

STORAGE NAME: h1591a.ca

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Community Affairs
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1591

RELATING TO: Loxahatchee Groves Water Control District, Palm Beach County

SPONSOR(S): Representative Frankel

COMPANION BILL(S): SB 2616 (s)

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

- (1) COMMUNITY AFFAIRS YEAS 9 NAYS 0
 - (2) WATER & RESOURCE MANAGEMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill codifies all prior special acts relating to the Loxahatchee Groves Water Control District in Palm Beach County into one special act.

The bill restricts annexation by municipalities by requiring a municipality proposing to annex land within the District to annex *all* of the property within the District.

The bill changes the District's election procedures, including a notice of intention to run requirement and that an election is unnecessary if the number of qualified candidates does not exceed the number of open seats, then they are deemed elected.

The bill sets the annual landowner meeting as the 4th Monday of June each year. The bill allows for the changing of this date provided that the change occurs at least 150 days prior to the newly selected date and is properly noticed.

The bill expands the District's authority to adopt uniform standards establishing a category/ies of sizes for culverts that connect the District's works to uniform standards for culvert crossings, bridges, and other drainage systems that connect, cross over, or lie within the right-of-ways of the District.

The bill decreases the notice requirement for violations of the uniform standards in emergency situations from 60 days to 30 days.

The bill limits the District's power to require maintenance of related non-district canals to those canals which, due to their lack of maintenance, adversely impacts the District, its operations, or any of its works.

The bill enlarges the condition of not causing damage when hauling, and liability from such damage from just the hauling operator to also include the hauling operator, permit applicant, and landowner. The bill requires the landowner to execute an indemnity agreement, in addition to the hauling operator and permit applicant.

The bill provides that any violation of the hauling permit provision is treated in the same manner as a non-criminal traffic violation and may be issued by traffic enforcement agencies.

The bill authorizes the District to borrow funds necessary to cope with a disaster. The bill authorizes the District to enter into a line of credit arrangement that will permit such borrowing, but the funds may be withdrawn only after a state of emergency has been declared by specific persons/parties. The bill also allows the District to grant any type of disaster relief payments or District assessments as security or collateral for borrowing.

The bill removes obsolete language and inserts applicable chapter law language.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1997 Legislature amended chapter 189, Florida Statutes, 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, section 189.429, Florida Statutes, 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 section 189.429, Florida Statutes, by (i) extending the deadline to codify to December 1, 2004, (ii) 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, (iii) removing the prohibition of substantive amendments in a district's codification bill, and (iv) 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 or 4 special acts (63 districts)	2000 Legislative Session
Special Districts with 5, 6 or 7 special acts (53 districts)	2001 Legislative Session
Special Districts with 8, 9, 10, 11 or 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

Also, section 189.404(5), Florida Statutes, 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.

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, Florida Statutes, 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, Florida Statutes (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, Florida Statutes

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, Florida Statutes, 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, Florida Statutes. 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, Florida Statutes, 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;
- (c) 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.

B. EFFECT OF PROPOSED CHANGES:

This bill codifies all prior special acts relating to the Loxahatchee Groves Water Control District in Palm Beach County into one special act.

The bill restricts annexation by municipalities by requiring a municipality proposing **to annex land within the District to annex all of the property within the District**. Currently, a municipality may annex land within the District without being required to annex all the property within the District. This bill requires an "all or nothing" approach. The bill provides that if an annexation is to occur, the annexation is subject to the provisions in section 171.0413, Florida Statutes, and requires approval by a referendum vote. A specific portion of the District is exempt from the above restriction on annexation.

The bill changes the District's election procedures. The bill requires a person to notify the Supervisor of the Board of Elections of Palm Beach County of his intention to be elected as a supervisor at least 90 days prior to the annual landowner's meeting. The bill provides that any person who does not properly notify the supervisor of election, is not allowed to be elected unless no other individuals provided proper notice to the Supervisor of Elections. The bill also provides that an election is unnecessary if the number of qualified candidates does not exceed the number of open seats, then they are deemed elected, and no election is required. However, if there are more candidates than seats, then the election will be held pursuant to section 298.12(1), Florida Statutes.

