

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 301 East Co. Water Control District
SPONSOR(S): Green
TIED BILLS: **IDEN./SIM. BILLS:** Ident. SB 1378, SB 1602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>17 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill provides that the East County Water Control District may apportion the benefits of subsequent improvements along with the benefits of the original construction when determining the apportionment of maintenance assessments amongst the benefited acreage within the district.

The bill also provides that the board of supervisors may equally apportion the maintenance assessments if they determine that the benefits are substantially equal to acreage throughout the district.

According to the Economic Impact Statement, the bill does not appear to impact local or state budgets.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. This bill appears to provide for the increase in maintenance assessments, and therefore, it can be argued that it increases government.
2. While assessments are not taxes, it appears to increase fees by virtue of the inclusion of subsequent improvements and the resultant effect on assessments.

B. EFFECT OF PROPOSED CHANGES:

This bill provides that any improvements subsequent to the original construction will be calculated into the apportionment of maintenance assessments of the East County Water Control District.

Background

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 of 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.

Current Law

Chapter 298, F.S., contains the provisions governing the creation and operation 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 of the special district. Section 298.01, F.S., 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, F.S. Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by chapter 298, Florida Statutes.

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.

The districts are governing by a board of supervisors that 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, 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, F.S., 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 ch. 298, F.S.

Section 298.76 F.S., 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 F.S., 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, s. 298.76, F.S., 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 ch. 298, F.S., at the time the district was created, and organized.

C. SECTION DIRECTORY:

Section 1. Amends the special act relating to the East County Water Control District to provide that subsequent improvements will be added to the net benefits assessment for purposes of apportioning maintenance assessments.

Specifically, the bill amends ch. 2000-423, L.O.F., to provide that maintenance assessments for the East County Water Control District shall be apportioned on the basis of the net benefits accruing from subsequent improvements as well as those accruing from the original construction.

Additionally, the bill provides that the board of supervisors may equally apportion the maintenance assessment if they determine the benefits are substantially equal for benefited acreage throughout the district.

Section 2. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

December 24, 2002.

WHERE?

News-Press, a daily newspaper of general circulation in both Lee County and 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There do not appear to be any technical drafting issues.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.