



## 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:

The Loxahatchee Groves Water Control District (District) provides water management, road maintenance, and related services for Loxahatchee for an area of 12.5 square miles with 30 miles of unpaved roads, 30 miles of canals in Northern Palm Beach County.<sup>1</sup> The District was founded in 1917<sup>2</sup> and codified all of its prior special acts into one special act in chapter 99-425, Laws of Florida.

As a water control district, the District is a creature of statute that must look to Chapter 298, Florida Statutes, and its enabling special acts for its authority.<sup>3</sup>

This bill changes the authority of the District by amending provisions of the charter of the District related to the election of supervisors, the terms of supervisors, the notice for the annual meeting, the procedures and requirements for adopting the uniform standard, the special assessment levy and bonding ability, and the liability of the District.

#### Changes to Election of Supervisors – Section 2 of the Charter

Section 2 of the charter of the District sets forth the provisions for the election of supervisors within the District after 1999:

In order for a person to be elected as a supervisor of the District, that person must notify the Supervisor of the Board of Elections of Palm Beach County of his or her intent to be elected as a supervisor at least 90 days prior to the annual landowner's meeting.

The charter further provides:

No person who has not timely provided notice to the supervisor of elections of his or her willingness to be elected, as set forth above in this section, may be elected as a supervisor of the district, unless no individuals have timely provided notice to the supervisor of elections, in which event the provisions of s. 298.12(1), Florida Statutes,<sup>4</sup> shall control.

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<sup>1</sup> See Loxahatchee Groves Water Control District, *About LGWCD* (visited February 23, 2004) <<http://www.lgwcd.org/.vnyx?y=1&z=2&pick=V:c2hvdzphYm91dA==>>.

<sup>2</sup> See *id.*

<sup>3</sup> See *Roach v. Loxahatchee Groves Water Control District*, 417 So.2d 814 (Fla. 4th DCA 1982), *affirmed* 421 So.2d 49 (Fla. 1982).

<sup>4</sup> Subsection (1) of section 298.12, Florida Statutes (2003), provides:

Every year in the same month after the time for the election of the first board of supervisors, it shall call a meeting of the landowners in the district in the same manner as is provided for in section 298.11, and the owners of land in such district shall meet at the stated time and place and elect one supervisor. Owners whose assessments have not been paid for the previous year are not entitled to vote. In case of their failure to elect, the Governor shall

Thus, if the number of persons timely providing notice to the supervisor of elections does not exceed the number of seats for which supervisors are to be elected in that year, then those individuals providing timely notice shall be deemed elected as supervisors.

On the other hand, if *no one* files the required notice, then the provisions of section 298.12, Florida Statutes, apply. There is, however, a problem with the current language as it might not allow the provisions of section 298.12, Florida Statutes, to apply in the event the one person provides the required notice and others do not. In that case, those who did not file the required notice may not be elected, nor could the provisions of section 298.12, Florida Statutes, apply. As such, this bill amends the language of the charter:

No person who has not timely provided notice to the supervisor of elections of his or her willingness to be elected, as set forth above in this section, may be elected as a supervisor of the district, unless no individuals or unless fewer individuals than the number of seats available for election have timely provided notice to the supervisor of elections, in which event the provisions of s. 298.12(1), Florida Statutes, shall control.

#### Changes to Terms of Supervisors – Section 2 of the Charter

The bill also attempts to address how the length of terms for the supervisors is determined given the elections provisions. As the charter is currently silent in this respect, this bill adds language to the charter:

- If the length of terms varies for those persons who timely provide notice, the length of terms will be assigned by lot.
- If the number of persons timely providing notice to the supervisor of elections is less than the number of seats for which supervisors are to be elected in that year, then the individual or individuals providing timely notice shall be deemed elected to the longer or longest term if the length of terms or different.

