



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill grants power and authority to the District for the purpose of providing additional services within District boundaries and for the purpose of enforcing landowner restrictions and covenants in community property owners' associations within the District.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

A water control district incorporated under ch. 298, F.S., is organized for limited and definite purposes, and its powers are restricted to those deemed essential by the Legislature to effect its purpose. Therefore, these districts have no power or authority other than that conferred by law.

The Ranger Drainage District (District) is located in Orange County and was created by decree of the circuit court entered on April 9, 1970. Water control districts created by circuit court decree prior to July 1, 1980, are authorized to operate under ch. 298, F.S., which contains provisions governing the creation and operation of these districts. In 99-453, L.O.F., the Legislature codified special acts relating to the District in order to provide a single charter that includes all current legislative authority of the district.

According to the District's charter, the District is an "independent special district" governed not only by ch. 298, F.S., but also by ch. 189, F.S., the Uniform Special District Accountability Act of 1989.

##### Governing Board

In accordance with ch. 189, F.S., and s. 298.11, F.S., the District's charter provides for a three-member governing board of three supervisors who are elected on a one-acre, one-vote basis by landowners in the District. Landowners owning less than one acre are entitled to one vote, and landowners with more than one acre are entitled to one additional vote for each fraction of an acre greater than ½ acre owned. According to the charter, the membership and organization of the board are governed by the charter and ch. 298, F.S. 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.

##### Revenue Sources and Bonds

The primary funding source for District activities is non-ad valorem assessments, referred to by the District as "installation" assessments and "maintenance" assessments.

Section 298.305, F.S., authorizes a water control district board to levy a non-ad valorem assessment on all land in the district to which benefits have been assessed. The District refers to these assessments as "installation assessments". Proceeds from these assessments must be used to pay the "costs of completion of the proposed works and improvements as shown in the adopted [water control] plan or plan amendment and in carrying out the objectives of the district...."

In addition, s. 298.54, F.S., authorizes water control districts to levy a "maintenance assessment" on all lands in the district to which benefits have been assessed as necessary to operate and maintain district works and activities and to defray current expenses.

Section 298.305(2), F.S., authorizes all water control districts to issue bonds to pay the cost of the works and improvements described in a district's water control plan. A district must levy a non-ad valorem assessment not less than an amount 90 percent of which must be equal to the principal of the

bonds. The total amount of all bonds issued may not exceed 90 percent of the benefits assessed upon the lands of a district.

If a district determines that assessments levied or the funds derived from the sale of bonds are insufficient to pay the cost of implementing the water control plan as adopted, the board may initiate plan amendment proceedings pursuant to s. 298.329, F.S., and may make an additional levy and increase the amount of bonds issued.

According to the District, its sole revenue source consists of maintenance assessments imposed on benefited lands in the District. Please refer to the "Fiscal Comments" section on p. 7 of this analysis for additional information.

### District Powers

The District is specifically authorized by its charter to exercise the following powers in addition to those granted by s. 298.22, F.S.:

- Services may be provided by the District on land within or adjoining the District by agreement with the owners of the land.
- The District may sponsor one or more events each year intended to foster community spirit, including a fishing tournament for children, so long as the only involvement of the District is the provision of its employees to assist in administering and holding the event.
- The District may authorize fishing in canals that are works of the District and which lie within rights-of-way or easements owned by the District.

Pursuant to s. 298.22, F.S., a water control district such as the Ranger Drainage District 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 adopted by a district. Subject to the applicable provisions of chapter 373 or chapter 403, a district:

- May employ persons and purchase machinery to construct and operate the works and improvements described in the water control plan, or may contract with others for the construction and operation of such works.
- 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; construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations, and siphons, and may connect same, or any of them, with any canals, drains, ditches, levees, or other works that may have been heretofore, or which may be hereafter constructed by the Department of Environmental Protection or jurisdictional water management district, and with any natural stream, lake, or watercourse in or adjacent to 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 their operation.

- 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, excavation, public highway, railroad right-of-way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of said 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.
- May 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 purposes provided in ch. 298, or for material to be used in constructing and maintaining 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 of the district not acquired or condemned by the court as identified in the engineer's report.
- May adopt resolutions and policies to implement the purposes of ch. 298, F.S.
- May assess and collect reasonable fees for the connection to and use of the works of the district.
- May implement and authorize the comprehensive water control activities, including flood protection, water quantity management, and water quality protection and improvement, described in the water control plan.
- 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.

### **Effect of Proposed Changes**

The bill includes the following “whereas” clauses that appear to make statements of fact and declare legislative intent as follows:

- The Ranger Drainage District is the primary local public agency that provides for maintenance of infrastructure, including drainage, flood protection facilities, and environmental features within the district;
- Residential development within the district is occurring at an extremely rapid rate and requires increased maintenance to public infrastructure such as common areas, passive recreational areas, and district rights of way;
- There is a need for better security and fire protection to ensure safety of persons and property within the district;
- All neighborhood associations within the district have urged the Legislature to grant the district additional authority to maintain and restore public infrastructure; and
- It is the intent of the Legislature to provide the district with the powers necessary to maintain public infrastructure and protect public and private property within the district.

