters and information relating to charters previously codified, there are 94 special districts that should have been codified during the 1999 Session but which were not. There are 56 special districts that are scheduled for codification during the 2000 Legislative Session.

Status Statement Language

Section 189.404(5), F.S., 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, F.S., contains provisions governing the creation and operation 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 s. 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.

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 the 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.

Section 298.11, F.S., 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.

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.

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 s. 298.50, F.S. 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.

Limitations 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, F.S., 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;
- © 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.

III. Effect of Proposed Changes:

This bill codifies all prior special acts relating to the district in Lee and Hendry County into a single act and repeals all prior special acts relating to the district's charter.

This bill makes the following substantive changes to the current charter of the East Water Control District:

- it revises the compensation paid to governing board members to \$250 per month;
- it expands the district's powers as it relates to public improvements and community facilities by authorizing the district to finance, construct and operate systems, facilities and basic infrastructure for conservation areas, mitigation areas, wildlife habitat; and by authorizing the district to construct and operate systems and facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses;
- it exempts the district from the maximum maturing rate of thirty years for bonds established by general law by providing that the district may issue bonds with forty years maturity rates; and
- it revises the district's boundaries.

Section 1 declares that the intent of this act is to codify all prior special acts relating to the district, and any additional authority granted by this act and chapters 189 and 298, F.S., into a single act and repeals all prior special acts relating to the district's charter.

Section 2 codifies, reenacts, amends, and repeals the 15 Laws of Florida that specifically relate to the district.

Section 3 re-creates the district's charter.

Section 1 of the charter sets the boundaries of the district.

Section 2 of the charter requires that annual installment assessments, levied pursuant to s. 298.36, F.S., are due when county taxes are due, pursuant to chap. 197, F.S. Such assessments are a lien until paid on the property against which assessed, and enforceable in the same manner as county taxes.

Section 3 of the charter provides for maintenance assessments, pursuant to s. 298.54, F.S., which are apportioned on the basis of net benefit to the property.

Section 4 of the charter sets forth the district's organization, elections, candidate qualifications, powers and duties, notwithstanding chapter 298, F.S. The district board of supervisors is composed of 5 members, elected at large in even numbered years, serving 4 year terms. The board is authorized to pay governing board members \$250 per month if they attend one monthly board meeting. The board is required to hold an annual organizational meeting to elect officers. The board is authorized to employ a district general manager. The board is authorized to exercise all powers provided for in this act and chapters 189, 197, and 298, F.S.

Section 5 of the charter provides that, notwithstanding s. 298.47, F.S., the board may issue bonds maturing at annual intervals within 40 years.

Section 6 of the charter provides that, notwithstanding s. 298.36(2), F.S., the secretary of the board must prepare a list of all assessments levied, storing it in electronic format.

Section 7 of the charter grants the district power to finance, construct and maintain systems for conservation and mitigation areas and wildlife habitat. After obtaining the consent of the local general purpose government, the district is authorized to obtain or construct and maintain park, recreational, cultural and educational facilities. In addition, the district is authorized to construct, maintain and regulate navigational and boating facilities.

Section 4 repeals the 15 Laws of Florida that specifically relate to the district.

Section 5 provides that the act be construed as remedial and be liberally construed to promote the purpose for which the act is intended.

Section 6 provides that in the event a section or provision of this act is determined to be invalid or unenforceable, such determination does not affect the validity of or enforceability of each other section and provision of this act.

Section 7 provides this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill makes the following substantive changes to the current charter of the district:

- it revises the compensation paid to governing board members to \$250 per month;
- it expands the district's powers as it relates to public improvements and community facilities by authorizing the district to finance, construct and operate systems, facilities and basic infrastructure for conservation areas, mitigation areas, wildlife habitat; and by authorizing the district to construct and operate systems, facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses;
- it exempts the district from the maximum maturing rate of thirty years for bonds established by general law by providing that the district may issue bonds with forty years maturity rates; and
- it revises the district's boundaries.

These changes to the charter are not purposes authorized by chapter 298, F.S., nor are these purposes included in the exceptions to s. 298.76, F.S.

Unless s. 298.76(1), F.S., is amended by a three-fifths vote of the Legislature to provide that the additional activities, higher compensation for board members, and increased time-frames on the maturation of the bonds are exceptions to this section, it would appear that these portions of the bill may be unconstitutional.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Notice of the local bill was published November 5, 1999 in the Fort Myers News-Press. The Local Bill Certification and Economic Impact Statement has been filed.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs:

This technical amendment declares the district to be an “independent special district,” as required by s. 189.404(5), F.S.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
