

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 Water Control Districts
SPONSOR(S): Machek
TIED BILLS:

IDEN./SIM. BILLS: Sim. SB 266

| 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></u> | <u></u> | <u></u> |
| 3) <u>Natural Resources</u> | <u></u> | <u></u> | <u></u> |
| 4) <u>Judiciary</u> | <u></u> | <u></u> | <u></u> |
| 5) <u>Agriculture & Environment App.</u> | <u></u> | <u></u> | <u></u> |
| 6) <u>Appropriations</u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

This bill provides that improvements made subsequent to the original construction of water control district ditches, drains or other improvements, may be calculated into the benefits accruing to acreage within the district for purposes of assessing properties with a maintenance tax. Additionally, if the board of directors of a water control district determines that any subsequent improvements equally benefit all benefited acres, then the district may equally apportion the maintenance taxes to all acreage throughout the district.

The bill also provides a liability waiver to all water control districts with respect to any persons using the district's lands, rights-of-ways, works, or easements for authorized, permitted, or licensed activities or facilities, or outdoor recreational purposes.

The bill creates a new section of law which provides that the section controls with respect to the liability of any water control district to persons using the district lands, rights-of-way, works, or easements for authorized, permitted, or licensed activities or facilities, or outdoor recreational purposes.

The bill provides that when a water control district permits or licenses activities or facilities, that the District is not liable for personal injury or damages caused by the negligent, willful, or intentional acts of a permittee or their invitee.

The bill provides that a water control district does not incur any duty of care by reason of a district authorization. Therefore, without a duty of care, there can be no case of negligence made against a water control district for issuance of a permit or authorization to use district property.

The bill provides that a water control district is not relieved of any liability arising out of the acts or omissions of its officers, employees, or agents that would otherwise exist for negligent, deliberate, willful, or malicious injuries to a person or property as provided by law. Also, provides that any such liability is subject to s. 768.28, F.S.

The bill does not appear to have an impact on local or state budgets.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0807b.lgv.doc
DATE: March 20, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

3. The bill limits individual freedom to pursue legal remedies of some individuals who may experience an injury of other damages as s. 2 of the bill has the effect of eliminating water control districts' liability under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

This bill addresses two issues. The first issue relates to the apportionment of maintenance assessments. The second issue relates to a waiver of liability for the benefit of water control districts.

Apportionment of Maintenance Assessments – Issue 1

This bill provides improvements made subsequent to the original construction of water control district ditches, drains or other improvements, may be calculated into the benefits accruing to acreage within the district for purposes of assessing properties with a maintenance tax.

Additionally, if the board of directors of a water control district determines that any subsequent improvements equally benefit all benefited acres, then the district may equally apportion the maintenance taxes to all acreage throughout the district.

Background – Issue 1

Similar authority is being sought in HB 301 relating to the East County Water Control District in Lee and Hendry Counties.

Current Law – Issue 1

Section 298.54, F.S., currently provides authority for the apportionment of an annual maintenance tax apportioned upon the basis of the net assessments of benefits assessed from the *original* construction of ditches, drains and other improvements within a water control district. A further discussion of existing law relating to water control districts is found below.

Waiver of Liability- Issue 2

This bill also provides a liability waiver to all water control districts (not water management districts created pursuant to ch. 373, F.S.) with respect to any persons using the district's lands, rights-of-ways, works, or easements for authorized, permitted, or licensed activities or facilities, or outdoor recreational purposes.

The bill creates a new section of law in ch. 298, F.S., which provides that the section controls with respect to the liability of any water control district created pursuant to ch. 298, F.S, or by special act, to

persons using the district lands, rights-of-way, works, or easements for authorized, permitted, or licensed activities or facilities, or outdoor recreational purposes.

The bill provides that when a water control district permits or licenses activities or facilities, that the District is not liable for personal injury or damages caused by the negligent, willful, or intentional acts of a permittee or their invitee.