The bill sets the annual landowner meeting as the 4th Monday of June each year. The bill allows for the changing of this date provided that the change occurs at least 150 days prior to the newly selected date and is properly noticed.

The bill expands the District's authority to adopt uniform standards establishing a category/ies of sizes for culverts that connect to District's works to uniform standards for culvert crossings, bridges, and other drainage systems that connect, cross over, or lie within the right-of-ways of the District.

The bill decreases the notice requirement for violations of the uniform standards in emergency situations from 60 days to 30 days.

The bill limits the District's power to require maintenance of related non-district canals to those canals which, due to their lack of maintenance, adversely impacts the District, its operations, or any of its works.

The bill enlarges the condition of not causing damage when hauling, and liability from such damage, from just the hauling operator to also include the hauling operator, permit applicant, and landowner. The bill requires the landowner to execute an indemnity agreement, in addition to the hauling operator and permit applicant.

The bill provides that any violation of the hauling permit provision is treated in the same manner as a non-criminal traffic violation and may be issued by traffic enforcement agencies.

The bill authorizes the District to borrow funds necessary to cope with a disaster, as defined by section 252.34(1), Florida Statutes. The bill authorizes the District to enter into a line of credit arrangement that will permit such borrowing, but the funds may be withdrawn only after a state of emergency has been declared by specific persons/parties. The bill also allows the District to grant any type of disaster relief payments or District assessments as security or collateral for borrowing.

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The bill allows the District to grant any type of disaster relief payments or District assessments as security or collateral for borrowing.

The bill removes obsolete language and inserts applicable chapter law language.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 76-455, Laws of Florida; Chapter 79-540, Laws of Florida; Chapter 82-355, Laws of Florida; Chapter 86-432, Laws of Florida; Chapter 87-519, Laws of Florida; Chapter 88-502, Laws of Florida; Chapter 92-259, Laws of Florida.

D. 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?

No.

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

Yes, the bill increases landowners and permit applicants' responsibilities. This bill enlarges the condition of not causing damage when hauling, and liability from such damage from just the hauling operator to also include the hauling operator, permit applicant, and landowner.

The bill now requires the landowner to execute an indemnity agreement, in addition to the hauling operator and permit applicant. The landowner, hauling operator, and permit applicant, as a condition of receiving a hauling permit, must execute an indemnity agreement which holds harmless the District and its agents and employees from all claims and damages.

- (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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

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

No.

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

No.

- 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?

No.

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

The bill potentially decreases the option of an individual to be annexed by a municipality. The bill restricts annexation by municipalities by requiring a municipality proposing to annex land within the District to annex *all* of the property within the District. If a property owner wants his/her property to be annexed by a municipality, the owner will be unable to have his/her property annexed unless the municipality chooses to annex *all* of the property within the District.

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

Yes. The bill creates new government interference with a property owner's ability to be annexed by a municipality.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Codifies, reenacts, amends, and repeals all prior special acts relating to the District.

Section 2: Recreates and reenacts the Loxahatchee Groves Water Control District to read:

Section 1: Changes the name of the Loxahatchee Sub-Drainage District, created by chapter 298, Florida Statutes, to the Loxahatchee Groves Water Control District; Declares that the District's life is extended perpetually.

Section 2: Requires the District to call a Landowner's meeting when a supervisor's term expires for the purpose of electing a supervisor; Requires that there is one ballot for each vacancy; Requires that a candidate must have a majority of the votes on that ballot; Provides for run-off ballot if no one received a majority of the vote; Provides that the run off is between the candidates receiving the two highest number of votes; Provides every owner of land is entitled to one vote per acre; Allows for proxy votes; Provides that owners of less than one acre receive one vote; Provides for voting for land jointly owned; Provides for one vote for any fractional land interest over 1/2 acre when landowner's acreage has been aggregated; Provides that a quorum is those landowners who attend the meeting or submit proxies; Provides that the board of supervisors is increased from three to five members; Requires a person to notify the Supervisor of the Board of Elections of Palm Beach County of his intent to be elected as a supervisor at least 90 days prior to the annual landowner's meeting; Sets the annual meeting as the 4th Monday of June each year; Allows for the changing of the annual landowner's

meeting provided that the change occurs at least 150 days prior to the newly selected date; Requires publication of change of the date and provides specifics and requirements; Provides that any person who did not properly notify the supervisor of election, is not allowed to be elected unless no individuals provided notice; Provides that if the number of qualified candidates does not exceed the number of open seats, then they are deemed elected; Provides that if there are more candidates than seats, then the election will be held pursuant to section 298.12(1), Florida Statutes.

