

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1381 Englewood Water District
SPONSOR(S): Paul
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>9 Y, 0 N</u>	<u>Smith</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Englewood Water District (District) in Charlotte and Sarasota counties is an independent special district that was created by chapter 59-931, Laws of Florida, and which has been amended by subsequent special acts. The district codified all of its prior special acts into one special act in chapter 96-499, Laws of Florida.

The District is amending its charter to:

- shorten the period of time when Board members assume office following their election;
- increase the maximum compensation for Board members from an amount not to exceed \$2,500 annually to an amount not to exceed \$6,000 annually;
- deletes the provisions for a threshold for general obligation indebtedness; and
- increases the threshold from \$15,000 to \$25,000 for the purchase of commodities or contractual services which require advertised bids.

According to the Economic Impact Statement, the estimated cost of administration, implementation, and enforcement is \$20,000 for fiscal years 2004-05 and 2005-06.

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:

The Englewood Water District (District) in Charlotte and Sarasota counties is an independent special district that was created by chapter 59-931, Laws of Florida, and which has been amended by subsequent special acts. The district codified all of its prior special acts into one special act in chapter 96-499, Laws of Florida. The district provides 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.

The District is amending its charter to:

- shorten the period of time for members taking office from on the first day of January following an election to ten days following the election for when Board members assume office;
- increase the maximum compensation for Board members from an amount not to exceed \$2,500 annually to an amount not to exceed \$6,000 annually;
- deletes the provisions for the threshold for general obligation indebtedness; and
- increases the threshold from \$15,000 to \$25,000 for the purchase of commodities or contractual services which require advertised bids.

The bill deletes unnecessary language, reorganizes some subsections, and changes subsection designations throughout the charter.

The bill makes minor, stylistic changes to some of the language of the charter.

Changes to Election of Supervisors – Section 3 of the Charter

Section 3 of the charter of the District sets forth the provisions for the election of supervisors:

By a majority vote, the district will adopt a preliminary resolution dividing the district into five separate and distinct sections of approximately equal populations, drawn along Charlotte County and Sarasota County precinct lines, if feasible. These divisions will be known as the “Englewood Water District Supervisor Election Districts” and will be numbered 1 through 5.

After the initial adoption by the board of the proposed Englewood Water District Supervisor Election Districts, the district shall hold a public hearing at which all residents of the district or other interested parties shall have an opportunity to be heard concerning the proposed Englewood Water District Supervisor Election Districts. Notice of such public hearing setting forth the five proposed Englewood Water District Supervisor Election Districts shall be given by one publication in a newspaper published

in Charlotte County, and in one publication in a newspaper published in Sarasota County, and such notice shall also be posted in five public places in the district, at least 30 days prior to the date of such hearing, which may be adjourned from time to time.

After such hearing, such preliminary resolution dividing the district into five separate and distinct sections, known as the Englewood Water District Supervisor Election Districts, either as initially adopted or as modified or amended, shall be finally adopted. A map of the Englewood Water District Supervisor Election Districts shall be kept on file in the office of the administrator of the district and shall be open to public inspection during normal business hours.

The Englewood Water District Supervisor Election Districts shall be revised every 10 years in the same manner as they were originally established as hereinabove established. If the boundaries of the district are modified, the election districts shall be modified as necessary in the same manner established above in adequate time for the new election districts to be utilized during the next general election.

On the first Tuesday after the first Monday in November 2002, and every 4th year thereafter, two supervisors, one residing in Englewood Water District Board of Supervisors Election District 5 and one residing in Englewood Water District Board of Supervisors Election District 4, shall be elected by the qualified electors of the Englewood Water District for terms of 4 years each.

On the first Tuesday after the first Monday in November 2004, and every 4th year thereafter, three supervisors, one residing in Englewood Water District Board of Supervisors Election District 3, one residing in Englewood Water District Board of Supervisors Election District 2, and one residing in Englewood Water District Board of Supervisors Election District 1, shall be elected by the qualified electors of the Englewood Water District for terms of 4 years each.

