

**STORAGE NAME:** h1679a.ca

**DATE:** April 6, 2000

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

**BILL #:** HB 1679

**RELATING TO:** Hendry/Hilliard Water Control Dist.

**SPONSOR(S):** Representative Spratt

**TIED BILL(S):** None

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

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

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

The bill modifies the description of the boundaries of the District as currently designated in the charter, but does not alter the current boundaries; the bill continues to allow supervisors for the District to not be residents of the District or state and does not require that they be landowners; the bill changes the uniform acreage tax for the District by removing the set amount of \$1 per acre and allowing the tax to be levied through the board of supervisors.

No fiscal impacts are anticipated for either fiscal year 2000-01 or 2001-02 according to the Economic Impact Statement.

**An amendment, which is traveling with the bill, was adopted by the House Committee on Community Affairs on April 5, 2000. See Part VI, AMENDMENTS AND COMMITTEE SUBSTITUTE CHANGES section.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

The Hendry/Hilliard Water Control District (District) was created by the Legislature in 1986, chapter 86-394, Laws of Florida. The District exists to provide comprehensive water management and control and development and management of lands and water within the District for the purpose of making the lands within the District available and habitable for settlement and agriculture, for the public convenience, welfare, utility, and benefit.

**Codification**

Codification is the process of bringing up-to-date a special act. Special acts are not codified and, after the Legislature passes the initial enabling act, special acts continuously amend or alter previously enacted special acts. To ascertain the current status of any special act, it is necessary to research all amendments or changes made to the act since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to go to one special act to determine the current charter of a district, instead of two, ten, twenty, or sometimes more special acts.

Codification of special districts' charters was authorized by the 1997 Legislature when it amended chapter 189, Florida Statutes. 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, 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

Since the enactment of sections 189.429 and 191.015, Florida Statutes, 36 special districts have codified their charters. Following is a list of special districts which have codified pursuant to sections 189.429 and 191.015, Florida Statutes, and the corresponding Laws of Florida:

Alachua County Library District	Ch. 98-502
Anastasia Mosquito Control District	Ch. 99-449
Baker County Hospital District	Ch. 99-431
Carrollwood Recreation District	Ch. 98-475, as amended by Ch. 99-418
Cedar Key Water & Sewer District	Ch. 98-473
Central Broward Water Control District	Ch. 98-501
Charlotte County Airport Authority	Ch. 98-508
Citrus County Hospital Board	Ch. 99-442
Citrus County Mosquito Control District	Ch. 99-432
County Line Drainage District	Ch. 99-417
East Charlotte Drainage District	Ch. 99-439
Flagler Estates Road & Water District	Ch. 98-529
Florosa Fire Control District	Ch. 99-479

Hillsboro Inlet District	Ch. 99-433
Immokalee Water & Sewer District	Ch. 98-495
Joshua Water Control District	Ch. 99-460
Lake Apopka Natural Gas District	Ch. 99-454
Lake Worth Drainage District	Ch. 98-525, as amended by Ch. 99-422
Lee County Bonita Springs Fire Control District	Ch. 98-464
Lee County Hyacinth Control District	Ch. 98-462
Lee County Mosquito Control District	Ch. 98-461
Loxahatchee Groves Water Control District	Ch. 99-425
North Bay Fire Control District	Ch. 98-470
North Naples Fire District	Ch. 99-450
Ocean City-Wright District	Ch. 99-478
Old Plantation Water Control District	Ch. 99-435
Orange County Library District	Ch. 99-486
Panama City-Bay Co. Airport	Ch. 98-527
Ranger Drainage District	Ch. 99-453
South Broward Drainage District	Ch. 98-524
Tindall Hammock Irrigation District	Ch. 98-523
Twelve Oaks Special District	Ch. 99-452
West Coast Inland Navigation District	Ch. 98-526

In 1998, the Environmental Protection Commission in Hillsborough County unsuccessfully attempted to codify its charter. The District is scheduled to codify in 2002. In 1999, there were two unsuccessful codifications. Mid-Bay Bridge Authority's codification bill passed the Legislature, but was vetoed by the Governor. The Authority was scheduled to codify its charter in 1999. The South Walton Fire District's codification bill died on the House calendar on April 30, 1999. The District is scheduled to codify its charter in 2004.

According to the Schedule of Submissions of Special District Charters and information relating to charters previously codified, there are 94 special districts that should have been codified during the 1999 session but which were not. There are 56 special districts that are scheduled for codification during the 2000 Legislative Session.

### **Status Statement Language**

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.

### **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.

**C. EFFECT OF PROPOSED CHANGES:**

The bill codifies all prior special acts relating to the Hendry/Hilliard Water Control District (District) into a single act and repeals all prior special acts relating to the District's charter.