The bill provides that a water control district does not incur any duty of care by reason of a district authorization. Therefore, without a duty of care, there can be no case of negligence made against a water control district for issuance of a permit or authorization to use district property.

The bill provides that a water control district is not relieved of any liability arising out of the acts or omissions of its officers, employees, or agents that would otherwise exist for negligent, deliberate, willful, or malicious injuries to a person or property as provided by law. Also, provides that any such liability is subject to s. 768.28, F.S.

The bill defines the term “outdoor recreational purposes” to include such activities as horseback riding, hunting, fishing, bicycling, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, waterskiing, motorcycling, and visiting historical, archeological, scenic, or scientific sites.

Background – Issue 2

The Lake Worth Drainage District (District), in Palm Beach County, the subject of HB 773, a district created pursuant to ch. 298, F.S.,¹ comprises some 511 miles of canals, 20 major water control structures and numerous minor structures that provide flood protection to over 700,000 residents, 20,000 acres of agricultural land and 120,000 acres of urban development.² The District is the largest water control district in the state and was originally established to provide flood control to promote settlement and small scale agricultural enterprises in what was then a sparsely populated rural southern Palm Beach County.³

The District’s website indicates that “all projects within the District’s boundaries, regardless of size or location, require review and permitting by the District.”⁴ Historically, the District issued permits to individuals living adjacent to the District’s channels for such things as boat docks, fences, boat davits, and similar structures. Also, historically, the District required permittees to name the District as an Additional Insured on their insurance policies. At some time after Hurricane Andrew, reportedly these insurance carriers discontinued the practice of allowing the District to be named as an Additional Insured. The District sought legislation (HB 1065) during the 2002 Session to authorize a more complete liability waiver than the one currently sought in HB 773 and this bill. HB 1065 (2002) died in the Committee on Local Government & Veteran Affairs. The District advises that it has ceased issuing permits in light of the permittees’ inability to secure insurance that names the District as an Additional Insured.⁵

Current Law (Sovereign Immunity) – Issue 2

Sovereign immunity is a doctrine that prohibits suits against the government without the government’s consent. The State Constitution addresses sovereign immunity in s. 13, Art. X. This provision allows the state to waive its immunity through an enactment of general law. Sovereign immunity extends to all subdivisions of the state.

¹ Created in 1915 by ch. 6458, L.O.F.; and currently operating pursuant to ch. 98-525, L.O.F.

² Lake Worth Drainage District brochure, Terry Lewis, Esq., Lewis, Longman & Walker, P.A., 3/4/03.

³ Lake Worth Drainage District brochure, Terry Lewis, Esq., Lewis, Longman & Walker, P.A., 3/4/03.

⁴ <http://www.lwdd.net/introduction.general.html> , 3/18/03.

⁵ Terry Lewis, Esq., Lewis, Longman & Walker, P.A., 3/4/03.

The 1973 Legislature enacted s. 768.28, F.S. This section allows individuals to sue the state government, subdivisions of the state, and municipalities under circumstances where a private person “would be liable to the claimant, in accordance with general laws of the state...”

Under current law, water control districts are subject to the same waiver of sovereign immunity for tort actions provided for the state, its agencies or subdivisions.⁶ 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.

Claims Bills – Issue 2

A claim bill, sometime called a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency. It is a means by which an injured party may recover damages even though the public officer of agency involved may be immune from suit. Majority approval in both houses of the Legislature is required for passage.

There are two kinds of claims bills – general and local. General bills are paid out of the state’s general appropriations. Local bills are paid by local dollars. Once a claim bill has been approved by the Legislature and signed by the Governor it has the effect of law.

In 1995, a claims bill was filed seeking \$909,000 from the Loxahatchee Groves Water Control and Management District as a result of personal injuries.⁷

Negligence – Duty to Care – Issue 2

One of the essential or fundamental elements or threshold elements of actionable negligence is the existence of a duty owed by the person charged with negligence to the person injured. There must be some relation or nexus from which flows a legal duty, express or implied, on the part of the defendant toward the particular person injured. Without the element of such a duty, there is no cause of action for negligence.