The bill also amends the charter of the District to provide the following additional powers and authorities:

- To construct and maintain firebreaks and related facilities for fire prevention and control within district easements, rights-of-way, and property in cooperation with the Department of Agriculture and Consumer Services, the Division of Forestry, or other fire prevention agencies.
- To own, acquire, construct, operate, and maintain passive recreation areas and facilities within the district, including, but not limited to, parks, walking or hiking trails, and related facilities.
- To acquire property for construction of projects within and adjacent to the district for environmental protection, restoration, or mitigation purposes. The district is also authorized to cooperate with public agencies and landowners in such projects.
- To provide security services within the district for the purpose of protecting district property and facilities.
- To construct and maintain signage and facilities identifying district ingress and egress locations.
- To maintain all district common areas, including, but not limited to, easements, road shoulders, and medians.
- To enforce landowner covenants and restrictions within district communities, provided a community property owners' association approves such action by majority vote of its board.<sup>1</sup>

Lastly, the bill amends the charter of the District to increase the number of governing board members from three to five, and to provide for staggered terms of the members. The bill also provides for an annual landowners' meeting to be held in September to elect board members and for other purposes.

C. SECTION DIRECTORY:

- Section 1. Amends ch. 99-453, L.O.F., to grant additional powers to the District.
- Section 2. Amends ch. 99-453, L.O.F., to increase the number of governing board members.
- Section 3. Provides an effective date.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 5, 2004

WHERE? Orlando Sentinel, Orange County.

B. REFERENDUM(S) REQUIRED? Yes  No  The bill does not require a referendum.

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

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<sup>1</sup> Authorizing the District to enforce landowner covenants and restrictions may be an exemption to general laws found in ch. 720, F.S., which restricts government enforcement of landowner restrictions and covenants within homeowners' associations. See ss. 720.301, 702.302, and 720.303, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### **Notice Requirements**

Article III, section 10 of the Florida Constitution provides that “[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.” This bill does not require a referendum.

Chapter 11, F.S., provides general law requirements applicable to the notice for special laws. Section 11.02, F.S., requires the notice to “state the substance of the contemplated law.” Therefore, the notice must be broad enough to include all matters contained in the body of the proposed legislation, although the specific contents need not be listed in detail. The function of the notice is to provide reasonable notice to a person whose interests may be affected by the proposed legislation so that he or she may inquire further into the detail of the local bill.

The notice published for HB 899 reads as follows: “This legislation will allow the District to provide services, including fire prevention and control and emergency medical services, school facilities, public transit, parking facilities, public security and conservation areas. It also staggers the terms of board members and adds two members to the existing three-member board.”

The bill includes a provision authorizing the District to enforce landowner covenants and restrictions within District communities, provided a community property owners’ association approves by majority vote of the board. It is unclear whether the enforcement of landowner covenants and restrictions is described in the published notice in such a manner as to notify interested persons. However, it is anticipated that the bill sponsor, Representative Allen, will offer an amendment in the Council on Local Government to remove this provision.

##### **Limitation on Special Acts**

This proposed special law appears to expand the existing authority of the District by authorizing the District to:

- Construct and maintain firebreaks and facilities for fire control and prevention;
- Acquire property for construction of projects for environmental protection, restoration, or mitigation purposes.
- Provide security services within the District for the purpose of protecting District property and facilities;
- Construct and maintain signage and facilities identifying District ingress and egress;
- Maintain all common areas in the District, including easements, road shoulders, and medians; and
- Enforce landowner covenants and restrictions within District communities, provided a community property owners’ association board approves by a majority vote.

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.”

With respect to water control district, s. 298.76(1), F.S., provides as follows:

This chapter is amended to provide that, pursuant to the authority granted the Legislature in s. 11(a)(21), Art. III of the State Constitution, 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 this chapter.

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 s. 145.16(2), F.S. (a general law passed by 3/5 vote). The Attorney General then advised that the general chapter law creating the prohibition, ch. 69-211, L.O.F., 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 of the Florida Constitution, 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: The bill does not address rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Fiscal Comments**

Proceeds from the “installation” assessment imposed by the District must be used to pay the “costs of completion of the proposed works and improvements as shown in the adopted [water control] plan or plan amendment and in carrying out the objectives of the district...” The “maintenance assessment” is levied only against lands to which benefits have been assessed as necessary to operate and maintain district works and activities and to defray current expenses.

According to the District, the annual maintenance tax is currently levied at a rate of \$135.00 per acre throughout the District, and is the primary revenue source for the District.<sup>2</sup> The installation assessment has not been levied in many years. For budget year 2003-2004, the total taxes assessed were \$737,900, and for proposed budget year 2004-05, the total amount of taxes collected is \$757,620.

Audit reports filed by the District with the Auditor General of Florida indicate the following revenues and expenditures between 2000 and 2003:

	2000	2001	2002	2003
<b>Total Revenues</b>	\$766,092	\$786,681	\$915,633	\$992,652
<b>Total Expenditures/Expenses</b>	698,764	778,334	1,043,653	888,266
<b>Excess Rev Over(Under) Exp.</b>	67,328	8,347	(128,020)	104,386

The District has indicated that current services provided by and activities of the District will not be diminished if this bill is enacted. The attached Economic Impact Statement indicates that the cost associated with “implementing this special act and moving it through the legislative process” can be met within the District’s current budget. However, beginning in FY 06-07, the District “may amend its current Plan to being providing capital improvements authorized by the bill. Annual assessments for these programs are estimated to be approximately \$20 per acre, which would increase revenues by about \$112,000 annually.”

<sup>2</sup> Other revenue sources include investment income and driveway permit income.

Based on the financial data submitted to the Auditor General, it appears that current revenues may not be sufficient to perform the new functions authorized by this bill, particularly the acquisition of land for recreational or environmental purposes. If revenues are insufficient, the District may levy additional assessments on land in the District if the District adopts an amendment to its water control plan in accordance with the requirements of s. 298.329, F.S.

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

It is anticipated that the bill sponsor, Representative Allen, will offer an amendment in the Council on Local Government to remove lines 60-62 of the bill, which is a provision that authorizes the District to enforce landowner covenants and restrictions within District communities, provided a community property owners' association approves such action by a majority vote of its board.