

STORAGE NAME: h0501s1.wrm
DATE: March 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 501
RELATING TO: Drainage Districts
SPONSOR(S): Representative Laurent
STATUTE(S) AFFECTED: Chapter 298, Florida Statutes (F.S.)
COMPANION BILL(S): SB 266 (s)

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 8 NAYS 0
- (2) FINANCE & TAXATION
- (3) GENERAL GOVERNMENT (FISCAL)
- (4)
- (5)

I. SUMMARY:

CS/HB 501 enacts recommendation 37 of the Water Management District Review Commission report entitled *Bridge Over Troubled Water: Recommendations of the Water Management District Review Commission*. It moves the oversight of Chapter 298, F.S. water control districts from the Department of Environmental Protection (DEP) to the five water management districts (WMDs) and the Governor. All oversight functions presently are vested in the DEP, including the power to appoint and remove some water control district supervisors. This bill gives the power of appointment and removal of supervisors to the Governor. Other oversight functions, including the review of water control district plans and activities, are vested in the WMD in which the water control district is located.

CS/HB 501 also requires the water control districts to revise or develop water control plans which meet certain minimum requirements, and review these plans every five years. These plans must be consistent with the applicable provisions of the WMDs' water resource plans and policies. CS/HB 501 clarifies that water control districts must comply with the applicable provisions of Chapters 373 or 403, F.S. The bill creates guidelines and notice requirements for the adoption of water control plans. Finally, the bill provides for the levy of non-ad valorem assessments to operate and maintain the district works and activities, the issuance of bonds in certain circumstances, for penalties and enforcement of delinquent assessments, and deletion of outdated references and sections.

This bill takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1913, the Legislature provided for the establishment of special drainage districts, called water control districts. These special districts originally were created to serve as special taxing districts to finance reclamation projects. At that time, landowners could petition the appropriate county commission or the circuit court to establish a special drainage district. If the commission or court believed the proposed reclamation project would be of general benefit, it could order the project financed by assessing all landowners in the district. Water control districts can no longer be created by court decree. Originally established primarily to serve the needs related to agriculture, in recent years an increase in urban growth and population has changed the water control districts' responsibilities significantly in some areas to encompass stormwater drainage and other, related concerns. There are now approximately 100 water control districts in Florida.

Water control districts are only one type of special district. Special districts are limited-purpose local governmental units administratively separate from municipal, county, or state government. They generally are created to provide financing or maintain infrastructure when general purpose local governments (i.e. counties and cities) are unwilling or unable to provide the needed capital or services.

Water control districts are generally governed by Chapter 298, F.S., but also may be authorized by a special act. Water control districts are governed by a board of supervisors which generally is elected by the landowners in the water control district. However, if the landowners fail to elect a supervisor the DEP has the authority to appoint one.

Under the existing Chapter 298, F.S. the DEP oversees the activities of the water control districts. These oversight duties include: 1) appointment of district supervisors if the landowners fail to elect a supervisor for any reason; 2) power to fill vacant district supervisor offices previously held by appointed supervisors; 3) power to remove appointed district supervisors for cause; 4) power to petition the circuit court to alter the boundaries of a water control district; and 5) authority to challenge the report which assesses the value of the land in the water control district.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 501 serves two main purposes: 1) to move oversight of Chapter 298, F.S. water control districts from the DEP to the WMDs and the Governor, and 2) to require water control districts to complete water control plans which meet certain minimum criteria and which are consistent with the applicable provisions of the WMDs' water resource plans and policies.

The bill requires each water control district to prepare or revise its water control plan by October 1, 2000. In addition to being consistent with the applicable WMD water resource plans and policies, each water control plan must include the following minimum criteria:

- a narrative description of the statutory powers and duties of the water control district;

- a map of the legal boundaries of the water control district;
- a description of the land use within the water control district and all district facilities, including their purpose and function, and a map depicting their locations;
- engineering drawings and descriptions of the each facility's capacity for the management and storage of surface water and potable water supplies;
- a description of any environmental or water quality program that the water control district has implemented or plans to implement;
- a map and description of the areas outside the water control district's boundaries for which it provides services;
- a description of the facilities and services which the water control district plans to provide in the next 5 years;
- a description of the administrative structure of the water control district;
- copies of any agreements between the district and the other governmental entities;
- the engineer's report prepared for plan adoption or amendment;
- the water control district's budget and revenue sources for the current year and the next two years.