The bill declares that the District is an independent special district and exists and is organized for all purposes set forth in Chapter 298, Florida Statutes.

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

The bill changes the description of the boundaries of the District as currently designated in the charter. According to a letter from the attorney for the District, Mary M. Viator, dated March 29, 2000:

The legal description includes the District as originally constituted plus previous modifications. Due to changes to the original description authorized by the Circuit Court by Final Judgment, the legal description has been revised in its entirety to reflect these prior changes. However, the bill's legal description does not alter the current boundaries of the District.

The bill continues to allow supervisors for the District to not be residents of the District or state and does not require that they be landowners.

The bill changes the uniform acreage tax for the District by removing the set amount of \$1 per acre and allowing the tax to be levied through the board of supervisors.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Provides that this is the codification required pursuant to chapters 97-255 and 98-320, Laws of Florida; states legislative intent and preserves authority granted to the District by its legislative enactments and this act.

**Section 2:** Codifies, reenacts, amends, and repeals special acts relating to the District's charter.

**Section 3:** Provides for the recreation of the District and the charter for the District with the following provisions.

Section 1: Sets forth the minimum charter requirements for the District in accordance with section 189.404(3), Florida Statutes.

Subsection (1) provides that the District is organized and exists for all purposes set forth in this act and chapter 298, Florida Statutes.

Subsection (2) provides that the powers, functions, and duties of the District regarding non-ad valorem assessments, bond issuance, other revenue raising capabilities, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and tax certificates, and contractual agreements shall be as set forth in chapters 189, 197, and 298, Florida Statutes.

Subsection (3) provides that the District was created by special act, chapter 86-394, Laws of Florida.

Subsection (4) provides that the District's charter may only be amended by special act.

Subsection (5) provides that the District is governed by a Board of Supervisors whose membership and organization shall be as set forth in this act and chapter 298, Florida Statutes.

Subsection (6) provides that compensation for Board members shall be governed by this act and chapter 298, Florida Statutes.

Subsection (7) provides that the administrative duties of the board shall be as set forth in this act and chapter 298, Florida Statutes.

Subsection (8) provides that the requirements for financial disclosure, meeting notices, reporting, public records maintenance, and per diem expenses for officers and employees shall be as set forth in chapters 112, 189, 286, and 298, Florida Statutes.

Subsection (9) provides that the procedures and requirements governing the issuance of bonds, notes, and other evidence of indebtedness by the District shall be as set forth in chapters 189 and 298, Florida Statutes.

Subsection (10) provides that the procedures for conducting District elections and for qualification of electors shall be pursuant to chapters 189 and 298, Florida Statutes.

Subsection (11) provides that the District may be financed by any method established in this action, chapters 189 and 298, Florida Statutes, or any applicable general laws.

Subsection (12) provides that the District may continue to levy upon all the real taxable property in the District, a special tax each year as a maintenance tax.

Subsection (13) provides that the method for collecting non-ad valorem assessments, fees, or service charges shall be as set forth in chapters 197 and 298, Florida Statutes.

Subsection (14) provides that the District's planning requirements shall be as set forth in chapters 189 and 298, Florida Statutes.



Subsection (15) provides that all acts and proceedings done and performed by the board, agents, and officers of the District, acting for and on behalf of the District are ratified, validated, confirmed, and declared to be legal, valid, and binding.

Subsection (16) provides that the geographic boundaries of the District shall be as set forth in this act.

Section 2: Provides the purposes and boundaries of the District.

Section 3: Provides that the District is a public corporation of the state; provides that the provisions of Florida law applicable to water control districts embodied in chapter 298, Florida Statutes, so far as not inconsistent with this act, are declared to be applicable to the District; provides that the District shall have all of the powers and authorities conferred by chapter 298, Florida Statutes.

Section 4: Provides the powers of the District: to sue and be sued; to make contracts; to adopt and alter a seal; to acquire real and personal property both within and without the District; to convey and dispose of such real and personal property; to construct, operate, and maintain canals, ditches, drains, levees, pumps, plants, pumping systems, and other works for water control purposes; to construct, operate, and maintain irrigation works, machinery, and plants; to borrow money and issue negotiable or other bonds of the District; to borrow money and issue negotiable or other notes of the District in anticipation of the collection of taxes, levies, and assessments or revenues of the District and the pledge of such; to exercise all other powers necessary, convenient, or proper in connection with any of the powers or duties of the District; provides that the powers and duties of the District shall be exercised by and through the board which shall have the authority to employ engineers, attorneys, agents, employees, and representatives of the board and to fix their compensation; provides that the District shall have all of the powers provided for in Chapter 298, Florida Statutes.

