

STORAGE NAME: h1315a.ca

DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 1315

RELATING TO: Ranger Drainage District (Orange County)

SPONSOR(S): Representative Sindler and others

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill, *subject to voter approval*, provides a charter for the Ranger Drainage District (District) in the special acts of Florida. The bill increases the Board of Supervisors (Board) of the District from three to five members. The bill also provides staggered terms of office, District boundaries and the powers of the District.

The District is authorized to levy a non-ad valorem assessment amounting to \$25 per lot per year for the first five years. The bill limits the use of the assessment to landscaping and maintenance of common areas of the District. The bill provides that if the assessment is unpaid, it constitutes a lien upon the property, becoming delinquent and accruing penalties in the same manner as county taxes.

The bill changes the landowners' vote from one acre-one vote, as provided under the Orange County Circuit Court order establishing the District in 1969, to one landowner-one vote. The bill also limits the liability of the District in certain respects and, if the voters approve, compensates the Board members \$50 a day for each day of service.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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, Florida Statutes, contains provisions governing the creation and operation of water control districts. Some of these provisions are briefly described below.

Creation of Water Control Districts

Section 298.01, F.S., restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of section 125.01, F.S. (dependent water control districts). Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by chapter 298, F.S.

Election of Board of Supervisors

Upon the formation of a water control district, the circuit court where the majority of the land is located has jurisdiction within the boundaries of the district. Once a district is organized, 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. In the event a quorum is not present, the Department of Environmental Protection (DEP) is required to fill the vacant seat.

One-Acre One-Vote

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.

Role of the Circuit Courts

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.

Revenue Sources

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 section 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.

Limitation 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.

Chapter 189, Florida Statutes; Elections

The provisions of section 189.405(2)(a)1-5, Florida Statutes, provides that any special district located entirely in a single county may provide for the conduct of district elections by the supervisor of elections for that county. Any district that conducts its elections through the office of the supervisor must conduct the election consistent with the Florida Election code for the following:

- ✓ Qualifying periods, in accordance with section 99.061, Florida Statutes;
- ✓ Petition format, in accordance with rules adopted by the Division of Elections;
- ✓ Canvassing of returns, in accordance with subsections 101.5614 and 102.151, Florida Statutes.
- ✓ Noticing special district elections, in accordance with chapter 100; and
- ✓ Polling hours, in accordance with section 100.011, Florida Statutes.

The Ranger Drainage District currently elects its Board of Supervisors under the one-acre/one-vote provisions of chapter 298, Florida Statutes. Should the District be authorized to elect its Board members otherwise, the provisions of section 189.405(2)(a)1-5, Florida Statutes, would apply.

Ranger Drainage District

The Ranger Drainage District, a drainage and water control district, was created on April 9, 1970, case number 69-2558, Circuit Court of Orange County, Florida. The District has been in continuous existence since being created for the purposes of providing to landowners in the District, those services and functions authorized by chapter 298, Florida Statutes.

The District landowners desire a special act to provide for non-ad valorem assessments to cover costs of specific functions provided by the District. Current statutory authority is not sufficient to allow the Board to levy a non-ad valorem assessment for the purposes of landscaping and maintaining certain common areas in the District. The Board was advised by legal counsel that a special act was needed for such an assessment.

B. EFFECT OF PROPOSED CHANGES:

The bill, *subject to voter approval*, establishes the boundaries of the District lying in Orange County, Florida. The District is to have all the powers described in chapter 298, Florida Statutes, and through this special act, is to retain all existing legal obligations of the District.

The Board of Supervisors (Board) membership increases from three members to five members effective November 30, 1997. The bill provides the terms of office are four years, except the candidates elected to positions four and five are initially elected for two year terms in order to hold staggered elections in the future. Three Board positions are at large, the other two represent areas referred to as "City" (position one) and "Estates" (position two). Candidates running for positions one and two must live in those areas. All five positions are elected by landowners of the District (one-landowner/one-vote) rather than by one-acre/one-vote.

Election procedures must be consistent with chapter 189, Florida Statutes. The Board must appoint a supervisor of elections to oversee the election of members of the Board of Supervisors. The District supervisor of elections may not be a Board supervisor.