This bill creates s. 298.82(2), F.S., which provides that water control districts incur no “duty of care toward a person who goes onto those lands...” by reason of a district authorization. Therefore, without a duty of care, there can be no case of negligence made against a water control district for issuance of a permit or authorization to use district property.

Water Control Districts – Generally

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

⁶ Section 13, Art. X, State Constitution; and s. 768.28, F.S.

⁷ HB 1353 (1995) died in the Senate.

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 existing law to provide that any improvements subsequent to the original construction of water control district ditches, drains and other improvements may be calculated into the apportionment of maintenance assessments of a water control district.

Section 2. Creates s. 298.82, F.S., which provides that this section controls with respect to the liability of any water control district created pursuant to ch. 298, F.S, or by special act, to persons using the district lands, rights-of-way, works, or easements for authorized, permitted, or licensed activities or facilities, or outdoor recreational purposes.

- (1) Provides that when a water control district permits or licenses activities or facilities, that the District is not liable for personal injury or damages caused by the negligent, willful, or intentional acts of a permittee or their invitee.
- (2) Provides that a water control district does not incur any duty of care by reason of a district authorization. Therefore, without a duty of care, there can be no case of negligence made against a water control district for issuance of a permit or authorization to use district property.
- (3) Provides that a water control district is not relieved of any liability arising out of the acts or omissions of its officers, employees, or agents that would otherwise exist for negligent, deliberate, willful, or malicious injuries to a person or property as provided by law. Also, provides that any such liability is subject to s. 768.28, F.S.
- (4) Defines the term "outdoor recreational purposes."

Section 3. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unless negligence on the part of a water control district can be proved, members of the private sector who are injured or damaged while utilizing facilities or while participating in activities on district lands or rights-of-ways may be impacted as a result of their inability to seek redress for their injuries or damages.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Access to Courts

The Legislature can only eliminate a remedy if there is a valid public purpose coupled with a reasonable alternative, or an overriding public necessity. The question then arises whether there is a historic remedy for persons injured or suffering damages while engaging in activities while on property of a water control district.

If there are any historic remedies available to an individual who suffers a personal injury or damage while engaging, for instance in an activity for "outdoor recreational purposes," then the Legislature

may not eliminate that remedy unless there is a valid public purpose coupled with a reasonable alternative, or an overriding public necessity.

Since water control districts are governmental entities, they have the duty to warn or correct a known danger created by the government.⁸ A duty to warn arises with respect to a known hazard so serious and so inconspicuous to a foreseeable plaintiff that it virtually constitutes a trap.⁹ If the danger is so open, notorious, and readily apparent to the public, there is no duty to warn.¹⁰ Thus, if a court determines that there is a historic legal remedy that is being eliminated by the Legislature, the court may determine that there is an infringement on the right of access to courts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

There do not appear to be any technical drafting issues.

Other Comments

Water control districts establish, individually, their own scheme for the licensing or permitting of facilities and activities on district lands and rights-of-way. That licensing and permitting scheme is not regulated and is not standardized in any manner. Thus, each water control district develops its own scheme or approach for what, when, and how, to license or permit these facilities or activities.

This bill removes from water control districts any liability, other than for acts or omissions of its officers, employees, or agents that would otherwise exist for negligent or deliberate, willful, or malicious injuries to a person or property as provided by applicable law. Thus, under s. 2 of this bill, water control districts are not liable for any results or consequences as a result of the licensing or permitting decisions, unless the injured or damaged party can make a case for negligent, willful or malicious injury.

The Florida Association of Special Districts is the proponent of this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁸ See *City of St. Petersburg v. Collom*, 419 So.2d 1082 (Fla. 1982).

⁹ See *DOT v. Konney*, 587 So.2d 1292 (Fla. 1991).

¹⁰ See *Barrera v. DOT*, 470 So.2d 750 (Fla. 3rd DCA).