#### Changes to the Notice for the Annual Meeting – Section 2 of the Charter

The charter currently requires elections at the annual landowner's meeting<sup>5</sup> if the number of persons providing timely notice to the supervisor of elections *exceeds* the number of seats for which supervisors are to be elected that year. Yet, the charter does not set forth the requirements if the number of persons providing timely notice to the supervisor of elections is less than<sup>6</sup> the number of seats for which supervisors are to be elected that year. Thus, this bill provides that if an election is not required, then the notice for the annual meeting set forth in section 298.12, Florida Statutes,<sup>7</sup> does not need to

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appoint such supervisor, who shall hold the supervisor's office for 3 years or until his or her successor is elected and qualified; and in case of a vacancy in any office of supervisor elected by the landowners, the remaining supervisors or, if they fail to act within 30 days, the Governor may fill such vacancy until the next annual meeting, when a successor shall be elected for the unexpired term.

<sup>5</sup> This is in accordance with the provisions of section 298.12(1), Florida Statutes, as modified in the charter.

<sup>6</sup> If the number of persons providing timely notice exceeds the number of the number of seats for which supervisors are to be elected that year, then the provisions of section 298.12(1), Florida Statutes, apply.

<sup>7</sup> This section requires the meeting of the landowners in the district to be called in the same manner as is provided for in section 298.11, Florida Statutes:

Within 20 days after the effective date of a special act creating a district, notice of a landowners' meeting shall be given as provided in the special act. The notice shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in each county in which lands of the district are located, the last publication to be not less than 10 nor more than 15 days before the date of the meeting. The meeting of the owners of the lands located in the district shall be scheduled, at a day and hour specified, at some public place in the county within which most of the district lands are located, for the purpose of electing a board of three supervisors, to be

be provided as long as the annual meeting has been included among the meetings properly noticed under the requirements of section 189.417, Florida Statutes. *This provision may be an exemption from general law.*

#### Changes to the Powers of the District Related to Roads – Section 4, Subsection c. of the Charter

The charter of the District is unique<sup>8</sup> in that it gives the District “the power to maintain roadways and roads” in addition to the powers provided in chapter 298, Florida Statutes.

This bill adds language to the charter providing that the District is not limited to constructing, maintaining, improving, and repairing roadways and roads shown on the replat of Loxahatchee Groves.

The bill provides language to the charter that the power to levy assessments is pursuant to the charter as well as chapter 298, Florida Statutes. The bill removes language which indicates that the assessments will be referred to as “drainage assessments” or special assessments.

The bill creates procedures through which the board of the District may, at its discretion, accept dedication of a road within the boundaries of the District:

- The landowners possessing the easements to such road petition the board in writing for dedication of the road. Those signing the petition must agree to give the District their respective easements at no cost to the district, pursuant to policies established by the district.
- At least a simple majority of landowners on the road, on a per-acre basis, must petition the board to dedicate the road.
- The board of the District then determines whether or not to accept such petition.
- If the board determines to accept the petition, the District will then project all estimated costs<sup>9</sup> involved with the dedication of the road.<sup>10</sup>
- The board then provides this estimated cost information to the affected landowners and a referendum shall be held among those landowners to create a special taxing unit, consisting of all of the benefited land contiguous to and inclusive of the road to be dedicated to cover such cost. If the referendum passes by majority vote, on a per-acre basis, the District shall create a special taxing unit and levy assessments for the costs involved with the dedication of the road.<sup>11</sup>

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composed of owners of the lands in the district and residents of the county or counties in which the district is located.

<sup>8</sup> See Op. Att’y Gen. Fla. 2003-49 (2003).

<sup>9</sup> These costs include the cost of planning, designing, and building the road or improving the existing road to meet specifications acceptable to the district, the cost of improving or replacing any culvert crossing or bridge that connects the road to be dedicated to an existing District road or roads, the cost of any eminent domain proceeding to obtain road easements from those landowners who did not sign the petition and give the District their respective easements, the cost of establishing the special taxing unit, and any other costs anticipated to be incurred by the district as a result of any action involved with such dedication.

<sup>10</sup> These provisions could be read as imposing the estimated costs and not the actual costs of the road dedication, which may vary. There is also no protection for the landowners in the event that the actual costs exceed the estimated costs. Counsel for the District does not agree that only the estimated costs could be imposed; counsel for the District also notes that other sections of chapter 298, Florida Statutes, use this estimated cost approach. See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov’t & Veterans’ Affairs).

