

STORAGE NAME: h1509.ca

DATE: April 14, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1509

RELATING TO: East County Water Control District

SPONSOR(S): Representative C. Green

TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC)
 - (2) FINANCE & TAXATION (PRC)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

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

This bill also makes substantive changes to the current charter of the East County Water Control District. This bill revises the compensation paid to governing board members to \$250 per month. This bill expands the District's powers as it relates to public improvements and community facilities. This bill authorizes the District to finance, construct and operate systems, facilities and basic infrastructure for: conservation areas, mitigation areas, and wildlife habitat; and parks and recreational, cultural, and educational uses.

This bill exempts the district from the maximum maturing rate of thirty years for bonds established by general law by providing that the District may issue bonds with forty years maturity rates. However, since this bill does not only provide an exemption from general law, it does not appear to violate House Rule 44(b).

This bill revises the District's boundaries.

The bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

- 1. This bill expands the District's powers as it relates to public improvements and community facilities. This bill authorizes the District to finance, construct and operate systems, facilities and basic infrastructure for: conservation areas, mitigation areas, and wildlife habitat; and parks and recreational, cultural, and educational uses.

B. PRESENT SITUATION:

Codification

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 (1) extending the deadline to codify to December 1, 2004; (2) allowing for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs; (3) removing the prohibition of substantive amendments in a district's codification bill; and (4) removing the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline.

SCHEDULE OF SUBMITTALS OF SPECIAL DISTRICTS' CHARTERS

Special Districts with 2 special acts (45 districts)	1999 Legislative Session
Special Districts with 3 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,	2002 Legislative Session

11 or 12 special acts (56 districts)

Special Districts with 13 or more (54 districts)

2003 Legislative Session

Special Fire Control Districts (47 districts)

2004 Legislative Session

Status Statement Language

Also, subsection 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.

History of Water Control Districts

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts--through circuit court decree--and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

Chapter 298, Florida Statutes

Chapter 298, 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. To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located. In the event a quorum is not present, the Department of Environmental Protection (DEP) is required to fill the vacant seat.

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.

East County Water Control District (District)

The East County Water Control District was created by judicial decree of the twelfth circuit court in 1958. This decree, as well as another, were ratified by the Legislature in 1963 by chapter 63-1549, Laws of Florida. This special act provided that the District was created under chapter 298, Florida Statutes. The District is authorized to levy annual installment and maintenance taxes. The collection and enforcement of taxes levied by the District are provided for in the same manner as county taxes. The District's authorization includes the authority to sell land for unpaid and delinquent taxes and the issuance and sale of tax certificates for unpaid taxes.

District's Governing Board

In 1986, the Florida Legislature passed House Bill 1186, as chapter 86-460, Laws of Florida. This bill amended the District's charter by providing for a five-member Board of Supervisors for the District and a three-member Board of Supervisors for the Hendry Subdistrict of the East County Water Control District. The bill provided that the two boards be elected in different manners. The District's governing board was elected by the electors residing in the District; whereas, the Hendry Subdistrict's governing board was elected on a one-acre, once-vote basis by landowners who own land within the Hendry Subdistrict. Although a referendum was scheduled, the law was declared unconstitutional and the Supervisor was ordered not to hold the election. In 1987, chapter 87-477 repealed chapter 86-460, Laws of Florida. Chapter 87-477, Laws of Florida, provided that the electors residing in the District elect the five-member board at large which governs the entire District. In addition, only those registered voters residing within the District were permitted to vote. Finally, chapter 87-477, Laws of Florida, provided that the Governor, for the remainder of the term, fills vacancies on the governing board. In 1990, chapter 87-477, Laws of Florida, was amended by chapter 90-393, Laws of Florida, which provided that a plurality, not majority, is needed to be elected to the governing board. The elimination of the annual landowners meeting pursuant to section 298.12, Florida Statutes, occurred in 1993. Chapter 93-309, Laws of Florida, provided that the District would no longer hold annual landowners meetings since the meetings were obsolete due to the election of supervisors by registered voters. Finally, there have been other additional changes to the governing board, such as whether the members are elected in even or odd-numbered years.

Vacancies on the District's governing board are provided for in chapter 87-477, Laws of Florida, which provides that the Governor for the remainder of the term fills vacancies on the governing board.

C. EFFECT OF PROPOSED CHANGES:

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

This bill also makes substantive changes to the current charter of the East Water Control District. This bill revises the compensation paid to governing board members to \$250 per month. This bill expands the District's powers as it relates to public improvements and community facilities. This bill authorizes the District to finance, construct and operate systems, facilities and basic infrastructure for: conservation areas, mitigation areas, and wildlife habitat; and parks and recreational, cultural, and educational uses.

This bill exempts the district from the maximum maturing rate of thirty years for bonds established by general law by providing that the District may issue bonds with forty year maturity rates. However, since this bill does not only provide an exemption from general law, it does not appear to violate House Rule 44(b).

This bill revises the District's boundaries by deleting Wildcat Farms in Lee County due to this property having never received any improvements, it is not included in the District's water control plan, and it is currently not being assessed by the District. In addition, the modification to the boundaries reflects the addition of lands in Hendry County, which were acquired by the District through its eminent domain authority.

The bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides intent of this act; and provides that all district authority is preserved.

Section 2: Codifies, reenacts, and amends all acts relating to the East County Water Control District.

Section 3: Recreates the East County Water Control District (District); and recreates and reenacts the District's charter to read:

Section 1: Ratifies and confirms the decrees of the twelfth circuit court and the District's 1963 special act; Declares the District's existence; and describes District boundaries.