Section 5: Provides for a board of supervisors which is the governing body of the District; provides that board members shall hold office for three years and until their successors shall be duly elected and qualified; provides that each June, a supervisor shall be elected by the landowners of the District to take the place of the retiring supervisor; provides that residents of the District need not be residents of the District or of the State of Florida, and they may or may not be owners of lands or property within the District; provides that in the case of a vacancy in the office, the remaining supervisors may fill such a vacancy until the next annual meeting of the landowners; provides that as soon as practicable after their election, the board shall organize and elect officers; provides that the board shall adopt a seal; provides that at each annual meeting of the landowners, the board shall report all work undertaken or completed during the preceding year and the financial status of the District; provides that whenever any election is authorized or required by this act and cannot be held, the power or duty to hold the election shall not cease but be held as soon as practicable and consistent with this act.

Section 6: Provides that each supervisor shall be paid a per diem for his or her services in an amount to be determined by the landowners at the annual meeting; provides that the amount not exceed that provided for in chapter 298, Florida Statutes;

provides that in addition to per diem, they shall receive reimbursement for travel and expenses as provided by law.

- Section 7: Provides that each year during the month of June, a meeting of the landowners of the District shall be held for the purpose of electing supervisors to take the place of retiring supervisors and to hear reports of the board; provides that the board shall have the power to call special meetings of the landowners at any time to receive reports and to act upon any matter upon which the board may request; provides that the notice provisions for such meetings shall be pursuant to chapters 189 and 298, Florida Statutes; provides that the secretary of the board shall be the secretary at landowner meetings; provides that each acre shall represent one vote, and each owner shall be entitled to one vote in person or by written proxy for every acre of land owned by him or her in the District; provides that the person receiving the highest number of votes for supervisor shall be declared and elected supervisor; provides that a quorum shall constitute those landowners present in person or by proxy; provides that guardians, personal representatives, trustees, and corporate officers or agents may represent their fiduciary.
- Section 8: Provides that taxes shall be levied and apportioned pursuant to chapter 298, Florida Statutes; provides that the District may levy annually a "maintenance tax" and provides the purpose and basis of apportionment; provides that all taxes and penalties shall constitute a lien of equal dignity with the liens for other county taxes and other taxes of equal dignity with county taxes; provides that the property appraiser, tax collector, and clerk of the circuit court shall be entitled to compensation of services performed in connection with taxes of said District as provided in chapter 298, Florida Statutes; provides that in levying and assessing all taxes, each tract or parcel of land less than one acre shall be assessed as a full acre and each tract more than one acre shall be assessed at the nearest whole number.
- Section 9: Provides that all taxes shall become delinquent and bear penalties in the same manner as county taxes.
- Section 10: Provides that the collection and enforcement of all taxes levied by the District shall be at the same time and in like manner as county taxes; provides that the provisions of the Florida Statutes relating to the sale of lands for unpaid and delinquent county taxes and the use of tax certificates related thereto, shall be applicable to the District and unpaid taxes of the District; provides that all discounts shall be subject to the same discounts as county taxes.
- Section 11: Provides that there is a uniform tax levied by the Legislature on each and every acre of land in the District, a uniform tax for the purpose of paying expenses incurred in making surveys of the lands of the District, assessing benefits and damages, and other expenses necessarily incurred; provides that the tax shall become due and payable on the first day of November and shall become delinquent 90 days thereafter; provides that the tax shall be a lien upon the lands in the District from the date of the enactment of this act and shall be collected in the same manner as the annual installment taxes; provides that the board may borrow money or issue bonds for the conduct and operation of the District and may pledge any and all assessments for repayment thereof; provides that the board may issue negotiable evidence of debt to any person or

persons performing work or services or furnishing anything of value to the District prior to the receipt of funds from assessments.

Section 12: Provides that bonds may be issued under the provisions of chapter 298, Florida Statutes.

Section 13: Provides that surface waters, which shall include rainfall and the overflow of rivers and streams, shall be managed for public benefit, and the District or any other permit holder from the District, shall have the right to dike, dam, and construct levees to manage waters within the District.

Section 14: Provides that the board shall have the power and is authorized to manage water within the District by designating areas or parts called "units." Provides for the designation and responsibilities of District and lands so designated.

**Section 4:** Repeals all previous special acts.

**Section 5:** Provides for severability.

**Section 6:** Provides that in the event of a conflict between the provisions of this act and the provisions of any other act, the provisions of this act shall control to the extent of such conflict.

**Section 7:** Provides this act shall take effect upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 26, 2000

WHERE? The Clewiston News in Hendry County, Florida

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:

None.

B. RULE-MAKING AUTHORITY:

None.

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C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted by the Committee on Community Affairs on April 5, 2000. The amendment removes an unnecessary line from the boundary description. The amendment is traveling with the bill.

VI. SIGNATURES:

COMMITTEE ON COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

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Kyle V. Mitchell

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Joan Highsmith-Smith