<sup>11</sup> There is uncertainty as to the permissibility of a water control district creating a “special taxing unit” for road dedication. It is not clear why the plan amendment and assessment provisions of sections 298.301 and 298.305, Florida Statutes, or the unit system provisions of section 298.353, Florida Statutes could not be used to accomplish the same objective even though the charter exempts the District from being required to modify or amend its water control plan to exercise these powers in subsection d. of section 4. The special taxing unit seems to be outside of the authority currently provided by

- If the dedication is approved, the District will acquire, by sale or through eminent domain, the necessary easements and build the road or make the necessary improvements to the existing road to meet all district specifications.
- The road is then dedicated to the District and maintained by the District under its general maintenance assessment.

The bill adds a provision to the charter preserving the district's ability, under chapter 298, Florida Statutes, to create and assess units of development.

#### Changes in Adopting a Uniform Standard Section 4, Subsection g. of the Charter<sup>12</sup>

The charter of the District provides the authority to adopt, by resolution, a uniform standard for culvert crossings, bridges, culverts, or other drainage systems that connect with, cross over any of the works of, or lie in the rights-of-way of the District. If the District establishes a uniform standard, the charter sets forth procedures the District must adopt by resolution. This bill amends those procedures:

- expands the notice for the uniform standard to include to persons owning land upon which, adjacent to, or to the best of the District's knowledge, using any culvert crossings, bridges, culverts, other drainage systems that connect with or cross over any of the works of, or lie within the rights-of-way of the District;
- requires the uniform standard to authorize the granting of permits for culvert crossings, bridges, culverts, or other drainage systems, or pursuant to such uniform standards;
- provides for the uniform standard to allow for permits to be applied for by a single landowner or by multiple landowners;
- sets forth provisions for the uniform standard to require multiple landowners applying for a permit to establish a single entity to represent all such landowners and to require this entity to apply for, obtain the permit, and construct and maintain the culvert crossings, bridges, culverts, or other drainage systems;

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Chapter 298, Florida Statutes. As such, this provision may conflict with section 298.76, Florida Statutes, which prohibits any special law granting additional authority to any water control district formed pursuant to Chapter 298, Florida Statutes unless it is passed by three-fifths vote of the membership of each house. Note, however, that subsection (4) of section 298.76, Florida Statutes, permits special or local legislation changing the governing authority or governing board of any district organized and created by Chapter 298, Florida Statutes. While "governing authority" in this context seems to relate to "governing board," this provision could also be read to have broader application. Counsel for the District commented on the permissibility of these "special tax units:" (1) the provision was designed to give an additional option to the landowners, as well as to seek their input through the referendum process with respect to potential dedication of a road; (2) the District has the ability to "establish different special assessment areas within the District according to the benefits received, and may revise such areas according to the benefits received from time to time, so as to most equitably provide for the levying of special assessments according to benefits as are deemed desirable by the board of supervisors;" and (3) the use of the phrase "governing authority" can, in fact, be read to have broader application than simply the "governing board." See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs).

<sup>12</sup> There may be a couple of issues related to these uniform standard changes. First, no process or protections are provided for how any culvert, crossing, or bridge will be "determined by the District to be restricting the normal conveyance of water." Second, there is uncertainty as to the permissibility of a water control district creating a "special taxing unit" as previously discussed. As it relates to the process and protections, counsel for the District asserts that there are maintenance design standards for the canals of the District as well as hydrological studies to assist the District in making this determination; counsel also relies the decision of the 4th District Court of Appeal in *Roach v. Loxahatchee Groves Water Control District*, 417 So. 2d 814 (Florida 4th DCA 1982) which established a standard that requires a similar type of determination by the District. See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs).

