

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1389

Water Control Districts

**SPONSOR(S):** Domino

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water &amp; Natural Resources Committee</u>	_____	<u>Smith</u>	<u>Lotspeich</u>
2) <u>Local Government Council</u>	_____	_____	_____
3) <u>State Resources Council</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, lease and transfer real or personal properties for use in works projects.
- Provides that only those water control plans and proposed amendments that require water management district permitting be submitted to a water management district.
- Includes the engineer's report as a substantial document, subject to statutory provisions.
- Changes the required public notice time a water control district must give to address adoption or amendments of the water control plan. Exempts certain engineer's reports and amendments from public notice requirements.
- Sets January 1 as the beginning date property is assessable in the year that property becomes assessable.
- 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:

##### **History of Water Control Districts**<sup>1</sup>

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 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.<sup>2</sup>

##### **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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

##### **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

<sup>1</sup> Water Control Districts; Report by the Local Government Council, 1999.

<sup>2</sup> s. 298.01, F.S.

<sup>3</sup> s. 298.01, F.S.

<sup>4</sup> s. 298.11 (1), F.S.

<sup>5</sup> s. 298.11 (3), F.S.

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.<sup>6</sup>

### Role of the Circuit Courts<sup>7</sup>

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<sup>8</sup>

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:<sup>9</sup>

- 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.<sup>10</sup> 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, any recommend to the board any proposed changes<sup>11</sup>

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

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<sup>6</sup> s. 298.11 (2), F.S.

<sup>7</sup> s. 298.01, F.S.

<sup>8</sup> s. 298.225, F.S.

<sup>9</sup> s. 298.225 (3), F.S.

<sup>10</sup> s. 298.301 (2), F.S.

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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

### 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.<sup>15</sup> 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.<sup>16</sup>

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

### 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, 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 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

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<sup>12</sup> s. 298.225 (8), F.S.

<sup>13</sup> s. 298.301 (2), F.S.

<sup>14</sup> s. 298.225 (7), F.S.

<sup>15</sup> s. 298.305 (1), F.S.

<sup>16</sup> s. 298.341, F.S.

<sup>17</sup> s. 298.305 (2), F.S.

(c) Changing the governing authority or governing board of any water control district.

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, Florida Statutes, at the time the district was created and organized.

### **EFFECT OF PROPOSED CHANGES**

#### **Powers of the Board: Transfer of Properties**

The bill adds to the current powers of the board of a water control district to grant them the authority to purchase, lease or transfer real property such as pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices, or equipment.

#### **Water Control Plans**

The bill requires the Board to submit proposals to the governing water management district only on those projects that require permitting. The bill reduces the time for the water management district to review the plan and/or amendments from 90 to 60 days.

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

#### **Public Notice**

The bill creates a minimum 25 day waiting period to hold a public hearing on the final adoption of the water control plan. The 60 day deadline to hold the hearing remains. The bill begins the 25 day waiting period from on date of the final public notice of the filing of the engineer's report with the district supervisor. The bill changes the language of the public notice to include the title of President of the District's supervisory board.

The bill requires the public notification of the filing of the engineer's report. The bill allows a location map or legal description of the land to qualify as the geographical description required by current statute. The bill amends the language of the notice to reflect the 25 day waiting period before public hearing on proposed plan amendments. The bill changes the language of the public notice to include the title of "President" of the district supervisory board.

The bill requires public hearing of all proposed objections and amendments to the engineer's report as well as the water control plan, and the revision of the engineer's report, water control plan, and amendments to conform to any objections or revisions the board deems necessary.

#### **Revenue Sources**

The bill creates an annual, retroactive (to January 1) assessment date on the year the property becomes assessable. This date is applicable to the lien the water control district has on delinquent and unpaid assessments.

The bill includes revision of the engineer's report to reflect any substantial changes in property values as the result of water control district projects.

### C. SECTION DIRECTORY:

- Section 1: Amends s. 298.22 (3), F.S., to authorize water control districts to purchase, lease, or transfer real or personal properties.
- 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) & (8), F.S. to provisions relating to public hearings.
- Section 4: Amends s. 298.341, F.S., to establish January 1 of as the date property assessment begins.
- Section 5: Amends s. 298.77 (3), F.S., to include revision of the engineer's report to reflect any plan amendments that resulted in a change of assessable value of a property.
- 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**