The jurisdictional WMD will review the water control plan for consistency with the applicable provisions of its water resource plans and policies. The WMD has 90 days to review the water control plan for consistency and make any recommendations. Upon receipt of the recommendations the water control district has 60 days to incorporate the recommendations of the WMD into the water control plan, to the extent practicable. If a WMD recommendation is not incorporated into the plan, the board of supervisors must specify the reasons for not incorporating the recommendation.

The water control district must review and revise its water control plan at least once every 5 years.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

The change of the water control districts' authority to adopt rules to the authority to adopt policies and resolutions does not eliminate or reduce their ability to regulate activities within their boundaries. What this change addresses is whether these districts should comply with the Florida

Administrative Procedures Act (APA), as state agencies and WMDs do, or should they be able to adopt resolutions as do other local governments.

The change of the authority to adopt rules, to the authority to adopt policies and resolutions, alone does not have legal significance. Chapter 298, F.S. water control districts are specifically listed in Chapter 120, F.S. as entities which must comply with the APA. As a listed entity in Chapter 120, F.S., as long as water control districts adopt instruments which have the effect of rules, regardless of which they are called, they will have to follow the APA. However changing "rules" to "policies and resolutions" could be the first step in removing Chapter 298, F.S. water control districts from the APA. Most other special districts and local governments are not required to follow the APA.

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

Yes, the bill creates new supervisory responsibilities for WMDs and the governor. However, these responsibilities are currently performed by DEP and the bill simply transfers supervisory authority from DEP to the five water management districts and the Governor.

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

No.

- 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?

The bill transfers supervisory authority over the water control districts from the Department of Environmental Protection to the five water management districts.

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

Most of the water control districts in Florida are within the South Florida Water Management District (SFWMD). SFWMD estimates that full implementation of the oversight responsibilities included in the bill would require 2 FTEs.

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

No new agency is created.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No, but see 2. e. below.

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

The bill does not require or authorize any increase in fees imposed by the state, but it does authorize increases in initial assessments by water control districts created on or after July 1, 1997. See 2. e. below.

- 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?

Yes, section 20 of the bill increases the maximum uniform initial assessment, for all water control districts created on or after July 1, 1997, from \$1 per acre to \$50 acre. This fee could be assessed upon creation of a new water control district, prior to the establishment or collection of the other assessments provided for in Chapter 298, F.S.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: amends s. 298.005, F.S., to define the following terms: "jurisdictional water management district," "owner," "water control district," and "water control plan."

Section 2: amends s. 298.11, F.S., to provide that 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. Notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in each county in which lands of the district

are located. Appointment of proxies shall comply with s. 607.0722, F.S. Landowners with more than 1 acre are entitled to one additional vote for each fraction of an acre owned, when all of a landowner's acreage has been aggregated for purposes of voting. Replaces the term "department" with the word "Governor" in many instances throughout this section. For example, the department retains the right to vote for supervisors at an election of owners in the district and also will represent the state at any meeting, provided the state owns acreage in the district and that acreage is subject to assessment by the water control district. The Governor, however, shall receive notice of failure to hold an election. The Governor may then appoint three competent persons who own land in the district as supervisors. The Governor may remove any elected or appointed supervisor for reasons of malfeasance and misfeasance, in addition to the existing grounds for removal listed in this section. The Governor shall fill this office as soon as practicable. This section also deletes references to the Melbourne-Tillman Water Control District.

Section 3: amends subsection (1) of section 298.12, F.S., regarding the annual election of supervisors to change the state agent of reference from the DEP to the Governor.

Section 4: amends s. 298.15, F.S., to provide that copies of the record of proceedings shall be filed with the jurisdictional water management districts upon request, rather than with the DEP.

