

STORAGE NAME: h1681.ca

DATE: April 4, 2000

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

BILL #: HB 1681

RELATING TO: Clewiston Drainage District

SPONSOR(S): Representative Spratt

TIED BILL(S): None

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

(1) COMMUNITY AFFAIRS (PRC)

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill codifies all prior special acts relating to the Clewiston Drainage 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 general law language.

The bill provides for minimum charter requirements.

The law firm representing the District has submitted a boundary letter which states that the bill's legal description does not modify or alter the current boundaries of the District.

The bill amends the District's Maintenance Tax cap.

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

This bill does not make any substantive changes to current law.

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:

In 1925, the Florida Legislature abolished the Clewiston Drainage District (a public corporation, created and established as such by the order, judgment and decree of the Circuit Court, Twelfth Judicial Circuit, Hendry County, Florida, on July 22, 1924) thus re-creating the Clewiston Drainage District, through Chapter 10435, Laws of Florida, 1925. The 1974 Florida Legislature changed the name of the District to the Clewiston Water Management District (Chapter 74-486, L.O.F.). The 1975 Florida Legislature changed the name of the District to the Clewiston Drainage District (Chapter 75-380, L.O.F.). It has been amended since 1925, nine times by the Legislature. 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

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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.

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 Clewiston Drainage 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 water control District and that Chapter 298, Florida Statutes, is applicable to the District except as otherwise provided.

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

The bill provides for minimum charter requirements.

The bill amends the District's Maintenance Tax cap from the maximum tax rate levied upon the lands in unit No. 1 not to exceed \$150 per acre per annum, unit No. 2 not to exceed \$57.69 per acre per annum, in unit No. 3 not to exceed \$34.62 per acre per annum to levy a maintenance tax and impose annually, an amount determined by the Board. The taxes shall be apportioned among the lands in each of the three Units in the same ratio as the assessment benefits per acre described by the Water Control Plan adopted by the District.

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; Declares the District an independent special district and political subdivision of the State of Florida; States legislative intent and preserves authority granted to the District by general law and its legislative enactments; Grants authority to preserve all of the District's authority; Grants authority to annually assess and levy against the taxable property in the District.

- 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: Provides the minimum charter requirements under section 189.404(3), Florida Statutes; Provides that the District is organized and exists pursuant to Chapter 298, Florida Statutes; Provides for the District's powers, functions, and duties relating to non-ad valorem assessments, bond issuance, other revenue-raising capabilities, budget, liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements; Provides that the District was created by a special legislative act; Requires that the District's charter is amended only by special act of the Legislature; Provides that the District is governed by a Board of Supervisors; Provides for the membership and organization of the District's Board; Provides for the compensation of board members; Provides for the administrative duties of the District's governing board; Provides for financial disclosure, meeting notices, reporting, public records, and per diem for officers and employees; Provides for the procedure and requirements governing bond and other indebtedness issuance; Provides for the procedures for conducting District elections and elector qualifications; Provides the methods for District financing; Authorizes the District to levy upon all of the real taxable property in the District a special tax each year as maintenance tax; Provides for the methods of collecting non-ad valorem assessments, fees, or service charges; Provides for the District's planning requirements; Provides the District's geographic boundary limitations.
- Section 2: Provides that the drainage, reclamation, and irrigation of these lands from the effects of water, or lack of water, for controlling the water and the water tables and the creation of the District are in the interest of and conducive to agricultural and sanitary purposes, and for the public health, convenience, welfare, utility, and benefit; Describes District's boundaries.
- Section 3: Provides for the designation of the District's three-member board; Provides that at any landowners' meeting, the owners and proxy holders of land in the District present shall constitute a quorum.
- Section 4: Provides for the establishment of three (3) Units within the District; Provides for the degree of service to the three Units; Describes the Unit's boundaries; Provides that all canal numbers, streets, lots, and blocks according to the general plan of Clewiston are inclusive of the public records of Hendry County; Provides for provisions to change the unit boundaries; Provides notice and a public hearing for all boundary changes; Provides for adoption of and recordation upon its minutes, a resolution delineating the revised boundaries of the Units; Provides for property owners to be entitled to have action by the Supervisors reviewed by certiorari as provided by law.
- Section 6: Provides for paying the cost of administering the affairs of the District and for the purpose of maintaining, operating, preserving, and rendering efficient the ditches, canals, drains, levees, and other improvements authorized to be constructed, and to repair and to restore, to defray current expenses of the District; Authorizes the Board to levy a maintenance tax and impose annually, upon the lands subject to tax within the boundaries of the District, an amount

