

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1389 CS

Water Control Districts

SPONSOR(S): Domino

TIED BILLS:

IDEN./SIM. BILLS: SB 2460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water & Natural Resources Committee</u>	<u>8 Y, 0 N</u>	<u>Smith</u>	<u>Lotspeich</u>
2) <u>Local Government Council</u>	<u>6 Y, 0 N</u>	<u>Camechis</u>	<u>Hamby</u>
3) <u>State Resources Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Smith</u>	<u>Hamby</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill amends several provisions of Chapter 298, F.S., relating to water control districts. Specifically, the bill:

- Grants the board of directors (board) of a water control district (district) the authority to purchase or lease real or personal properties for use in works projects.
- Requires the water management district to recommend proposed changes within 60 days after receipt of the plan or amendment, rather than 90 days.
- Provides that amendments to the engineer's report that do not result in a levy increase are not subject to notice and adoption procedures applicable to water control plans.
- Revises notice requirements for water control plans or amendments.
- Provides that a local map or legal description is a geographical depiction sufficient for purposes of notice of filing the engineers report.
- Requires objections and proposed revisions to the engineer's report, water control plan, or plan amendment to be heard and determined by the district board.
- Provides that assessments are, from January 1 of each year assessable property is liable for assessments, a lien until paid on the property.
- Requires any amendments resulting in a change in property value to also be reflected in the engineer's report.

The bill appears to have no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the authorities of water control districts.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

History of Water Control Districts¹

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 (now codified in Chapter 298, F.S.), 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, F.S., 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, F.S., 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, F.S., (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, F.S.,²

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.³ 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.⁴ 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.⁵

One-Acre, One-Vote

Section 298.11(2), F.S., 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

¹ Water Control Districts; Report by the Local Government Council, 1999.

² s. 298.01, F.S.

³ s. 298.01, F.S.

⁴ s. 298.11 (1), F.S.

⁵ s. 298.11 (3), F.S.

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.⁶

Role of the Circuit Courts⁷

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 Plans⁸

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.

A water control plan must reflect these minimum requirements, where applicable:⁹

- Descriptions of the district's statutory authority
- Maps delineating all boundaries of the district and sub districts
- Descriptions of all land and facility uses
- Engineering descriptions for each facility's ability to store water
- Map of areas outside the district where the district provides service
- Detailed descriptions of proposed facilities in the next 5 years
- Description of the administrative structure of the district

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.¹⁰ The board must also submit the plan or amendments to the jurisdictional water management district for review. The water management district has 90 days from receipt of the plan or amendments to review them for consistency with the applicable water resource plans and policies, and recommend to the board any proposed changes¹¹

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, it will 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 completing the water control plan and an estimate of the benefits derived from the water control plan. If proposed amendments do not result in the revision of the district plan, or

⁶ s. 298.11 (2), F.S.

⁷ s. 298.01, F.S.

⁸ s. 298.225, F.S.

⁹ s. 298.225 (3), F.S.

¹⁰ s. 298.301 (2), F.S.

¹¹ s. 298.225 (5), F.S.

require the increase of any assessments beyond the maximum amount prescribed by law, those amendments are exempt from the public hearing process provisions of s. 298.301 (2)–(9), F.S.¹²

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.¹³

The board of supervisors must review the water control plan at least every 5 years following its adoption.¹⁴

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.¹⁵ Any unpaid or delinquent assessments bear penalties in the same manner as county taxes. The assessments constitute a lien on the property until paid. This lien is enforceable in the same manner as county taxes.¹⁶

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.¹⁷

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 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, 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 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.

¹² s. 298.225 (8), F.S.

¹³ s. 298.301 (2), F.S.

¹⁴ s. 298.225 (7), F.S.

¹⁵ s. 298.305 (1), F.S.

¹⁶ s. 298.341, F.S.

¹⁷ s. 298.305 (2), F.S.

Finally, section 298.76 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, F.S., at the time the district was created and organized.

