

STORAGE NAME: h0669.sgc.doc
DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 669
RELATING TO: Devil's Garden Water Control District
SPONSOR(S): Representative Spratt
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (LGVA) YEAS 9 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill de-annexes a 194-acre parcel of environmentally sensitive land from the boundaries of the Devil's Garden Water Control District. According to the District Engineer, the Parcel will be deeded to the South Florida Water Management District, and used for the conservation of natural resources.

The bill states that all boundaries of the District are deemed to receive equal benefits from the District, and shall be assessed equally for the maintenance and rehabilitation improvements of the District's works, facilities, and improvements.

According to the economic impact statement, this bill does not have a fiscal impact.

The Committee on Local Government and Veterans Affairs, at its meeting on February 7, 2002, considered and adopted one amendment, and approved the bill. The amendment is traveling with the bill. (See Section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES").

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"/> |

B. PRESENT SITUATION:

The Devils Garden Water Control District (District) was created pursuant to chapter 298, Florida Statutes, by decree of the Circuit Court of the 20th Judicial Circuit on May 4, 1971. In 1997, as a condition of ownership, the District was required to de-annex and deed a tract of land to the State, to be used by the South Florida Water Management District (WMD). The District's charter was amended twice before being codified during the 2000 Session.

Currently, the District desires to de-annex a 194-acre parcel of environmentally sensitive land (Parcel) from its boundaries. According to the District Engineer (Engineer), the Parcel was purchased by a developer to satisfy a contractual obligation stating that the developer must purchase a mitigation site in the area of Southwest Florida, adjacent to a tract controlled by a state agency. The Parcel will be used for the conservation of natural resources, and it is adjacent to the land the District de-annexed and deeded to the SWD in 1997.

According to the Engineer, no District or landowner constructed drainage facilities currently serve the Parcel.

History of Water Control Districts

As early as the 1830s, the Legislature passed special acts authorizing landowners to construct drainage ditches across adjacent lands for the discharge excess water. Following the passage of several special acts creating these districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913. The purpose of this Act was to establish that all drainage districts would be created by 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 Act was amended to change the name of the entities from drainage districts, to water management districts, and finally to water control districts. Although the Legislature did not enact a major reform of the Act in either year, the 1979 amendment repeal provisions in the Act that authorized 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

A water control district can be created as a dependant, or an independent special district, and this decision determines the powers and authority wielded by the special district. Section 298.01, Florida Statutes, restricts the creation of independent water control districts to special acts of the Legislature, and dependant water control districts to the provisions of section 125.01, Florida Statutes. 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, jurisdiction within the district's boundaries is given to the circuit court where the majority of the land is located. Once a district is organized, a notice of the first landowners' meeting must be given. This notice must be published once a week for two consecutive weeks in a newspaper of general circulation, in each county where district lands are located. At the first meeting, the landowners are required to elect a three-member board of supervisors. The district supervisors serve for 3-year rotating terms, with one supervisor elected each year at an 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, unless a district's special act provides otherwise. If acreage owned by the state is subject to assessment by the district, the Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting.

One-Acre, One-Vote

Section 298.11(2), Florida Statutes, provides that every acre of assessable land within a district represents one share, or vote. Landowners within a district are entitled to one vote per acre of assessable land that they own. Landowners owning less than one assessable acre are entitled to one vote. When all of the landowners' acreage has been aggregated for purposes of voting, landowners with more than one acre of assessable land are entitled to one additional vote for any fraction of an acre greater than 1/2 acre. The section also allows landowners to vote by proxy.

Role of the Circuit Courts

Prior to July 1, 1980, when a water control district was formed, the circuit court of the county where the majority of the land is located had exclusive jurisdiction within the boundaries of the district. Circuit courts served several functions in the creation and governance of water control districts. After a board of supervisors adopted a plan of reclamation, it petitioned the circuit court to appoint three commissioners to appraise the lands that would be acquired to implement the plan of reclamation. A circuit court may have required the report on assessment of benefits and damages to be amended to include condemned lands needed to construct the district's works. In the event a circuit court determined that the value of land within the district had changed and additional conditions were met, the court was required to appoint three commissioners to readjust the original report on the assessments of benefits and damages.

Water Control Plans

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed, and implemented by a water control district is considered a "water control plan". The approval and implementation process has been removed from the purview of the circuit court.

Before adopting a water control plan, or plan amendment, the board of supervisors must adopt a resolution to consider adoption of the plan, or amendment. The board of supervisors must publish notice of a public hearing once a week for 3 consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission of the county, and any municipality in which the District is located.

