

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 859

East County Water Control District, Lee and Hendry Counties

**SPONSOR(S):** Kreegel

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1752

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Local Government Council</u>	<u>6 Y, 0 N</u>	<u>Smith</u>	<u>Hamby</u>
2) <u>Environmental Regulation Committee</u>	<u>6 Y, 0 N</u>	<u>Kliner</u>	<u>Kliner</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This bill authorizes the East County Water Control District (District), an independent special district, in Lee and Hendry Counties, to sell, lease, or otherwise encumber its surplus real property, with the exception of environmentally sensitive property.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Chapter 298, F.S., Water Control Districts

Chapter 298, F. S., contains provisions governing the creation and operation of water control districts.

##### *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 s. 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 ch. 298, F.S.

##### *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.

##### East County Water Control District

The District was created by judicial decree of the twelfth circuit court in 1958. This decree, as well as another, were ratified by the Legislature in 1963 by ch. 63-1549, L.O.F. This special act provided that the District was created under ch. 298, F.S. The District is authorized to levy annual installment and maintenance taxes. The collection and enforcement of taxes levied by the District are provided for in the same manner as county taxes. The District's authorization includes the authority to sell land for unpaid and delinquent taxes and the issuance and sale of tax certificates for unpaid taxes.

##### Effect of Proposed Changes

This bill amends the charter of the District to add a provision that authorizes the District to sell, lease, or otherwise encumber surplus real property owned by the District for the benefit of the District, except for environmentally sensitive property designated by the Florida Department of Environmental Protection.

#### C. SECTION DIRECTORY:

Section 1. Adds subsection (12) to s. 4 of s. 3 of ch. 2000-423, L.O.F. relating to the power and duties of the Board of Supervisors.

Section 2. Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 4, 2005

WHERE? *News-Press*, Fort Myers, Lee 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:

The proposed change may conflict with s. 298.76, F.S., which prohibits any special law granting additional authority to any water control district formed pursuant to ch. 298, F.S.

### Prohibited Special Laws "Like Vote" Provision

Paragraph (21) of subsection 11(a) of Article III of the Florida Constitution prohibits special laws or general laws of local application pertaining to "any subject when prohibited by general law passed by a three-fifths vote of the membership of each house." Furthermore, "[s]uch law may be amended or repealed by like vote." (emphasis added)

The law is unsettled with respect to whether the "like vote" requirement to amend or repeal a law on a subject that was added to the prohibited subject list means that the amendment or repeal may be made (1) by any general or special law passed by a three-fifths vote; or (2) only by amending or repealing the underlying general bill that created the prohibited special law by a three-fifths vote. There is no case law on the issue and Florida attorneys general have come down on both sides of this issue.

The most current opinion concludes that a general law passed by a three-fifths vote of the Legislature prohibiting special or local laws on a particular subject may be amended or repealed by a special act which has passed by a like vote of three-fifths of each house of the Legislature. Op. Att'y Gen. 83-27 (May 5, 1983). The Attorney General advised that the constitutional provision does not expressly provide that amendment or repeal may only be accomplished in the same manner or by general law.

On the other hand, in 1969, the Attorney General was asked whether it was possible to pass special legislation providing compensation to county officers, although such compensation was prohibited by section 145.16(2) of the Florida Statutes (a general law passed by 3/5 vote). The Attorney General then advised that the general chapter law creating the prohibition, chapter 69-211, Laws of Florida, operated to "prohibit and prevent effectiveness of any special act on the specified subject thereafter until amendment or repeal of... Ch. 69-211." Op. Att'y Gen. 69-80 (August 28, 1969).

Those wishing to create a local exception to a law placed on the prohibited subjects list by adoption of a general law as provided in paragraph 11(a)(21) of Article III, should take note that this difference of opinion exists and are advised that amendment or repeal for a local area through the vehicle of a local bill introduces some risk, particularly if the bill is a controversial one.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.