- permits the uniform standard to give the District the power to ensure that the single entity formed by multiple landowners has the legal authority to assess such landowners for the cost of construction and maintenance of such culverts, drainage systems, culvert crossings, or bridges, that such power to assess runs with the land of the landowners creating the entity, and that the district can enforce such assessment power if necessary;
- changes the notice provisions for the violation uniform standard to eliminate its application to culvert crossings and bridges and applies it only to culverts or other drainage systems;
- makes it mandatory for the uniform standards to include provisions permitting the District to enter upon the lands and take such action as necessary to cause the violation to be corrected and to assess the owner of the land for the associated costs;
- adds a requirement to the uniform standards in the event that any culvert crossing or bridge, whether or not permitted by the District, is determined by the District to be restricting the normal conveyance of water in a district canal to require the District to notify the permitholder of said structure, or the landowner if there is no permit on file with the District for the structure, of options that are available regarding the structure:

(1) The structure may be repaired, by the permitholder or the landowner using the structure, in conformance with current District standards and a permit from the District pursuant to its uniform standards and procedures.

(2) The structure may be abandoned and removed by the permitholder at the expense of the permitholder or, if the structure has not been permitted, the district shall remove the structure and the district shall not be liable to any person or entity that uses such structure for its removal.

(3) The landowner or landowners using the structure may apply for a permit to construct a conforming replacement structure at the sole expense of said landowner or landowners. This process requires obtaining a permit issued by the district pursuant to its uniform standards and procedures.

(4) If there are multiple landowners, the landowners may establish a single entity to represent all the landowners.

(5) The affected landowners may request the District, via referendum of the landowners utilizing the structure, upon a majority vote of such landowners, on a per-acre basis, to establish a special taxing unit of all such landowners to pay a special assessment to cover the initial costs<sup>13</sup> to alleviate the restriction on the normal conveyance of water in the District canal structure and make the structure a District-owned structure maintained by the District.

(6) The permitholder of a structure restricting the normal conveyance of water in a district canal, or if said structure is unpermitted, the landowner or landowners as reasonably determined by the district to be using such structure, shall have 60 days after notice is sent to respond to the District regarding the option which has been selected and an additional 120 days to repair or remove said structure. If the District does not receive a written response within the first 60 days after the notice has been sent, the structure shall be reviewed by the board of the District, which may deem the structure to

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<sup>13</sup> Initial costs include, but are not limited to, engineering fees, removal cost, repair or replacement construction cost, dedication of adjoining road, and permit fees.

be abandoned. In emergency situations, the time periods for notice and response may be shortened by the district as is reasonable under the circumstances.

The bill adds another provision to the charter preserving the district's ability, under chapter 298, Florida Statutes, to create and assess units of development.

#### Changes to the Special Assessment Levy and Bonds - Section 4, Subsections i. and j. of the Charter<sup>14</sup>

The board of the District is currently authorized to levy and impose special assessments "against any or all of the real property within the district upon a determination that the construction, maintenance, improvement, repair, or operation of the roads or roadways provides a benefit to such real property." This bill would remove the reference to "roads and roadways" and permit special assessments for "improvements or services provided to existing improvements."

Similarly, the District currently has the ability to issue special assessment bonds to pay all or any part of the cost of "a system of roads and roadways." This bill would remove "a system of roads and roadways" and allow special assessments for "improvements."

#### Changes to the Liability of the District – Creating Section 8 of the Charter

This bill amends the charter of the District to exempt it from general law or special act with respect to the liability relating to persons using the lands, rights-of-way, works, or easements of the District:

- The District is not to be liable for personal injury or damages caused by the negligent or willful and intentional acts of permitholders and their invitees that may occur as a result of carrying out the permitted activity or from the use of such facilities or structures when:
  - (1) the District individually, or jointly with another agency of government, authorizes, permits, or licenses activities for facilities within district rights-of-way, works, or lands over which the District has a legally established easement right, and allows access to or use of such rights-of-way, works, lands, or easements for such purposes or
  - (2) facilities or structures are constructed by any person or entity other than the District within District rights-of-way or lands over which the District has easement rights, whether or not such facilities or structures are permitted.
- When the rights-of-way, works, lands, or easements of the District are used or accessed by the public for authorized, permitted, or licensed actions for facilities or structures,
  - (1) the District does not, by the authorization for use or access, extend any assurance that its rights-of-way, works, lands, or easements are safe for any purpose;
  - (2) does not incur any duty of care, by such authorization, toward a person who goes onto those rights-of-way, works, lands, or easements;
  - (3) is not responsible for any injury to persons or property caused by a negligent act or omission of any person who goes onto those rights-of-way, works, lands, or easements.

