

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SB 2460

SPONSOR: Senator Atwater

SUBJECT: Drainage and Water Control Districts

DATE: April 16, 2005

REVISED: 04/19/05

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE                   | ACTION                      |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Branning</u>             | <u>Kiger</u>                | <u>EP</u>                   | <b>Favorable</b>            |
| 2. | <u>Herrin</u>               | <u>Yeatman</u>              | <u>CA</u>                   | <b>Fav/1 amendment</b>      |
| 3. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 4. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 5. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |
| 6. | <u>                    </u> | <u>                    </u> | <u>                    </u> | <u>                    </u> |

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

This bill would:

- Allow the board of supervisors of a water control district to purchase, sell, lease, convey, or transfer real or personal property.
- Provide that only projects that require a permit from the water management district must be submitted to the water management district for review.
- Provide that an engineer’s report that meets certain criteria is exempt from the plan adoption process.
- Provide that the board of supervisors of the water control district must hear all proposed revisions to the engineer’s report, the water control plan, or plan amendments, and the board of supervisors may approve or amend the engineer’s report, the water control plan, and plan amendments.
- Provide that water control district assessments constitute a lien on the assessable property.

This bill substantially amends ss. 298.22, 298.225, 298.301, 298.341, and 298.77, Florida Statutes:

## II. Present Situation:

Originally established primarily to serve needs related to agriculture, water control districts now have greater responsibilities resulting from increases in urban growth and population. These responsibilities have grown to include stormwater drainage and other, related concerns. Today, there are nearly 100 water control districts in Florida.

In 1997, the Legislature substantially revised the provisions of ch. 298, F.S, relating to water control districts. Oversight for these districts was moved from the Department of Environmental Protection to the water management districts and the Governor. In 1998, several additional amendments were made to these provisions.

Each water control district is governed by a three-member board of supervisors composed of owners of the lands in the district and residents of the county or counties in which the district is located. The board of supervisors has full power and authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan. Section 298.22, F.S., provides for the powers and duties of the board of supervisors. Among those specified powers, the board of supervisors:

- May employ persons and purchase machinery to directly supervise, construct, maintain, and operate the works and improvements described in the water control plan or contract out for such activities.
- May clean out, straighten, open up, widen, or change the course and flow, alter or deepen any canal, ditch, drain, river, watercourse, or natural stream; and concentrate, divert, or divide the flow of water in or out of the district.
- May build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of the district; acquire, construct, operate, maintain, use, sell, convey, transfer or otherwise provide for pumping stations, including pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment.
- May contract for the purchase, construction, operation, maintenance, use, sale, conveyance and transfer of pumping stations, machinery, motive equipment, electric lines and appurtenant equipment, including the purchase of electric power and energy for the operation of the same.
- May construct or enlarge, or cause to be constructed or enlarged, any and all bridges that may be needed in or out of the district, across any drain, ditch, canal, floodway, holding basin, exaction, public highway, railroad right-of-way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of such works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut, in or out of the district; remove any fence, building or other improvements, in or out of the district.

- Shall have the right to hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right-of-way, sluice, reservoir, holding basin or franchise, in or out of the district, for right-of-way, holding basin for any of the district's stated purposes, or for material be used in constructing and maintaining said works and improvements for implementation of the district water control plan.
- May condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without the district not acquired or condemned by the court as identified in the engineer's report, and shall follow the procedure set out in ch. 73, F.S.
- May assess and collect reasonable fees for the connection to and use of the works of the district.
- May construct and operate facilities for the purpose of controlling and preventing the spread or introduction of agricultural pests and diseases.
- May construct, manage, or authorize construction and management of resource-based recreational facilities that may include greenways, trails, and associated facilities.

Over the years, the water control districts have been able to acquire land, by direct purchase, condemnation, donation, or forfeiture by liens on tax certificates; however, there is no statutory provision that allows the water control districts to sell any of the land that they own or acquire.

Pursuant to s. 298.225, F.S., 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."

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

- 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; and
- 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. 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 changes.

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 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.

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.

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

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. 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.

### **III. Effect of Proposed Changes:**

**Section 1.** Section 298.22, F.S., is amended to allow the board of supervisors of a water control district the authority to purchase, sell, lease, convey or transfer real or personal property such as pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices, or equipment. This would allow water control districts to sell any lands that they deem surplus.

**Section 2.** Section 298.225, F.S., is amended to provide that, prior to adoption, the board of supervisors must submit any proposed water control plan or water control plan amendment to the jurisdictional water management district for review for only those projects that require a permit pursuant to ch. 373, F.S., from the jurisdictional water management district.

The preparation of an engineer's report or amendments thereto do not result in revision of the district's current water control plan or require the increase of any levy of assessments or taxes beyond the maximum amount previously authorized by general law, special law, or judicial proceeding, the provisions of the adoption process do not apply. Also, minor, insubstantial amendments to the district engineer's reports, may be adopted by resolution of the board of

supervisors. Minor, insubstantial amendments include amendments to the engineer's reports which do not increase the total assessment of benefits.

**Section 3.** Section 298.301, F.S., is amended to revise the notice provisions relating to the approval of a water control plan or amendments thereto. Currently, a final hearing on approval of the proposed plan or plan amendment must be held at a regularly scheduled board of supervisors meeting 60 days after the filing of the engineer's report with the secretary of the district. This bill provides that the final hearing shall be noticed and held at least 25 days but not later than 60 days after the last scheduled publication of the notice of filing of the engineer's report with the secretary of the district. The district must also publish a geographical depiction of the district. This bill provides that a location map or legal description of the land constitutes a geographical depiction.

The bill further clarifies that all objections and proposed revisions to the engineer's report, water control plan, or plan amendment must be heard and determined by the board of supervisors at the public hearing. If the plan or plan amendment is to be sustained or implemented, the engineer's report and the plan or plan amendment must be changed to conform to the board's findings. Then the board of supervisors may approve and confirm or disapprove the engineer's report and the water control plan and plan amendments.

**Section 4.** Section 298.341, F.S., is amended to provide that non-ad valorem assessments under ch. 298, F.S., constitute a lien from January 1 of each year the assessable property is liable until paid and are enforceable in the same manner as county taxes.

**Section 5.** Section 298.77, F.S., is amended to provide that the engineer's report shall be revised under certain conditions.

**Section 6.** This bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The water control districts would be able to sell any lands that they deem surplus that they may have acquired through donations or unpaid tax liens. This would constitute revenue for the districts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

Barcode 181558 by Community Affairs:  
Technical amendment.

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