Section 3: Provides that parcels of land less than one acre are assessed as a full acre.

Section 4: Grants powers to the District provided by chapter 298, Florida Statutes; Grants the authority to maintain, construct, improve, and repair roadways and roads necessary to carry out the District's functions; Grants the authority to maintain roadways and roads necessary and convenient to provide access to and efficient development of areas, as a result of the District's plan of reclamation, including roads shown on the replat of Loxahatchee Groves; Grants the authority to provide for funds for this purpose in its annual levy; Authorizes the District to spend funds for engineering studies and plans for the purpose of developing a road improvement program; Authorizes the levying of drainage assessments or special assessments; Authorizes the District to acquire land by purchase, gift, exchange, or eminent domain; Provides that the District exercise these powers without the modification or amendment of its water control plan; Provides that the Board acts by resolution; Provides that the Board may not authorize any new construction with the majority votes of affected landowners; Grants the authority to establish different special assessment areas according to the benefits received; Allows revision of special assessment areas; Grants the power to adopt, by resolution, a uniform standard for culvert crossings and other drainage systems which affect the District; Provides for the adoption of a resolution regarding the uniform standards and procedures, including notice to affected landowners; Authorizes the District to enter onto lands and take action to rectify violations of the uniform standards, after notice and continued non-compliance; Allows for the District to be reimbursed for expenses incurred in rectifying violations; Provides that the failure to pay assessments arising from non-compliance with the uniform standards becomes a lien; Provides for lien superiority; Provides that the lien shall bear interest pursuant to section 55.03, Florida Statutes; Provides that the lien remains effective until paid; Grants the power to require maintenance of canals, etc., which connect to the District and adversely impacts the District due to the lack of maintenance; Requires thirty day notice to be given in the event of necessary maintenance; Authorizes the District to enter onto lands and perform maintenance, after notice and continued non-compliance; Allows for the District to be reimbursed for expenses incurred in maintaining the canal, etc.; Provides that the failure to pay assessment arising from maintenance costs becomes a lien; Provides for lien superiority; Provides that the lien shall bear interest pursuant to section 55.03, Florida Statutes; Provides that the lien remains effective until paid; Grants the authority to levy and impose special assessments; Requires the assessment to be imposed on benefitted property and prorated; Requires resolution, when District elects to assess a special benefit, which declares improvement, location, cost, assessment, payment of assessment; Requires the resolution to identify the lands to be assessed; Requires notice of assessment; Provides for the creation of an assessment roll and related procedures for assessment and collection; Allows landowners to appear before Board and be heard regarding the assessment and proposed improvements; Requires notice of an adjustment meeting; Allows for adjustment of special assessments; Prohibits the final adjustments from exceeding the amount of benefits originally assessed; Requires the confirmed assessments to be recorded in the public records of Palm Beach County; Provides that recording of the lien constitutes prima facie evidence of its validity; Provides that special assessments are paid in the manner stipulated in the Board resolution; Provides for interest and lien for assessment; Provides for the determination and levy of new assessment if an assessment is annulled, vacated, or otherwise unenforceable; Provides that the validity of the assessment is not affected by irregularity or informality in connection with the levy; Authorizes the issuance of special assessment bonds by resolution, for specific purposes, which are paid from special assessment proceeds; Provides for interest and other bond characteristics; Provides for use of bonds; Provides that the assessment bonds bear negotiable instrument characteristics; Allows for the District's special assessments to be collected by the Palm Beach County

tax collector; Requires the District to certify to the tax collector a list of assessments; Provides for other means of collection, such as mailing assessments; Deems all costs relating to the assessments, including the issuance of assessment bonds, to be in connection with District operation and maintenance; Requires the District to pay for collection costs and expenses.