determined by the Board to properly administer, operate, and maintain the District and its facilities and to provide funds for improvements or additions to the facilities of the District; Provides the taxes be apportioned among the lands in the three units the same ratio as the assessment benefits per acre; Provides for the taxes necessary to meet the annual budget needs of the District as follows: the Board shall determine the annual per acre tax rate to be levied upon the lands in Unit 1, the annual per acre tax rate levied upon the lands in Unit 2 shall be 38.46% of the annual per acre tax rate levied on the lands in Unit No. 1, the annual per acre tax rate levied upon the lands in Unit No. 3 are 23.08% of the annual per acre tax rate levied upon the lands in Unit No. 1; Provides that all Units are equally benefited from the construction and operation of the works and public improvements constructed and to be constructed by the District pursuant to the provisions of this act, and that the works and public improvements will confer benefits upon the lands within the district as to each acre or fraction of an acre in an amount at least equal to its proportionate share of the taxes authorized to be levied by the Board, and that the ratio of benefits conferred upon lands in each of the three Units is in proportion to the taxes and assessments authorized by this act to be levied upon the lands.

- Section 7: Provides additional powers of the Board to assess impact fees for connections to or use of District works, as determined by the Board, to offset direct fiscal impact to the District resulting from increased construction, operation, or maintenance cost to the District.
- Section 8: Authorizes and empowers the Board to enter into arrangements with other drainage or water control districts for the pooling of insurance coverage, purchase, rental, and use of supplies, equipment, buildings, and facilities and for services of employees; Provides for the Board to employ a General Manager of the District and to delegate to him or her the performance duties and to provide compensation; Requires the General Manager to furnish a surety bond.
- Section 9: Provides for a separate list of lands owned by railroad companies, telephone, telegraph, and other public utility companies, be certified to the Comptroller by the secretary, copied and filed, and the assessments and taxes herein levied against the lands be assessed and collected in the same manner as taxes are levied and collected on the lands for the county, and such moneys, when collected, shall be remitted to the secretary and treasurer of the District; Provides that rights-of-way dedicated for public thoroughfares, public parks, properties owned by the Federal Government, the state, Hendry County, or the City of Clewiston and used for public purposes, parcels upon which are located houses of worship or parsonages, except the lands owned by Hendry County Hospital Authority and the lands occupied by the golf course and the airport are exempt from taxation under this provision.
- Section 10: Ratifies, validates, and confirms all other acts and proceedings of the Circuit Court of said Counties taken by, for, and on behalf of the District since the creation, and all of the acts and proceedings of the Board of Supervisors, the Commissioners, and all other officers and agents of the District, Counties, acting for and on behalf of the District, and any and all tax levies and assessments which have been made by the Board of Supervisors for and on behalf of the District.

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Section 4: Repeals all previous special acts.

Section 5: Provides that in the event a section or provision of this act or the application of the sections or provisions to any situation, circumstance, or person is held unconstitutional it shall not affect any other section or provision of this Act or the application of the sections or provisions to any other situation, circumstance, or person, and such section or provision shall be construed and applied as if the section or provision had not been included.

Section 6: 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 Clewiston, 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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The law firm representing the District has submitted a boundary letter which states that the legal description includes the District as originally constituted plus previous modifications. The bill's legal description does not modify or alter the current boundaries of the District.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One technical amendment is offered by Representative Spratt to correct the numbering in the sections of the charter to make them consecutive.

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VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Terri S. Boggis

Joan Highsmith-Smith