

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 881 Englewood Water District
SPONSOR(S): Detert
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	_____	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) <u>Ethics & Elections (Sub)</u>	_____	_____	_____
3) <u>Procedures</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill recodifies the current special acts relating to Englewood Water District and further amends the charter. The bill repeals the existing special act passed by the 2002 Legislature codifying the Districts' charter.

The bill amends the charter to: 1) shorten the period of time when Board members assume office following their election; 2) deletes the provisions for the threshold for general obligation indebtedness; and 3) increases the threshold for the purchase of commodities or contractual services which require advertised bids from \$15,000 to \$25,000.

No fiscal impacts are anticipated for either fiscal year 2003-04 or 2004-05 according to the Economic Impact Statement.

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 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:

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

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Present Situation

The Englewood Water District (District) is an independent special district created by chapter 59-931, L.O.F., as amended, to provide water and sewer services within the District’s 45.5 square-mile boundaries. The predominate land use within the District is residential, and the District straddles the boundaries of Charlotte and Sarasota Counties.

History of Water Control Districts

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state’s first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts – through 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 Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing 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

Section 298.01, Florida Statutes, restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of section 125.01, Florida Statutes (dependent water control districts). 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, the circuit court where the majority of the land is located has jurisdiction within the boundaries of the district. Once a district is organized, notice of the first landowners' meeting shall be given. The notice shall be published once a week for two consecutive weeks in a newspaper. At the first meeting, the landowners are required to elect a three-member board of supervisors. Supervisors serve 3-year rotating terms, with one supervisor elected each year at a required 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. The Department of Environmental Protection is authorized to vote on any matter that may come before a landowners' meeting if acreage owned by the state is subject to assessment by the district.

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. Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one acre are entitled to one vote. The section allows proxy voting by landowners as well. Landowners owning more than one acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowners' acreage has been aggregated for purposes of voting.

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 plan amendment. The board of supervisors shall 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 plan amendment the board of supervisors will consider any objections to the plan and then shall determine whether or not to proceed with the plan. 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 shall 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 the completing the water control plan and an estimate of the benefits derived from the water control plan.

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 filing of the engineer's report with the secretary of the district.

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

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, which must be imposed on the property so that the burden on every parcel will bear a just proportion to that imposed on every other. In other words, the assessment of the particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. Special assessments may be determined legislatively or judicially.

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, such a general law may be amended or repealed by like vote.

Section 298.76, Florida Statutes, is an example of such 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:

- (a) Changing the method of voting for a board of supervisors for any water control district;

- (b) Providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any water control district; and
- (c) Changing 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.

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in section 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended section 189.429, Florida Statutes to provide that reenactment of existing law pursuant to section 189.429: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of sections 189.429 and 191.015, F.S., 122 special districts have codified their charters.

Status Statement Language

Section 189.404(5), F.S., provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform to the Department of Community Affairs' determination or declaratory statement regarding the status of the district.

C. SECTION DIRECTORY:

Section 1. Creates the Englewood Water District; describes the District's boundaries.

Section 2. Provides definitions.

Section 3. Provides the District be governed by a Board of Supervisors consisting of five members; allows revision of the District Supervisor Election Districts if boundaries are modified; provides for election of Board members; provides each elected member of the Board will assume office 10 days following the member's election; provides for vacancies; provides for residency requirements; provides for compensation of the Board members; provides for per diem and travel expenses; provides for open and noticed meetings; permits the Secretary to the Board to attest a contract, and to clarify that the

administrator is the administrator of the District; requires 14 day notice of any public hearing at which a bond resolution will be considered.

Section 4. Establishes powers, authorities, and duties of the Board.

Section 5. Provides for bonding provisions; authorizes Board to issue revenue bonds to finance the costs of additions, extensions, and improvements to or the acquisition of systems; provides for contracts; authorizes Board to enter into such credit enhancement or liquidity agreements as the Board may determine; notwithstanding present law, proceeds of bonds and money set aside or pledged to secure payment of the principal of, premium, and interest on bonds, or any of the contracts entered into pursuant to this section, may be invested in securities or obligations described in the resolution providing for the issuance of bonds.

Section 6. Provides for the initial schedule of rates, fees, or other charges; requires the Board to set rates prior to the issuance of revenue bonds; allows Board, by resolution, to consolidate any one or more systems for the purposes of setting rates, provided such consolidation does not impair the rights of any bondholders of the District.

Section 7. Provides for the Board to establish additional agreements with bondholders.