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<sup>14</sup> The only potential issue with changing the scope of the ability of the District to levy and bond special assessments is the unknown impact such a change may have since "improvements" is broader than "roads and roadways." This subsection, at least as it relates to the levy of special assessments, is limited by the powers in the five preceding subsections, subsections whose power are also expanded by this bill. Counsel for the District believes that the preceding subsections are a sufficient limit on these powers. See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs).

- The District continues to be liable for negligence or any deliberate, willful, or malicious injury to a person or property as provided by applicable Florida law
- These changes do not create or increase the liability of the District or any person beyond that which is authorized by section 768.28, Florida Statutes.

### Potential Issues with the Changes to the Liability of the District

The Chair of the Board of Supervisors for the District explained the liability changes are “similar to legislation passed last year for the Lake Worth Drainage District, but because of unique circumstances of the District (i.e. many old, unpermitted bridges or culvert crossings affecting the District’s canals), the bill also covers the non-District structures constructed within the District’s rights-of-way easements.”<sup>15</sup>

This explanation and the proposed change raise several issues:

- The argument that these changes are similar to legislation passed last year for a drainage district suggests that this liability is more broadly needed by the water control districts. If that is the case, then chapter 298, Florida Statutes, should be amended<sup>16</sup> rather than having all 94 of the water control districts<sup>17</sup> each seek changes to their respective special acts in order to have these protections.
- Making the change to each individual water control district also may conflict with section 298.76, Florida Statutes, which prohibits any special law<sup>18</sup> granting additional authority to any water control district formed pursuant to Chapter 298, Florida Statutes unless it is passed by three-fifths vote of the membership of each house.<sup>19</sup>
- Such a change made by a special or local law may violate the provisions of Article X, section 13 of the Florida Constitution which permits *general law* to provide for “bringing suit against the state as to all liabilities now existing or hereafter originating.” As a political subdivision of the state,<sup>20</sup> the Legislature may enact a general law which permits suits to be brought against the District for liability. The Legislature has enacted such a law in section 768.28, Florida Statutes.<sup>21</sup> It is questionable whether a special or local law could exempt the District from the application of section 768.28, Florida Statutes.

<sup>15</sup> Letter from David DeMarois, Chair of the Board of Supervisors for the District, to Ed Chase, Executive Director, Palm Beach County Legislative Delegation (Nov. 13, 2003) (on file with the Committee on Local Government & Veterans’ Affairs).

<sup>16</sup> See Fla. HB 807 (2003) (died in Committee on Judiciary)

<sup>17</sup> See Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, *The Official List of Special Districts Online, Create Your Own Report* (visited Feb. 25, 2003) (select “Water Control” under “Functions to Include”) <<http://www.floridaspecialdistricts.org/OfficialList/criteria.asp>>.

<sup>18</sup> Pursuant to the authority granted the Legislature in section 11(a)(21), Article III of the Florida Constitution.

<sup>19</sup> *But see* subsection (4) of section 298.76, Florida Statutes, which permits special or local legislation changing the governing authority or governing board of any district organized and created by Chapter 298, Florida Statutes. While “governing authority” in this context seems to relate to “governing board,” this provision could also be read to have broader application.

<sup>20</sup> See Fla. Stat. § 1.01(8) (2003)(defining the words “public body,” “body politic,” or “political subdivision” include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state; “other districts” includes water control districts). See also Op. Att’y Gen. Fla. 2000-52 (2000); Op. Att’y Gen. Fla. 87-38 (1987); Op. Att’y Gen. Fla. 081-83 (1981); Op. Att’y Gen. Fla. 078-145 (1978).