Qualified electors must be a District landowner, be at least 18 years of age and registered with the District supervisor of elections. Registration may be accomplished by mail. Voting by proxy is not permitted.

The District Supervisor of Elections and the current Board supervisors must prepare for the election of the new Board prior to November 30, 1997. In the event the election does not take place before November 30, 1997, the election must take place as soon thereafter as is practicable. The current Supervisors will continue to hold office until the successor Board is elected or appointed.

A candidate for the Board must designate the position (seat) he/she is running for. The candidate receiving a plurality of votes is elected to the Board. In the event of a vacancy(ies), the Board may fill the vacancy(ies) until the next regularly scheduled election

This bill authorizes a levy of a non-ad valorem assessment to be used for landscaping and maintenance of common areas benefiting district landowners. The assessment is \$25 per lot per year for the first five years. If after that the assessment is revised it may not increase by more than ten percent per lot over the last assessment. A lot is defined as

- ⇒ each platted lot and tract, excluding any tract or portion of a tract as set forth in paragraph (c);
- ⇒ each parcel of unplatted contiguous land under common ownership; or
- ⇒ each parcel of contiguous land under common ownership which is made up of a portion or portions of a platted lot or lots or platted tract or tracts, or of a platted lot or lots or platted tract or tracts and a portion of a platted lot or lots or platted tract or tracts.

Common areas are those lands and facilities which are owned by the District or over which the District has a legally established easement right, other than those currently being operated or maintained pursuant to section 298.22, Florida Statutes, (reclamation areas) or section 298.54, Florida Statutes, (maintenance areas). No privately owned parcels in the District, except those parcels or portions to which the District has legally established an easement right to, are considered common areas. The use of common areas are regulated by the District.

The non-ad valorem assessment must be equal for each lot and a plan must be prepared by the Board of Supervisors setting forth the projects to be financed by the assessment. For each year the levy is imposed, the plan must be reviewed and revised as appropriate. The Board may not issue any bonds for these purposes and no other District funds may be used for these purposes.

The assessments, if unpaid, constitute a lien of equal dignity with county tax liens and other taxes of equal dignity with county taxes. All lands subject to the assessments levied and collected pursuant to the statutory provisions governing non-ad valorem assessments are subject to the lien provision. If the non-ad valorem assessment is not paid, it becomes delinquent and accrues penalties in the same manner as county taxes.

This assessment is levied by the District *at the same time and in like manner as county taxes*. The assessment is subject to the same provisions of law relating to the sale of lands for unpaid and delinquent tax certificates.

The liability of the District is limited with respect to the District's rights-of-way easements, or works used by the public for outdoor recreational purposes, in the following circumstances:

- ⇒ When a water management district, individually or jointly with another governmental agency, acquires land adjacent to the District's rights-of-way or works or easements and the land is made available by the water management district for outdoor recreational purposes allowing access to the District's rights-of-way, works, or easements, the District's liability is limited to the extent enjoyed by the water management district for its lands when those same circumstances exist.

The District is still liable for gross negligence or deliberate, willful or malicious injury to persons or property. Additional liability is not created nor increased to the District beyond that provided by section 768.28, Florida Statutes.

The District must hold annual meetings in August or September of each year to be decided by the Board. At that meeting, an engineer's report must be presented and commented on by the landowners.

The bill provides that during any Board member election year, the question of supervisor compensation must be placed separately on the ballot. The question is:

Shall the members of the board of supervisors receive \$50 a day for each day of service, when a day of service is defined as 4 hours' work performed on behalf of the district, or attendance at any district public hearing or regularly scheduled meeting, workshop, or emergency meeting of the board of supervisors?"

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If the ballot question is approved, the compensation of the Board members is \$50 a day until the next election.

The bill provides that the act must be approved by the voters at referendum except for sections 7 and 9 of the bill which shall become effective upon the act becoming law.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Creates new law.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

(3) any entitlement to a government service or benefit?

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

See 2.b. below.

- b. Does the bill require or authorize an increase in any fees?

