

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 266

SPONSOR: Comprehensive Planning Committee and Senator Pruitt

SUBJECT: Water Control Districts

DATE: March 6, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>FT</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute (CS) allows water control districts to equally apportion district facility maintenance taxes to all benefited acres.

A new section is created to provide the water control districts with limits from liability for injuries resulting from third-party use of district lands, rights-of-way, works, and easements under certain conditions.

This CS substantially amends s. 298.54, F.S; and creates s. 298.675, F.S.

II. Present Situation:

Originally established primarily to serve the needs related to agriculture, water control districts now have greater responsibilities resulting from increases in urban growth and population. These responsibilities have grown to include stormwater drainage and other related concerns. Today, there are nearly 100 water control districts in Florida.

In 1997, the Legislature substantially revised the provisions of ch. 298, F.S, relating to water control districts. Oversight for these districts was moved from the Department of Environmental Protection to the water management districts and the Governor. In 1998, several additional amendments were made to these provisions.

Each water control district is governed by a three-member board of supervisors composed of owners of the lands in the district and residents of the county or counties in which the district is located. The board of supervisors has full power and authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water

control plan. Section 298.22, F.S., provides for the powers and duties of the board of supervisors. Among those specified powers, the board of supervisors:

- May employ persons and purchase machinery to directly supervise, construct, maintain, and operate the works and improvements described in the water control plan or contract out for such activities.
- May clean out, straighten, open up, widen, or change the course and flow, alter or deepen any canal, ditch, drain, river, watercourse, or natural stream; and concentrate, divert, or divide the flow of water in or out of the district.
- May build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of the district; acquire, construct, operate, maintain, use, sell, convey, transfer or otherwise provide for pumping stations, including pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment.
- May contract for the purchase, construction, operation, maintenance, use, sale, conveyance and transfer of pumping stations, machinery, motive equipment, electric lines and appurtenant equipment, including the purchase of electric power and energy for the operation of the same.
- May construct or enlarge, or cause to be constructed or enlarged, any and all bridges that may be needed in or out of the district, across any drain, ditch, canal, floodway, holding basin, exaction, public highway, railroad right-of-way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of such works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut, in or out of the district; remove any fence, building or other improvements, in or out of the district.
- Shall have the right to hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right-of-way sluice, reservoir, holding basin or franchise, in or out of the district, for right-of-way, holding basin for any of the district's stated purposes, or for material be used in constructing and maintaining said works and improvements for implementation of the district water control plan.
- May condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without the district not acquired or condemned by the court as identified in the engineer's report, and shall follow the procedure set out in ch. 73, F.S.
- May assess and collect reasonable fees for the connection to and use of the works of the district.
- May construct and operate facilities for the purpose of controlling and preventing the spread or introduction of agricultural pests and diseases.

- May construct, manage, or authorize construction and management of resource-based recreational facilities that may include greenways, trails, and associated facilities.

Section 298.54, F.S., allows the board of supervisors to assess an annual “maintenance tax” to maintain and preserve the ditches, drains, or other improvements and to repair and restore the same, when needed, and to defray the current expenses of the district. The tax shall be apportioned upon the basis of the net assessment of benefits assessed as accruing from the original construction, shall be evidenced to and certified by the board of supervisors not later than June 1 of each year to the property appraisers of counties in which lands of the district are situated, and shall be extended by the county property appraisers on the county tax rolls and collected by the tax collectors in the same manner and time as county taxes, and these proceeds shall be paid to the district. The tax shall be a lien until paid on the property against which assessed and enforceable in the same manner as county taxes.