Section 5: amends subsections (2) and (3) of s. 298.16, F.S., to allow the chief engineer to confer with the jurisdictional water management district, rather the DEP. The engineer shall make a report containing a full and complete water control plan for draining and reclaiming the lands; the term "water control plan" replaces the term "plan of reclamation" throughout subsection (3) of this section. A copy of the report required under this section shall be filed with the jurisdictional water management district rather than the DEP.

Section 6: amends s. 298.22, F.S., to provide that subject to the authority granted to water management districts and the DEP under Chapter 373 and Chapter 403, F.S., the board of supervisors of the district shall have full power and authority to excavate, construct, and complete any and all works and improvements necessary to execute the water control plan. The board of supervisors may employ persons and purchase machinery to directly supervise, construct, maintain, and operate the works and improvements described in the water control plan or may contract with others to do so. The chief engineer of the district must be the superintendent of all district works and improvements. The board is authorized to implement and authorize comprehensive water control activities including flood protection, water quantity management, and water quality protection and improvement. Also this section changes the board of supervisors' authority to adopt rules to authority to adopt resolutions and policies.

Section 7: creates s. 298.225, F.S., to provide that effective October 1, 1998, any plan of reclamation created by this chapter or by special act will be referred to as a "water control plan." By October 1, 2000, the board of supervisors of each water control district must develop or revise the district's water control plan to reflect the minimum requirements listed in this section. New facilities or modifications to existing facilities described in the water control plan or plan amendment must be consistent with the applicable provisions of the WMD water resource plans and policies

Before final adoption of the water control plan or plan amendment, the board of supervisors must submit the plan to the jurisdictional water management district for review. Within 90 days after receipt of the water control plan, the jurisdictional water management district must review the plan for consistency with the applicable provisions of the WMD's water resource plans and policies, and recommend to the board of supervisors any proposed changes. If the jurisdictional water management district determines that the plan is incomplete, it may notify the water control district and request additional information. Upon such request, the deadline for review may be extended as agreed by the water control district and jurisdictional water management district. Within 60 days after receipt of the water management district's recommended changes, the board of supervisors shall include the recommendations in the water control plan or plan amendment to the extent practicable, or specify the reasons why the recommendations were not incorporated. A copy of the water control plan must be filed with the jurisdictional water management district and each local general purpose government within which all or a portion of the district's lands are located.

The board of supervisors must review and revise the water control plan at least every 5 years.

Section 8: amends s. 298.23, F.S., to make a few linguistic changes. For example, "circuit courts organizing such district" is changed to read "circuit courts of the county or counties within which the respective lands are located;" the term "commissioner's reports" is changed to "engineer's reports;" and the amount of damage previously assessed by the board of commissioners and confirmed by the court is now assessed by the board of supervisors.

Section 9: amends s. 298.24, F.S., to substitute the term "water control plan" for the term "plan of reclamation."

Section 10: amends s. 298.25, F.S., to substitute the term "water control plan" for the term "plan of reclamation." The requirement to file a copy of the plan of reclamation regarding bridges over drains in large counties with the clerk of the circuit court is deleted. The cost, as estimated by the chief engineer of the district, shall be included by the district board of supervisors, rather than the commissioner of the district, in assessing the cost of constructing the water control plan.

Section 11: amends s. 298.26, F.S., to substitute the term "water control plan" for the term "water management plan" throughout this section. The chief engineer shall continue to make a report in writing to the board of supervisors every 12 months or as directed by the board. The report shall describe the progress made and the activities undertaken in furtherance of the water control plan and may include suggestions and recommendations to the board as the chief engineer deems appropriate. Once adopted, the report shall become part of the water control plan.

Section 12: amends s. 298.28, F.S., to substitute the term "water control plan" for the term "plan of reclamation."

Section 13: creates s. 298.301, F.S., to provide guidelines for the adoption of the district water control plan, plan amendments, form of notice, objections, hearing and determination on resolution. Specifically, the district infrastructure and works shall be implemented pursuant to a water control plan. Specific "Notice of Hearing" provisions, as

well as the time line for publication of such notice, are provided. Additionally, a copy of the notice shall be served by first-class mail on each landowner in the district, the jurisdictional water management district, the board of county commissioners of the county, and the governing body of the municipality in which lands are located.

