

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 1183

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Kreegel

115 Y's 0 N's

COMPANION N/A
BILLS:

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

House Bill 1183 passed the House on February 29, 2012, and subsequently passed the Senate on March 5, 2012.

The East County Water Control District (District) is an independent special district that covers the eastern portions of Lee County and the western portion of Hendry County. The District was created in Lee County by judicial decree in 1958. The District was later expanded into Hendry County by judicial decree in 1961. In 2000, the District's charter was codified pursuant to s. 189.429, F.S. The District is responsible for the maintenance of drainage infrastructure for 70,000 acres in portions of these two counties.

This bill provides for the Governor to fill any vacancies on the Board of Commissioners to serve until the next general election for which candidates can qualify, so as long as the appointment is consistent with general law.

The bill was approved by the Governor on April 6, 2012, ch. 2012-254, Laws of Florida. The bill is effective upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

The East County Water Control District (District) is an independent special district that covers the eastern portions of Lee County and the western portion of Hendry County. The District was created in Lee County by judicial decree in 1958. The District was later expanded into Hendry County by judicial decree in 1961. In 2000, the District's charter was codified pursuant to s. 189.429, F.S. The District is responsible for the maintenance of drainage infrastructure for 70,000 acres in these counties. The District's Commissioners are elected by the popular vote of electors living within its boundaries.¹

Water control districts are governed by the provisions of ch. 298, F.S., unless their charters say otherwise. Section 298.11, F.S., requires that election of a Board of Supervisors be done on a one-acre, one-vote basis. Consistent with the one-acre, one-vote requirement, s. 298.12, F.S., requires that "in case of a vacancy in any office of supervisor² *elected by the landowners*, the remaining supervisors or, if they fail to act within 30 days, the Governor may fill such vacancy until the next annual meeting, when a successor shall be elected for the unexpired term."³ However, s. 298.12, F.S., is not clear whether the same process (i.e. the remaining supervisors fill the vacancy or, if they fail to act within 30 days, the governor fills the vacancy) applies to the District because its board is elected by popular vote and *not elected by landowners*.

In 2009, the Florida Legislature amended the District's charter to resolve the ambiguity concerning the process of filling vacancies on the board.⁴ The requirement that vacancies be filled pursuant to s. 298.12, F.S., was amended to read that vacancies be filled pursuant to s. 189.405(3)(a), F.S. This section requires that "[i]f a multicounty special district has a popularly elected governing board, elections for the purpose of electing members to such board shall conform to the Florida Election Code, chapters 97-106."⁵ Because s. 189.405(3)(a), F.S., speaks more directly to the issue of elections for a multicounty special district with a popularly elected board—a more accurate description of the District than the description in s. 298.12, F.S.—the District believed this would resolve the ambiguities in the vacancy appointment process.⁶

The changes made in 2009 to the District's charter, however, failed to resolve the ambiguity as the Florida Election Code (chapters 97-106) does not clearly speak to how vacancies on the governing boards of special districts should be filled. Section 100.111, F.S., is entitled "Filling Vacancy." Yet there is little direction as to how a vacancy on the board of a special district must be filled. This is because the language in s. 100.111(1)(a), F.S., applies only to offices required to be filled pursuant to s. 1(f), Art. IV of the Florida Constitution,⁷ i.e. only "state or county" offices. Therefore, the question of whether this provision encompasses the board members of an independent special district was still ambiguous. This

¹ ECWCD Charter, Section 4(4).

² Chapter 298 calls the elected officials on the board of a water control district "supervisors." However, Ch. 2009-260, L.O.F., changed the term "supervisors" to "commissioners" for purposes of the ECWCD.

³ (Emphasis added).

⁴ Chapter 2009-260, L.O.F.

⁵ Section 189.405(3)(a), F.S.

⁶ The ECWCD's executive director noted the ambiguity in s. 298.12, F.S. as the reasons for the amendment contained in Ch. 2009-260, L.O.F., during a telephone conversation with Community & Military Affairs Subcommittee staff.

⁷ [T]he governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

continued legal uncertainty led to the filing of this bill so as to make the vacancy filling process unambiguously clear.⁸

Effect of Changes

The bill amends the District's charter to clarify that "the Governor shall appoint a successor to serve until the next general election for which candidates may qualify." The bill also provides that the appointment must be consistent with general law. If in the future s. 298.12, F.S., is amended to clearly apply to water control districts whose boards are not elected on a one-acre one-vote basis, then that amended provision contained in general law would control.

The bill is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 1, 2011.

WHERE? Fort Myers News-Press.

B. REFERENDUM(S) REQUIRED? Yes No

C. LOCAL BILL CERTIFICATION FILED? Yes No

D. ECONOMIC IMPACT STATEMENT FILED? Yes No

⁸ The ECWCD's executive director noted that the Florida Election Code contained legal uncertainties about the process for appointing vacancies during a telephone conversation with Community & Military Affairs Subcommittee staff.