The results of such election shall be declared by resolution adopted by the board. *Each elected member of the Board shall assume office 10 days following the member's election.* Each supervisor shall duly file his or her oath of office and a bond in such amount as the board shall determine for the faithful performance of his or her duties prior to taking office and the cost thereof shall be paid by the district.

All elections will be nonpartisan.

Elections for the purpose of electing supervisors to the board shall conform to the Florida Election code, chapters 97-106, Florida Statutes, as pertains to independent special districts as set forth in section 189.405, Florida Statutes. 1. The results of the election shall be jointly canvassed by the county canvassing boards of the Counties of Charlotte and Sarasota and the results of such joint canvass shall be reported in accordance with general law. 2. Supervisors shall be qualified electors with legal residence in the appropriate Englewood Water District Board of Supervisors Election District, who are freeholders. The office of any supervisor who ceases to be a qualified elector with legal residence in the appropriate election district and a freeholder in the district during his or her term of office shall become vacant.

Changes to the compensation of board members – Section 3 of the Charter

The board shall be vested with all administrative power and authority of the district and shall have and exercise all powers conferred upon such district by the terms of this act. Members of the board may each be paid a salary or honorarium to be determined by at least a majority plus one vote of the board, which salary or honorarium may not exceed \$500 per month for each member. *Special notice of any meeting at which the board will consider a salary change for a board member shall be published at least once, at least 14 days prior to the meeting, in a newspaper of general circulation in the county in which the district is located.* Separate compensation for the board member serving as treasurer may be authorized by like vote so long as total compensation for the board member does not exceed \$500 per month. Said salary or honorarium shall be adjusted in accordance with section 191.005(4), Florida

Statutes. Said board members shall also be reimbursed for moneys expended in the performance of their official duties consistent with the provisions of section 112.061, Florida Statutes. (See section III. C "OTHER COMMENTS:".)

Changes to allow Board Members to join the Florida Retirement System – Section 4 of the Charter

The bill amends section 4 of the charter to provide Board members a pension or retirement plan for its employees. (See section III. C "OTHER COMMENTS:".)

Deletion of the provision for the threshold for general obligation indebtedness – Section 4 of the Charter

The following language was removed from the charter "the total amount of all general obligation indebtedness of the district issued pursuant to this act shall not exceed the aggregate principal amount of \$12 million or 15 percent of the assessed valuation of the taxable property in the district, whichever may be the lesser of the two, said assessed valuation to be ascertained by the last preceding valuation for taxes."

Changes to the threshold for purchase of commodities or contractual services – Section 15 of the Charter

The bill increases the threshold from \$15,000 to \$25,000 for the purchase of commodities or contractual services which require advertised bids.

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.

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.

C. SECTION DIRECTORY:

Section 1. Provides that this act is the District's charter codification required under section 189.429, Florida Statutes; provides Legislative intent; preserves all District authority.

Section 2. Codifies, reenacts, amends, and repeals chapters 59-931, 67-811, 71-480, 85-406, 86-420, 89-400, 90-408, 91-357, 92-271, 94-437, and 96-499, Laws of Florida.

Section 3. Re-creates the Englewood Water District and re-creates and reenacts the charter as follows:

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, Florida Statutes, 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, Florida Statutes, 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 4.** Repeals chapters 59-931, 67-811, 71-480, 85-406, 86-420, 89-400, 90-408, 91-357, 92-271, 94-437, and 96-499, Laws of Florida.
- Section 5.** Provides for the repeal of any section, subsection, sentence, clause, phrase, or portion of this act if it is held invalid or unconstitutional.
- Section 6.** Provides for the liberal construction of act.
- Section 7.** Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 3, 2003 and November 1, 2003

WHERE? *Charlotte/Englewood Herald Tribune*, Charlotte and Sarasota County, Florida and *The Sun*, Charlotte Harbor, Charlotte County, Florida and at Venice in Sarasota 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:

This bill does not provide authority for an agency to adopt rules to implement a specific power or duty created in this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sponsor may wish to amend the bill to address the status statement, correct the repeal section, and correct the directory language.