At the public hearing on the proposed plan, or amendment, the board of supervisors must consider objections before determining whether or not to proceed with the plan, or amendment. In the event the board proceeds forward, it will then direct the District Engineer to prepare a report in writing to the board of supervisors, complete with maps and surveys. The report must include a full and complete water control plan for draining, and reclaiming the lands described in the petition. Further, the report must contain an estimate of the costs of carrying out, and completing the water control plan, in addition to an estimate of the benefits derived from it.

A final hearing on approval of the water control plan, and the engineer's report, is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the engineer's report is filed with the secretary of the district.

Under section 298.301, Florida Statutes, the board of supervisors must determine that the plan's estimated costs of construction are less than the benefits determined for the lands, before the final adoption of the engineer's report, and water control plan, or plan amendment.

The board of supervisors must review the water control plan at least every 5 years following its adoption.

Revenue Sources

The primary funding source for water control district activities is special assessments. Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. The greatest challenge to a valid special assessment is its classification as a tax by the courts.

As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax.

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use, and the parcel's physical characteristics.

A special assessment may provide funding for capital expenditures, or the operational costs of services, provided that the property subject to the assessment derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, storm-water management services, and water and sewer line extensions..

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

Limitation on Special Acts

Section 11(a)(21), Article III of the State Constitution, provides that no special law, or general law of local application, shall be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house. However, a general law may be amended or repealed by a like vote.

Section 298.76, Florida Statutes, is an example of a general law passed by a three-fifths vote of the membership of each house. The statute provides that 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 chapter 298, Florida Statutes.

Section 298.76 Florida Statutes, does not prohibit special or local legislation that:

- (a) Amends an existing special act that 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.

Section 298.76 Florida Statutes, authorizes special or local legislation that:

- (a) Changes the method of voting for a board of supervisors for any water control district;
- (b) Provides a change in the term of office of the board of supervisors, and changes the qualifications of the board of supervisors of any water control district; and
- (c) Changes the governing authority or governing board of any water control district.

Finally, section 298.76, Florida Statutes, 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 chapter 298, Florida Statutes, at the time the district was created, and organized.

C. EFFECT OF PROPOSED CHANGES:

According to the Engineer, no District or landowner constructed drainage facilities currently serve the Parcel. Pursuant to the terms of the developer's contract, the Parcel is to be deeded to the WMD. The WMD's objective is to keep its land in the current pristine and natural condition. The WMD currently controls the land adjacent to the Parcel, and has requested that their property not

be served by manmade drainage improvements. The Parcel will be treated in a like manner once it is deeded to the WMD.

Section 2 of the bill states that all boundaries of the District are deemed to receive equal benefits from the District, and shall be assessed equally for the maintenance and rehabilitation improvements of the District's works, facilities, and improvements. **See Section IV. C: Other Comments for explanation.**

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Boundaries

Amends the territorial boundaries of the Devil's Garden Water Control District located in section 2 of section 3 of chapter 2000-481, Laws of Florida, to remove 194 acres of land from the District.

Section 2: Benefits Assessed

Adds language stating that all boundaries of the District are deemed to receive equal benefits from the District, and shall be assessed equally for the maintenance and rehabilitation improvements of the District's works, facilities, and improvements.

Section 3: Provides that this act shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 31, 2001

WHERE? The Clewiston News in Clewiston, 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

III. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Section 2 of the bill states that all boundaries of the District are deemed to receive equal benefits from the District, and shall be assessed equally for the maintenance and rehabilitation improvements of the District's works, facilities, and improvements.

However, as established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. *Thus, **to be assessed equally for the maintenance and rehabilitation improvements of the District, the boundaries of the District must actually receive equal benefits from the District.***

According to the attorney representing the District, the Parcel being de-annexed does not receive benefits from the District. Therefore, the de-annexation of the Parcel does not have an effect on rate and apportionment of assessments in the District. The attorney stated that the purpose of Section 2 of the bill is to reassure the District that de-annexing the Parcel does not require the District to amend its water control plan. Thus, neither the de-annexation of the Parcel, nor the inclusion of Section 2 into the District's charter will have an effect on the rate and apportionment of assessments in the District.

In addition, the District's special acts contained this provision prior to codifying during the 2000 Session.

IV. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government and Veterans Affairs, at its meeting on February 7, 2002, considered and adopted one amendment, and approved the bill. The amendment is traveling with the bill.

The amendment corrects the District's legal boundaries.

V. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Alex Abdo

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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