

STORAGE NAME: h0985.lgva.doc
DATE: February 7, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 985
RELATING TO: Central Broward Water Control District
SPONSOR(S): Representative Ritter

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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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.

This bill amends the boundaries of the zones from which the District's Board of Commissioners (Board) are elected, and staggers the election of commissioners to the Board.

The bill provides that the qualifying dates for individuals running for election to the Board are the same as those for individuals running for County Commission at the general election.

The bill provides that commissioners holding office as of January 1, 2002 will serve their full 4-year term. Commissioners elected in 2002, and 2004, will assume office, and be installed at the first regularly scheduled meeting following their election.

The sponsor has proposed an amendment to subsection (b) of section 4 of section 2 of chapter 98-501, Laws of Florida, to provide that the commissioner from zone 6 will be elected in the general election of November 2002, and the commissioner from zone 3 will be elected in the general election of November 2004. **See section: V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES.**

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"/> |

B. PRESENT SITUATION:

The Central Broward Water Control District was created in 1961, by 61-1439, Laws of Florida, and originally called the Central Broward Drainage District. The District changed its name in 1996, and codified all of its special acts into one comprehensive charter in 1998, by 98-501, Laws of Florida.

For the purposes of electing a board of commissioners, the lands within the District's boundaries are divided into six zones, with one commissioner from each zone being elected on an at-large, non-partisan, basis by the qualified electors residing within each respective zone.

According to the attorney for the District, it is unconstitutional for the population variance between respective zones to be greater than 10%. Four of the current zones conform to this requirement; however, due to rapid growth in certain locations, zones 1, and 6, vary beyond the constitutional limit of 10%.

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:

Due to rapid growth in certain locations, two zones in the District vary beyond the constitutional limit of 10%. The bill amends the boundaries of zones 1, and 6, to bring all the zones into compliance with the Constitutional guidelines. The District utilized the "Fred's" program to re-apportion zones 1, and 6. According to the attorney for the District, the commission seats are non-partisan, and the boundaries were drawn solely to balance the zone populations.

The bill staggers the election of commissioners to the Board. The bill provides that the election of commissioners from zones 1, 2, and 3 will take place in the general election of November 2002, and the election of commissioners from zones 4, 5, and 6 will take place in the general election of November 2004.

The bill provides that the qualifying dates for individuals running for election to the Board are the same as those for individuals running for County Commission at the general election.

The bill provides that commissioners holding office as of January 1, 2002 will serve their full 4-year term. Commissioners elected in 2002, and 2004, will assume office, and be installed at the first regularly scheduled meeting following their election.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 4 of section 2 of chapter 98-501, Laws of Florida as follows:

Amends subsection (b) of section 4 of section 2 of chapter 98-501, Laws of Florida, to state that the election of commissioners from zones 1, 2, and 3 will take place in the general election of November 2002, and the election of commissioners from zones 4, 5, and 6 will take place in the general election of November 2004; provides that the individual who has qualified to run as commissioner, and received the most votes, is elected commissioner of that zone; provides that no commissioner elected prior to January 1, 2002, will be affected in his, or her, term of office.

Amends subsection (d) of section 4 of section 2 of chapter 98-501, Laws of Florida, to change the boundaries of zones 1 and 6.

Amends subsection (f) of section 4 of section 2 of chapter 98-501, Laws of Florida, to provide that the qualifying dates for individuals running for election to the Board are the same as those for individuals running for County Commission at the general election.

Amends subsection (j) of section 4 of section 2 of chapter 98-501, Laws of Florida, to state that commissioners holding office as of January 1, 2002 will serve their full 4-year term. Commissioners elected in 2002, and 2004, will assume office, and be installed at the first regularly scheduled meeting following their election.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 20, 2002

WHERE? Sun-Sentinel: Fort Lauderdale, Broward County, Florida; Boca Raton, Palm Beach County, Florida; Miami, Miami Dade 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:

The sponsor desires to amend subsection (b) of section 4 of section 2 of chapter 98-501, Laws of Florida, to provide that the commissioner from zone 6 will be elected in the general election of November 2002, and the commissioner from zone 3 will be elected in the general election of November 2004. According to the attorney for the District, this amendment corrects a drafting oversight. As the bill is written, the commissioner from zone 3 would be subject to a shortened term, while the commissioner from zone 6 would be the beneficiary of an extended term.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Alex Abdo

Joan Highsmith-Smith