The engineer is required to view the premises and determine the value of all lands, within or without the district, to be acquired by purchase or condemnation and used for rights-of-way or other works set out in the proposed plan or plan amendment. The engineer shall assess the amount of benefits and the amount of damages, if any, that will accrue to each subdivision of land from carrying out and putting into effect the proposed plan or plan amendment. The engineer has no power to change the proposed plan or plan amendment without board approval. The form and contents of the engineer's report are specified.

These listed groups shall have the right to file objection to the engineer's report and adoption of the proposed plan.

Section 14: creates s. 298.305, F.S., to provide that after the engineer's report has been approved by the board of supervisors, the proposed water control plan or plan amendment has been finally adopted, and the lists of lands with the assessed benefits have been filed in the office of the secretary of the district, then the board of supervisors shall levy a non-ad valorem assessment as approved by the board on all lands in the district to which benefits have been assessed, to pay the costs of the completion of the proposed works and improvements, and in addition, 10 percent of the total amount for contingencies. The board of supervisors may also levy a maintenance assessment on all lands in the district to which benefits have been assessed as may be necessary to operate and maintain the district works and activities and to defray the current expenses of the district. A maintenance assessment recommendation must be included in each engineer's report considered by the board.

Section 15: creates s. 298.329, F.S., to provide that if the works set out in the district water control plan are found insufficient to develop, the board of supervisors shall have the right to formulate new or amended plans. This section also provides that if it is found that the amount of assessments levied under the provisions of this act are insufficient, the board of supervisors may make an additional levy to provide funds to complete the work. Bonds may be issued under this section, pursuant to s. 298.47, F.S.

Section 16: creates s. 298.333, F.S., to provide that all non-ad valorem assessments provided for in Chapter 298, F.S., together with all penalties for default in payment of such assessments and all costs in collecting such assessment, will constitute a lien of equal dignity with the liens for county taxes.

Section 17: creates s. 298.337, F.S., to provide that the levy of assessments on each tract or parcel of land of less than 1 acre in an area shall be assessed as a full acre.

Section 18: creates s. 298.341, F.S., to provided that all non-ad valorem assessments that become delinquent bear penalties on the amount of the assessments in the same manner as county taxes. The assessments constitute a lien until paid on the property against which assessed and are enforceable in the same manner as county taxes.

Section 19: creates s. 298.345, F.S., to provide that the enforcement of unpaid non-ad valorem assessments shall be the same as the enforcement of county taxes.

Section 20: creates s. 298.349, F.S., to provide, for all districts created on or after July 1, 1997, a uniform initial acreage assessment of \$50 per acre for the year in which the district is created, for the payment of administrative costs and certain other expenses. The assessment shall be a lien upon the lands in the district from the effective date of the special act creating the district and shall be collected by the district. If the board of supervisors determines that it is necessary to obtain funds for the operation of the district before a sufficient sum can be obtained through the assessments, the board of supervisors may issue notes or bond for such amounts, and may pledge any and all assessments of such initial acreage assessment levied under this section for the repayment of such loans or bonds.

Section 21: creates s. 298.353, F.S., to provide that the board of supervisors of the district shall have the power to designate areas of the district as separate administrative and financial "units." A unit is similar to a subdistrict. The board of supervisors shall have the power to authorize separate financial and administrative "units." The development of the units, powers of supervisors to designate units, and financing assessments for each unit are described.

Section 22: amends s. 298.36, F.S. to delete the provisions relating to district plan adoption by as circuit court procedure and deletes redundant bond language.

Section 23: amends s. 298.47, F.S., to allow the board of supervisors to issue bonds not to exceed 90 percent of the total amount of the non-ad valorem assessments. Currently, s. 298.47, F.S., allows the board to issue bonds not to exceed 90 percent of the total amount of assessments levied.

Section 24: amends s. 298.59, F.S., is amended to conform the reference to "water control plan" as provided by this bill.

Section 25: amends s. 190.013 (6), F.S. to conform a cross reference to the reorganization of Chapter 298, F.S.