Yes, a non-ad valorem assessment for landscaping maintenance of common areas. The assessment amounts to \$25 per year per landowner.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

See 2.b. above.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

According to the Economic Impact Statement (statement), the District landowners will benefit to the extent that the value of lands in the district are enhanced because of more consistent maintenance of common areas. Also, according to the statement, the bill enhances administration of district activities and decreases District liability regarding use by the public of the District's land for recreational purposes.

4. Individual Freedom:

Not applicable.

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment:

Not applicable.

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION RESEARCH:

Section 1--

Establishes jurisdiction of the District; provides continuance of the District as established by the Circuit Court of Orange County in 1969 without changing legal obligations of the District.

Section 2--

Provides for Board of Supervisors (Board), their qualifications and the election process; increases Board members from three to five members and provides for staggered terms; provides for early expiration of all three seats; elections are pursuant to chapter 189, Florida Statutes, to be elected on a nonpartisan basis with no filing fee required; provides for representation of two geographic areas known as "City," and "Estates," with the other three seats representing the district at large; provides each of the five members to be elected by qualified electors who are landowners; provides that a qualified elector must be a landowner, 18 years of age, and registered with the District's supervisor of elections; registration may be by mail; proxy voting not allowed; and provides that if the elections are not held by November 30, 1997, the present officeholders must continue to hold their seats until their successors are elected or appointed.

Section 3--

Authorizes non-ad valorem assessments not to exceed \$25 per lot per year during the first 5 years for purposes of landscaping and maintaining common areas benefitting District landowners; defines "common areas;" provides that after the first 5 years an increase in the assessment may occur every 5 years thereafter as long as it does not increase by more than 10 percent per lot over the last previous assessment; requires published notice and a public

- hearing prior to increasing the assessment.
- Section 4--** Provides that unpaid assessments and costs of collection constitutes a lien equal with liens for county taxes and other taxes of such equality.
- Section 5--** Provides that unpaid non-ad valorem assessments are delinquent and penalties applicable to unpaid county taxes apply to unpaid assessments.
- Section 6--** Provides that collection and enforcement of non-ad valorem assessments levied by the District be the same as for county taxes including the provisions of the statutes relating to the sale of land for unpaid county taxes and delinquent certificates for unpaid and delinquent county taxes; provides discounts for county taxes are the same for non-ad valorem assessments.
- Section 7--** Provides for limitation on liability of the District when lands are used by persons in pursuit of non-commercial or non-profit making activity; provides the District remains responsible for acts of gross negligence or deliberate, willful, or malicious injury to a person or property; provides that the District's liability is to the extent authorized by section 768.28, F.S., provides definition of "outdoor recreational purposes" as used in this act.
- Section 8--** Establishes annual landowners' meetings and supervisors' compensation to

be determined by vote of the landowners during the year that voting for board members occurs.

Section 9--

Provides that sections 7 and 9 take effect upon becoming a law; provides that a three-fifths majority approve by referendum the remainder of the bill; provides that the supervisor of elections for the District conduct the election 90 days after this act becomes law or as soon thereafter as is reasonably practicable; provides that the referendum procedures be adopted by the board of supervisors and followed for this election; provides that registration of electors of the district be as provided in this act and that electors meet the same qualifications as provided in this act.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 18, 1997

WHERE? The Orlando Sentinel, Orlando, Orange County, FL

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? 90 days following effective date of the act or as soon as practicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The House Committee on Community Affairs has received hundreds of form letters in opposition to this bill. The letter, in part, states:

. . . This proposed bill was presented to the Orange County Delegation on January 13, 1997, amended, and sent forward for legislative action against the will and over the objections of 60% of the landowners. Of the approximate 3200 landowners in this District, 1,905 of us objected in writing to the passage of this legislation. Those supporting this legislation presented a petition representing less than one (1) percent of the total landowners....yet this legislation continues to move forward.

. . . **The only item within this bill that I support is the limitation of liability to Ranger Drainage District as provided by state law to other water management districts and which can easily be incorporated into House Bill 0501 currently before the legislature.** . . . (Emphasis not supplied).

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Community Affairs on April 15, 1997. The amendments provide the following:

Amendment #1 Removes unnecessary language from one of the WHEREAS clauses.

Amendment #2 Corrects the title.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Joan E. Highsmith-Smith

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