Mr. Thomas P. McLennon, Esq., representing the District, sent the following letter relating to the Englewood Water District – Enabling Act:

Please be advised that the legal description for the Englewood Water District has been corrected in HB1381-2004 Legislative Session, and there have been no changes in boundaries of the Englewood Water District.

Regarding as to whether the Englewood Water District is a drainage and water control district pursuant to Chapter 298, Florida Statutes, I contend that the Englewood Water District is not a

drainage and water control district and has never been considered as such, nor has it conducted its activities pursuant to Chapter 298. I have represented the Englewood Water District for over fifteen (15) years and in that time the District has not been involved with any activities described in Chapter 298, Florida Statutes. A Chapter 298 District is empowered with the authority to control water and drainage within specified boundaries; i.e. to clean out, straighten, open up, widen, or change the course and flow of any canal, ditch, drain, river, water course, or natural stream, or to construct or enlarge any and all bridges that may be needed in and out of said District over any such canal, ditch or stream. These matters relate to surface control, runoff and drainage which is not a function of the Englewood Water District.

The Englewood Water District is recognized by the Department of Community Affairs as an independent special district pursuant to Chapter 189. It has the specific purpose of providing potable water, wastewater and reuse services to residents within the boundaries of the Englewood Water District. The Englewood Water District is subject to the authority of the Southwest Florida Water Management District. The Englewood Water District has never adopted a water control plan because it has no authority over any drainage issues or water resource issues, nor does it have any jurisdiction over any canals, streams, etc. within its boundaries.

The Englewood Water District is simply a special-purpose local government which was created at a time when neither Sarasota County nor Charlotte County was in a position to supply potable water, wastewater and reuse services. The Englewood Water District is somewhat unique in that typically potable water, wastewater and reuse services are provided by a general-purpose local government; i.e., a county or a municipality. Because the Englewood Water District straddles two (2) counties and because in 1959 neither county was in a position to provide such service to the Englewood area, an independent special district was created solely for that purpose. A review of Chapter 298 and 189 will show that the Englewood Water District squarely falls within Chapter 189 and not Chapter 298.¹

Mr. Garry Green, Research & Education Section, Division of Retirement, Department of Management Services, sent the following e-mail relating to the Board of Supervisors authority to join the Florida Retirement System:

The Englewood Water District already participates in the FRS for its general employees. You asked about the Florida Retirement System (FRS) participation options for the elected officers of the Englewood Water District.

1. If current law is not changed, these elected officials cannot participate in the FRS because there is a specific prohibition against their eligibility for pension or retirement benefits. See Chapter 96-499, Laws of Florida, in the first paragraph at the top of page 130 of the enabling act.

2. If HB 1381 is enacted, then the elected board could have options to be able to participate under the FRS provided:

* The board elected to receive a salary instead of an honorarium, see pages 10 & 11 of the bill - lines 287-304. Under the FRS, service credit is earned based upon compensation reported for work performed. An honorarium does not meet the definition of compensation under Chapter 121, F.S.

* HB 1381 does not contain any prohibition against the elected officials receiving pension or retirement benefits. The board would have to decide if the agency was going to participate in the FRS for its elected officials. If so, then the board would have to pass a new resolution for their participation in the FRS for the board members. The board would have to decide if its elected

¹ Letter received from Thomas P. McLennon, Esq., Thomas P. McLennon, Esq., a Professional Association (March 11, 2004) (on file with the Committee on Local Government & Veterans' Affairs).

officials were covered as members of the Regular Class or the Elected Officers' Class. The board would have to have a participation agreement with the FRS to include their elected officials.

Again, if HB 1381 passes, the board would not have to cover its elected officers for FRS participation but it would have options available to them. If the board is going to cover its elected officers, then those decisions would have to be presented as a resolution(s) and voted upon in their public meetings - as outlined in this bill.²

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Subcommittee on Local Affairs recommended the adoption of an amendment to address the status statement, correct the directory language, delete an incorrect reference, and correct the repeal section.

² Email received from Gary Green, Division of Retirement, Department of Management Services (March 12, 2004) (on file with the Committee on Local Government & Veterans' Affairs).