Section 2: Provides for installment assessments; provides that assessments become due and collected each year during the same time and same manner as county taxes; and provides that assessments are liens on property until paid and are enforceable in the same manner as county taxes.

Section 3: Provides for maintenance assessments; Requires the assessments to be apportioned upon the basis of benefits assessed; provides for collection of

such assessments; and provides that assessments are liens on property until paid and are enforceable in the same manner as county taxes.

- Section 4: Provides for the District's governing board; provides that chapter 298, Florida Statutes, is applicable, unless the charter provides otherwise; provides for a five member governing board; requires board members to be registered voters and residents of the District; provides for an at-large election; provides for four year terms; provides for District elections; provides for nonpartisan vote; provides that candidate receiving plurality of vote wins; requires voters to reside in the District; requires the District to pay for election costs; provides that terms begin the day after the member is elected; extends the terms of specific members; provides for qualification procedures; requires candidates to open campaign accounts; provides for the filling of vacancies; provides for member salary and reimbursement; restricts the payment of a salary; requires an organization meeting; provides for the election of officers; provides that the governing board shall establish duties of such officers; allows the governing board to employ a general manager and delegate authority and duties; provides for compensation for the general manager; allows the governing board to require a bond; grants powers, functions and duties, set forth in applicable general law, to the governing board; provides for the assessment and collection of non-ad valorem assessments, fees, and charges as provided by applicable general law; provides for District planning; and requires the governing board and employees to adhere to financial disclosure, meeting notices, reporting, public records maintenance, and per diem expenses, as provided by applicable general law.
- Section 5: Exempts all District bonds from state and local taxes; allows the District to insert a tax exempt provision on the bond; and allows the District to issue bonds that mature at annual intervals within 40 years.
- Section 6: Directs the District secretary to prepare an electronic list of all assessments levied.
- Section 7: Grants special powers to the District relating to public improvements and community facilities; authorizes the District to finance, construct and operate systems, facilities and basic infrastructure for conservation areas, mitigation areas, and wildlife habitat; after receiving consent of applicable local government, authorizes the District to finance, construct and operate systems and facilities for parks and recreational, cultural, and educational uses; authorizes the District to construct and maintain navigational and boating facilities in its canals; and allows the District to regulate the use of its canals, including boat size, and speed.
- Section 4:** Repeals all prior special acts relating to the District.
- Section 5:** Provides that this act should be construed as remedial; and provides for liberal construction.
- Section 6:** Provides severability clause.
- Section 7:** Provides effective date of upon becoming a law.

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III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 5, 1999

WHERE? News-Press; Fort Myers

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to a letter from the District's attorney, the rational behind the substantive changes in this bill are as follows:

- Board of Supervisors Compensation -- This change is being sought due to repeated controversy arising out of the charter's current language which allows \$50 per diem for "time engaged in work for the district." There has been abuse, misuse and repeated criticism of this subjective language.
- Authority to Engage in Conservation, Etc. Endeavors -- This change is being sought to maximize the conservation and preservation activities on District lands containing environmentally sensitive species.
- Authority to Engage in Recreational, Etc. Endeavors -- This change is being sought to maximize the District's natural assets and maintenance capabilities. The District is repeatedly receiving requests from Lee County to co-venture with them in activities where they have budgeted funds, but the county is unable to provide maintenance. Since the District is not currently authorized to provide services in this area, the District is unable to spend any of its resources for parks and other recreational endeavors. This change allows the District to co-venture with Lee County to create meaningful recreational, cultural, and educational opportunities for the citizens of the District and Lee County.
- Districts Bonds -- This change deals with the maturity date of District bonds. Currently under chapter 298, Florida Statutes, District bonds may be issuable for thirty years. The District is seeking an exemption from this to allow for the issuance

of forty years bonds. This change is being sought to allow the District to participate in a USDA Rural Development, Rural Utility Services bond program that provides for forty year bonds. This change broadens the District's ability to take advantage of Federal funding programs.

This bill raises issues regarding the addition of "ad valorem taxation" and the new provisions in the bill relating to the authority to engage in conservation and recreational endeavors. The concern with the inclusion of "ad valorem taxation" is that this bill is granting the District the authority to levy ad valorem taxes. The language included within the bill is standard language which appears in a majority of codification bills. The inclusion of this language, does not in and of itself, allow the District to levy taxes. Before the District may levy taxes, the Legislature must fix a specific millage limit for the District. Once this millage rate is set, the District is constitutionally required to receive approval at **referendum by the electors of the District**. Without both legislative and elector approval, the District is unable to levy ad valorem taxes.

The second issue relates to the provisions granting the authority to engage in conservation and recreational endeavors. Some District residents are concerned that they will be double taxed for park and recreation services. The county currently uses a portion of its ad valorem taxes proceeds for these purposes. However, some residents support the ability of the District to provide these services. On April 3, 2000, the Community Council of Lehigh Acres, Inc. adopted a resolution supporting this bill. A copy of the resolution is available at the House Community Affairs Committee offices.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

There are two amendments being offered by Representative C. Green. The first amendment declares that the District is an independent special district. This amendment complies with section 189.404(5), Florida Statutes, which 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. The second amendment is a technical amendment which clarifies that the District is authorized to issue bonds with 40 year maturing dates, notwithstanding the provisions of chapter 298, Florida Statutes.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Laura L. Jacobs, Esq.

Joan Highsmith-Smith