Section 8. Provides for fees, rates, or charges in default; provides for provisions relating to liens is pursuant to general law.

Section 9. Provides for the levy of non-ad valorem assessments on the lands and real estate benefited by the construction of any system or extensions or improvements of such, or any part of such, for all or part of the costs; provides for improvements; provides the assessment plat to be available at the District office at the time the resolution is adopted, the assessment plat must be available for public inspection and must show the area to be assessed, plans and specifications, and an estimate of the cost of the proposed improvement; provides for public notice; provides for a preliminary assessment roll and requires that specified information be included in the preliminary assessment roll; provides the Board by resolution adopt a place and time at which the owners of the property are assessed or other interested parties may appear before the Board to provide comment; provides for notice to each property owner; requires a hearing for testimony regarding proposed improvement and non-ad valorem assessment; requires Board to make a final decision on whether to levy the non-ad valorem assessment; provides for adoption by resolution a final assessment roll; provides for non-ad valorem assessment to be payable at the time and in the manner stipulated in the resolution providing for the improvement, provision is made for liens and late fees; provides Board authorization for the levy, assessment, and collection of non-ad valorem assessments as provided by general law; provides for counties and school districts and their obligations regarding assessments; provides no lien on such property may be foreclosed unless and until the real estate is conveyed to a person or entity which is not a political subdivision.

Section 10. Provides for annual reporting.

Section 11. Provides for the rights of any holder of bonds issued under this act.

Section 12. Relates to the declaration of public purpose of the District; declares the District and the property of the District shall not be subject to taxation by the state or any political subdivision, agency, instrumentality, or municipality; exempts the bonds or other obligations issued under the act from taxation; provides the exemption does not apply to any tax imposed by chapter 220, F.S., on interest, income, or profits.

Section 13. Provides for additional charges for manufacturing and industrial plants or buildings.

Section 14. Provides for agreements for the delivery of bonds.

Section 15. Provides for procedures and requirements for bidding to the extent that any commodities or services in excess of \$25,000 must be publicly advertised and bid.

Section 16. Provides for rates, fees, charges, and non-ad valorem assessments to be fixed, levied, and collected.

Section 17. Authorizes the District to classify as surplus any of its property and dispose of such property consistent with general law.

Section 18. Provides for the construction of specified systems within the District.

Section 19. Provides for the Board's power to mortgage, pledge, encumber, sell, or convey property.

Section 20. Provides for the rights of bondholders.

Section 21. Provides the provisions of this act constitute a contract with holders of any bonds issued under this act.

Section 22. Provides the provisions of this act are severable.

Section 23. Allows the District to assume the operation of any water system or sewer system that fails to meet its financial responsibilities or operating standards; provides that before assuming operation of any system, the Board must find that the assumption of the system is in the public interest, and the owner of the system must convey the system to the District.

Section 24. Authorizes the Board to lease or license any of the District's property subject to specified conditions; prohibits the use of such property for purposes in conflict with this act or general law.

Section 25. Authorizes the District to assess an interest charge for contractual obligations owed the District.

Section 26. Provides for the member of the Board to be subject to recall as provided by general law for elected officers of municipalities.

Section 27. Provides that any person who steals, damages, tampers with or alters District property or threatens or causes actual harm to public health shall be guilty of a criminal offense and misdemeanor within the meaning of s. 775.08, F.S., unless such offense is of a higher degree in general law, and shall be punished as provided by general law.

Section 28. Provides for enforcement of all contracts, obligations, rules, regulations, or policies of any nature existing on the date of enactment of this act.

Section 29. Provides this act shall not affect the terms of office of the present District Board and employees.

Section 30. Repeals chapter 96-499, Laws of Florida.

Section 31. Provides for the act's control if there are conflicting provisions.

Section 32. Provides for the liberal construction of act.

Section 33. Provides for the repeal of any act in conflict of any other act.

Section 34. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 4, 2002

WHERE? A Sun Coast Media Group, Inc. Publication, Charlotte 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: Not Applicable.

B. RULE-MAKING AUTHORITY: Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: The bill fails to provide adequate directory language and contains obsolete provisions relating to past District elections.

Other Comments: Many local bills contain language providing that in the event of a conflict of the provisions of the local bill with the provisions of any other general or local law, the provisions of the act being considered controls to the extent of the conflict(s). This is referred to as a "supremacy" clause. This language does not allow interested persons or Members of the Legislature knowledge of the specific laws containing potential conflicts. Unless those specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The sponsor of the bill will be offering one amendment to add directory language and to delete obsolete language.