Section 5: Provides definitions relating to the permitting of hauling operation; Grants the authority to implement and enforce a permitting system; Allows for the District to restrict the use of roads within the District for the hauling of excavated materials within a 1-year period; Authorizes the District to obtain specific information in order to regulate hauling activities; Requires a hauling permit recipient to coordinate with the District the hauling routes and times; Provides that the hauling operator, permit applicant, and landowner will not cause damage or loss to the property of the District as a hauling permit condition; Provides that the parties are liable for the repair of any damage to District property or adjacent private property owners caused by hauling activities; Requires the hauling operator to have insurance; Requires the permit applicator, landowner, and permit applicant, to indemnify the District and its agents, including reasonable attorney fees, arising out of or resulting from hauling activities; requires execution of indemnity agreement; Authorizes a permit application fee; Authorizes the adoption of rules; Requires a hauling permit to be obtained; Provides liability for any person who willfully hauls without a permit or who violates the hauling permit conditions; Provides that the violator is liable to the District for double the cost of repairing any resulting damages; Provides that violators are subject to a civil fine of \$500 per occurrence, and defines occurrence; Provides that violations are treated as noncriminal traffic fines and may be issued in the same manner as traffic citations; Requires notice to be given in the event of any damage arising from hauling; Authorizes the District to repair such damage, after notice and continued non-compliance; Allows for the District to be reimbursed for expenses incurred in repairing the property; Provides that the failure to pay assessments arising from maintenance costs becomes a lien; Provides for lien superiority; Provides that the lien shall bear interest pursuant to section 55.03, Florida Statutes; Provides that the lien remains effective until paid.

Section 6: Restricts annexation by municipalities; Requires a municipality proposing to annex land within the District to annex *all* of the property within the District; Provides that the annexation is subject to the provisions in section 171.0413, Florida Statutes; Requires the annexation to be approved by a referendum vote; Excludes a specific portion of the District from the above restriction on annexation.

Section 7: Authorizes the District to borrow funds necessary to cope with disaster, as defined by section 252.34(1), Florida Statutes; Authorizes the District to enter into a line of credit arrangement that will permit such borrowing, but the funds may be withdrawn only after a state of emergency has been declared by specific persons/parties; Allows the District to grant any type of disaster relief payments or District assessments as security or collateral for borrowing.

Section 3: Repeals all prior special acts relating to the District's charter.

Section 4: Provides severability clause.

Section 5: Provides for this act's control if in conflict with other provisions.

Section 6: Provides effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 19, 1999

WHERE? The Palm Beach Post

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

IV. COMMENTS:

There has been some concern regarding this bill's restriction on a municipality's ability to annex property. The bill restricts a municipality from annexing property within the District **to either annexing none of the property, or annexing all of the property within the District.** However, the Legislature has authority, by special or local legislation, to limit municipal annexations. See, City of Ft. Lauderdale v. Town of Hacienda Village, Inc., 172 So. 2d 451, 453 (Fla. 1965); SCA Services of Florida, Inc. v. City of Tallahassee, 418 So. 2d 1148, 1149-50 (Fla. 1st DCA 1982), *rev. denied* 427 So. 2d 737 (Fla. 1983); Fla. Const. Art. VIII, §2(c). In exercising this authority, the Legislature is not invading any personal property rights, as the Florida Supreme Court has stated in City of Ft. Lauderdale, 172 So. 2d at 452, that:

There is no purely private right to have any particular area invested with the powers of municipal government. The ultimate decision in such matters is purely a legislative function with the people granted to the State Legislature by the Constitution itself. Article VIII, Section 8, Florida Constitution.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs, at its meeting on April 8, 1999, adopted a strike-everything amendment sponsored by Representative Frankel which does the following:

- inserts "for all elections held after 1999" prior to the new candidate notification requirement;
- combines sections 4 and 5 regarding violations of uniform standards and the reimbursement for expenses incurred in rectifying violations. This amendment conforms these sections to section 4(h);
- clarifies hauling permit & restrictions language to include hauling *to* land within the district, not just hauling *from* property;
- clarifies that liens arising from non-payment of hauling damage attaches to all property of the landowner within the district;
- inserts that district's liens have the same priority as conservation easements; and
- corrects scrivener's errors.

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VI. SIGNATURES:

COMMITTEE ON Community Affairs:

Prepared by:

Staff Director:

Laura L. Jacobs

Joan Highsmith-Smith