<sup>21</sup> This section provides a limited waiver of the sovereign immunity of the state for liability for torts in “actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.” Counsel for the District contends that this language does not exempt the District from the application of section

- These provisions may violate Article I, section 21 of the Florida Constitution<sup>22</sup> for if there is currently a right of access to the courts for redress of tort injuries by the District, then the Legislature “is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the state to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.”<sup>23</sup>
- It is uncertain how this bill will impact the District or the state from having to answer for negligence by way of a claims bill filed with the Legislature.<sup>24</sup>
- Given the existence of the District since 1917, it is not clear how the old, unpermitted bridges or culverts were allowed to be built such that these structures now affect the canals of the District. It is also not clear why the District should now be absolved of liability for such structures.<sup>25</sup>

C. SECTION DIRECTORY:

Section 1: Amends subsection e. of section 2 and subsection c., g., i., and j. of section 4 of section 2 of chapter 99-425, Laws of Florida.

Adds section 8 to section 2 of chapter 99-425, Laws of Florida.

Section 2: Provides that this act shall take effect upon becoming law.

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

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? WHERE?

An Affidavit of Proof of Publication states that a Notice of Local Legislation was published in the Palm Beach Post on December 12, 2003.

768.28, Florida Statutes, as the charter provides for the continued application of these provisions. See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs). While these liability exemption provisions can operate in concert with section 768.28, Florida Statutes, these liability exemption provisions can also act to exempt the District from its application, potentially violating article X, section 9 of the Florida Constitution.

<sup>22</sup> This section provides that the “courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”

<sup>23</sup> See *Kluger v. White*, 281 So.2d 1 (Fla. 1973). Counsel for the District argues that common law rights are not being effected in any way and that the liability exemption language does not restrict the ability to bring suit. Yet, counsel does concede that the District would not be responsible for acts, whether negligent, willful, or omissions, of third parties. See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs). Thus, “redress for any injury” as well as the administration of justice is potentially impacted by this change.

<sup>24</sup> Counsel for the District believes that claim bills would be handled as provided under section 768.28, Florida Statutes. Yet it is not clear whether such a claim could be for liability that would be allowed under 768.28, Florida Statutes, but is not allowed under the liability exemptions. See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs).

<sup>25</sup> According to Counsel for the District: “The District is primarily rural and in past decades has perhaps been less observant in requiring permits than it should. It should also be noted that a culvert crossing can be constructed almost overnight with a culvert pipe and fill. The District, through a series of regular meetings and special workshops, has attempted to provide legislation that would not automatically require the removal of such unpermitted bridges or culvert crossings, while at the same time making it clear that the District, which did not permit, built or maintain such structures, does not have any liability for them.” See e-mail from Thomas A. Sheehan, III, Esquire (Mar. 09, 2004, 09:18 EST) (on file with H.R. Comm. on Local Gov't & Veterans' Affairs).

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:

- a. Several of the proposed changes may conflict with section 298.76, Florida Statutes, which prohibits any special law granting additional authority to any water control district formed pursuant to Chapter 298, Florida Statutes. Section 298.76, Florida Statutes, is a general law which was passed by three-fifths vote of the membership of each house, and makes any special law prohibited unless it is passed by three-fifths vote of the membership of each house.
- b. Changing the liability of the District through a special or local law may violate the provisions of Article X, section 13 of the Florida Constitution which permits general law to provide for "bringing suit against the state as to all liabilities now existing or hereafter originating." As a political subdivision of the state<sup>26</sup>, the Legislature may enact a general law which permits suits to be brought against the District for liability. The Legislature has enacted such a law in section 768.28, Florida Statutes. It is questionable whether a special or local law could exempt the District from the application of section 768.28, Florida Statutes.
- c. These provisions may violate Article I, section 21 of the Florida Constitution for if there is currently a right of access to the courts for redress of tort injuries by the District, then the Legislature "is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the state to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."<sup>27</sup>

#### B. RULE-MAKING AUTHORITY:

This bill does not provide authority for an agency to adopt rules to implement a specific power or duty created in this bill.

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

Other than the issues previously raised, there are no drafting issues or other comments.

### IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Subcommittee on Local Affairs recommended the adoption of an amendment to remove a provision that would change the District's liability.

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<sup>26</sup> See *supra* note 21.

<sup>27</sup> See *Kluger v. White*, 281 So.2d 1 (Fla. 1973).