EFFECT OF PROPOSED CHANGES

Powers of the Board: Transfer of Properties

Section 298.22, F.S., authorizes water control districts to build and construct any works and improvements deemed necessary to preserve and maintain the works in or out of the district. Districts are also authorized to acquire, construct, operate, maintain, use, sell, convey, or transfer pumping stations, including pumping machinery, motive equipment, electric lines, and all appurtenant or auxiliary machines, devices, or equipment.

This bill expands the powers of a district to authorize the purchase and lease of real or personal property.

Water Control Plans

Section 298.225(5), F.S., requires the board of supervisors to submit a proposed water control plan or plan amendment to the water management district for review. The water management district must review the plan or amendment for consistency with water resource plans and policies and recommend proposed changes within 90 days. The bill also requires the water management district to provide recommendations within 60 days rather than 90 days.

The bill exempts from public notice requirements the engineer's report and any amendments that do not require an increase in the levy of assessments or do not result in an increase of the overall benefits.

Public Notice

Section 298.301(2), F.S., requires the final hearing on approval of a proposed water control plan or plan amendment and engineer's report to be noticed and held at a regularly scheduled board of supervisors meeting within 60 days after filing of the engineer's report with the secretary of the district. This bill amends that section to provide that the hearing must take place at least 25 days, but no later than 60 days, after the last scheduled publication of the notice of filing the engineer's report with the secretary of the district.

Section 298.301(6), F.S., requires the board of supervisors to give notice of the filing of the engineer's report by publication of the *report* together with a *geographical depiction* of the district once a week for 2 consecutive weeks in a newspaper of general circulation in each county in the district. This bill amends that provision to provide that only the notice of filing the engineer's report must be published, rather than the entire report, and to allow a location map or legal description of the land to qualify as the required geographical description. The notice form is revised to incorporate the hearing date changes discussed above, and to allow the name of the President of the board of supervisors to be included on the published notice.

Section 298.301(8), F.S., requires "all objections" to be heard by the board of supervisors. This bill amends that provision to specifically require public hearing of all objections and proposed revisions to the engineer's report, water control plan, or plan amendment. The bill also clarifies current language regarding the process followed by the board of supervisors to sustain objections or implement proposed revisions.

Revenue Sources & Adjustment of Assessments

Section 298.341, F.S., provides that non-ad valorem assessments provided in ch. 298, F.S., and imposed by water control districts constitutes a lien until paid on the property against which assessed and are enforceable in the same manner as county taxes. The bill amends that section to provide that assessments, from January 1 of each year assessable property is liable for assessments, constitute a

lien until paid on the property against which assessed and are enforceable in the same manner as county taxes.

Section 298.77, F.S., permits owners of property in a district to file a petition with the board of supervisors stating that there has been a material change in the value of the property in the district since the last previous assessment of benefits. Upon hearing the petition, if the board finds that there has been a material change in the values of lands in the district since the last previous assessment of benefits, contributed to by the drainage system, and that the other material allegations of the petition are true, the board must order a readjustment of the assessment of benefits. This bill requires the board to also amend the engineer's report.

C. SECTION DIRECTORY:

Section 1: Amends s. 298.22(3), F.S., to authorize water control districts to purchase or lease real or personal property.

Section 2: Amends s. 298.225(5) and (8), F.S., to address provisions relating to water control plans.

Section 3: Amends s. 298.301(2), (6), and (8), F.S., relating to public hearings.

Section 4: Amends s. 298.341, F.S., to establish January 1 as the date property assessment liens attach.

Section 5: Amends s. 298.77(3), F.S., to require revision of the engineer's report to reflect material changes in the values of lands.

Section 6: Provides an effective date.

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: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 13, 2005, the State Resources Council adopted an amendment without objection:

Amendment 1: Removes language from the original bill requiring water control district board supervisors to submit proposed plans or amendments for only those projects that require a permit from the jurisdictional water management district.