Section 26: repeals the following sections:

- s. 298.07, F.S., relating to changing the boundary lines and water management plan;
- s. 298.27, F.S., relating to the board of supervisors making new plans, levying additional assessments, and issuing bonds;
- s. 298.29, F.S., relating to the levy of certain taxes;
- s. 298.30, F.S., relating to the appointment of commissioners for certain purposes;
- s. 298.31, F.S., relating to meetings and organization of commissioners;
- s. 298.32, F.S., relating to proceedings and duties of commissioners;

- s. 298.33, F.S., relating to notice;
- s. 298.34, F.S., relating to procedures for filing exceptions to an engineer's report;
- s. 298.35, F.S., relating to powers of supervisors;
- s. 298.467, F.S., relating to a prohibition against borrowing; and
- s. 298.55, F.S., relating to the readjustment of assessments and benefits.

Section 27: provides that this act takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The bill eliminates DEP's responsibility to oversee the water control districts. DEP estimates this bill will reduce state oversight costs by eliminating duplicative record keeping requirements and by reducing the need for DEP employees to travel to the water control districts. However, minimal or no cost savings to DEP are expected because the agency's duties to oversee the water control districts were absorbed within current resources.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A. 2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Water control districts are special-purpose local governments. The cost to the water control districts of preparing the initial water control plan could be significant. However, most of the information already is required by sections 298.16 and 298.26, F.S. Consequently, if a water control district was in compliance with the existing statutory reporting and planning requirements, the additional costs are likely to be minimal.

2. Recurring Effects:

The bill transfers supervisory authority over the water control districts from the DEP to the five WMDs, which are generally considered to be special-purpose local governments. Most of the water control districts in Florida are within the South Florida Water Management District (SFWMD). SFWMD estimates that full implementation of the oversight responsibilities included in the bill would require 2 FTEs.

The primary recurring expense imposed on the water control districts will be the expense of updating and reviewing the water control plan ever 5 years. The cost of this review and update of the plan will vary depending on the size of the district and the level of services the district provides. The cost to small districts which only provide limited drainage control will be negligible. The cost to a large district which provides drainage, stormwater, water quality, and drinking water supplies could be quite significant. However, the net increase caused by the requirements of this bill would be small in most cases. This is because when a special district provides municipal services, such as drinking water supplies or sewer service, they are already required, pursuant to s. 198.415, F.S., to provide a public facilities report to the cities or counties in which the special district is located.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminant.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the committee meeting March 12, 1997 a "strike-everything-after-the-enacting-clause" amendment was offered by Representative Laurent and adopted by the committee. The amendment made the following changes in the bill:

- Eliminated references to water management district water management plans. Where the bill had required water control plans be consistent with water management district water management plans, the amendment instead required consistency with "applicable water resource plans and polices" of the water management district.
- Clarified that all new and amended water control plans are subject to review by the water management district.
- Clarified that water control districts are subject to the applicable provisions of Chapter 373, F.S. or Chapter 403, F.S.
- Allowed water management district governing boards to delegate review of water control plans to district staff.
- Removed a proposed exemption for government-owned properties.
- Clarified that approval by the water management district of a water control plan does not constitute any assurances that the district will approve any required permits.
- Clarified limits on the authority of water control districts to issue bonds.
- Eliminated obsolete language.
- Removed language that would have repealed s. 298.36. F.S. This section provides water control districts with the authority to levy assessments.

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Representative Laurent also offered, and the committee adopted, two amendments to the "strike-everything" amendment. The first amendment deletes obsolete language relating to the Melbourne-Tillman Water Control District. A local bill passed in 1986 changed this district to dependent district under Brevard County, eliminating the need for the reference in Chapter 298, F.S. The second amendment changes the power of a water control district to adopt rules to the power to adopt resolutions and policies. This change would be the first step in removing the statutory requirement that water control districts comply with the Florida Administrative Procedures Act.

The committee adopted the bill, as amended, and reported it as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON Water & Resource Management:

Prepared by:

Legislative Research Director:

Charles R. Fletcher

Joyce Pugh