

STORAGE NAME: h1793a.ca

DATE: April 12, 2000

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

BILL #: HB 1793

RELATING TO: Devil's Garden Water Control Dist.

SPONSOR(S): Representative Spratt

TIED BILL(S): None

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

(1) COMMUNITY AFFAIRS (PRC) YEAS 8 NAYS 0

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill codifies all prior special acts relating to the Devil's Garden Water Control District in Hendry County 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 and inserts applicable chapter language.

The bill does not alter the current boundaries of the District.

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

See Part V, AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section, for the effect of the amendments traveling with the bill. The amendment adopted by the Committee on Community Affairs changes references to "circuit court" to "court of competent jurisdiction."

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 Devil's Garden Water Control District (District) in Hendry County was created pursuant to Chapter 298, Florida Statutes, by Circuit Court Decree of the 20th Judicial Circuit on May 4, 1971. The District was recognized by the Legislature in 1987, chapter 87-473, Laws of Florida.

In 1999, the Legislature removed land from the District's boundaries and reduced the boundaries to reflect the deannexation, eliminated the District's canal maintenance obligations for the lands being deannexed, and eliminated the obligation to pay the District's assessments on the deannexed property, chapter 99-436, Laws of Florida. The land being deannexed from the District was approximately 2000 acres of environmentally sensitive land which was privately owned by Alico, Inc. The property had been sold and conveyed to the State of Florida after Alico entered into negotiations with the South Florida Water Management District, on behalf of the Trustees of the Internal Improvement Trust Fund, the Division of Forestry and the Florida Game and Fresh Water Fish Commission. The removal of the lands from the District was a condition of the contract for the sale of the land. The reasoning behind the removal is that without the deannexation, the District's assessments would have continued to be levied. By removing the public land from the District, the District's maintenance obligations regarding the canals ceased. Thus, the District's costs decreased due to having fewer canals to maintain. Although the District lost property which it used to assess, the District is offset the lost revenue by the decrease in canal maintenance costs.

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

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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 Devil's Garden 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 and inserts applicable chapter language.

The bill does not alter the current boundaries of the District. According to a letter from the attorney for the District, Mary M. Viator, dated March 30, 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.

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

Subsection (b) 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 (c) provides that the District was created by the process set forth in chapter 298, Florida Statutes.

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

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

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

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

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

Section 2: Provides the boundaries of the District.

Section 3: Provides the powers of the District; in addition to the powers of the District under chapter 298, Florida Statutes, and other general laws, the District shall have the power to construct, finance, and maintain roads and to acquire, construct, and maintain pumping stations, water control facilities, levees, ponds, lakes, and other facilities for the retention of water; provides that all power and authority of the District shall extend and apply to the District as a whole and to each unit of improvement.

Section 4: Provides that the Board of Supervisors shall have the power and is authorized to drain, irrigate, and reclaim or more completely and intensively to drain the lands in the District by designated areas or parts of the District to be called units; provides for the Board to set the boundaries and names or numbers of the units; provides a process for the creation of units, including notice and hearing provisions; provides for the adoption of a water control plan; provides that the provisions of this act apply to each unit of the District; provides that all assessments, levies, taxes, bonds, and other obligations for each unit shall be a lien and charged solely and only upon the lands in the unit; provides for the amendment and changing of the units.

Section 5: Provides that all lands in the District receiving benefits shall be subject to District taxes.

Section 6: Provides that the governing board of the District shall be designated as the "Board of Supervisors of Devil's Garden Water Control District" and shall be composed of three persons, who shall be resident freeholders of the District.

Section 7: Provides that all acts and proceedings of the circuit court taken by, for, and on behalf of the District are ratified, validated, and confirmed.

Section 4: Repeals all previous special acts.

Section 5: Provides for severability.

Section 6: Provides this act shall take effect upon becoming a law.

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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.

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 changes references to "circuit court" to "court of competent jurisdiction."

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Kyle V. Mitchell

Joan Highsmith-Smith