The water control districts often license and permit facilities or structures to be built on district lands and rights-of-way for outdoor recreational purposes. The water management districts also allow such activities on their lands and rights-of-way. However, s. 373.1395, F.S., seeks to encourage water management districts to make available land, water areas, and park areas to the public for outdoor recreational purposes by limiting the water management districts’ liability to persons going on such lands and to third persons who may be damaged by the acts and omissions of persons going on such lands. Generally, the water management district that leases any land or water area to the state for outdoor recreational purposes, or for access to outdoor recreational purposes, owes no duty of care to keep that land or water area safe for entry or going on that land or water of any hazardous conditions, structures, or activities thereon. A water management district that leases a land or water area to the state for outdoor recreational purposes does not, by giving such lease, extend any assurance that such land or water area is safe for any purpose, incur any duty of care toward a person who goes on the leased land or water area, and is not responsible for any injury to persons or property caused by an act or omission of a person who goes on the leased land or water area. This provision applies to any person going on the lease land or water area whether the person goes as an invitee, licensee, trespasser, or otherwise. This provision does not relieve the water management district of any liability that would otherwise exist for gross negligence or a deliberate, willful, or malicious injury to a person or property.

The Legislature has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions, resulting from a negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. A claim or judgment by any one person may not exceed \$100,000, and may not exceed \$200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence. Section 1.01(8), F.S., defines “political subdivision” as “counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.” The term “other districts” includes water management districts and water control districts.¹ Section 373.1395, F.S., specifically states that it does not create or increase the liability of a water management district beyond the limits established in s. 768.28, F.S.

¹ See *Andrews v. Pal-Mar Water Control District*, 388 So. 2d 4 (Fla. 4th DCA 1980); Fla. Attorney General Advisory Legal Opinion 78-113.

III. Effect of Proposed Changes:

Section 1 amends s. 298.54, F.S., relating to the maintenance tax for water control districts, allows the district's board of supervisors to apportion the maintenance taxes for the maintenance of the district facilities equally to all benefited acres if the board determines that benefits are substantially equal for benefited acreage throughout the district.

Section 2 creates s. 298.675, F.S., to provide limits to water control districts' liability from third-party use of district lands, rights-of-way, works, or easements for authorized, licensed, or permitted activities or facilities, or for outdoor recreational purposes. Specifically, when a water control district individually or jointly with another agency of government authorizes, permits, or licenses activities or facilities within district lands, rights-of-way, or works or lands over which the district has a legally established easement right, thereby allowing access to or use of such lands, rights-of-way, works, or easements for such activities or facilities or for outdoor recreational purposes, the district is not liable for personal injury or damages caused by the negligent acts of a permittee or the permittee's invitees which occur as a result of carrying out such activities or from the use of such authorized, permitted, or licensed facilities.

When district lands, rights-of-way, works, or easements are used or accessed by the public for authorized, permitted, or licensed activities or facilities or for outdoor recreational purposes, the district does not, by authorizing such use or access, extend any assurance that such lands, rights-of-way, works, or easements are safe for any purpose. Further, the district does not by such authorization incur any duty of care toward a person who goes onto those lands, rights-of-way, works, or easements; and is not responsible for any injury to persons or property caused by an act or omission of a person who goes onto those lands, rights-of-way, works, or easements.

This section does not, however, relieve a water control district of any liability arising out of the acts or omissions of its officers, employees, or agents which would otherwise exist for negligent or deliberate, willful, or malicious injuries to a person or property as provided by applicable law. This section does not create or increase the liability of a district or any person beyond that authorized by s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions.

"Outdoor recreational purposes" includes activities such as, but not limited to, horseback riding, hunting, fishing, bicycling, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, operating off-road vehicles, and visiting historical, archaeological, scenic, or scientific sites.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This CS allows a water control district board of supervisors to apportion maintenance taxes for the maintenance of district facilities equally to all benefited acres if the board determines that the benefits are substantially equal for the benefited acreage throughout the district.

B. Private Sector Impact:

The public could enjoy more outdoor recreational activities if the water control districts make available more of their lands, rights-of-way, works, or easements to the public for such purposes. Without the limitation of third-party liability, many districts may close or restrict access to the public.

C. Government Sector Impact:

This CS grants the water control districts a limitation on third-party liability. Currently, there is a similar provision in s. 373.1395, F.S., for the water management districts. This will help eliminate the need for duplicate and costly insurance coverage for the districts and their permittees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments: