

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 1009	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Local & Federal Affairs Committee; Mayfield	116 Y's	0 N's
<b>COMPANION BILLS:</b>	N/A	<b>GOVERNOR'S ACTION:</b>	Vetoed

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**SUMMARY ANALYSIS**

CS/HB 1009 passed the House on April 26, 2013, and subsequently passed the Senate on May 1, 2013.

This bill codifies, amends, and reenacts the special acts relating to the Fellsmere Water Control District (District), an independent special district in Indian River County. Additionally, this bill changes the District to an independent improvement district; renames it the Fellsmere Improvement District; grants it additional powers; and represents a total rewrite of its charter.

This bill has no fiscal impact on state or local government.

The effective date of this bill was upon becoming law; however, this bill was vetoed by the Governor on July 2, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### Chapter 298, Florida Statutes

Chapter 298, F.S., 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, 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.

##### *Board of Supervisors*

Upon the formation of a water control district, landowners are required to elect a three-member board of supervisors. Supervisors serve three-year rotating terms, with one supervisor elected each year at a required annual meeting.<sup>1</sup> 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 members of the board are reimbursed for their travel expenses pursuant to s. 112.061, F.S., but receive no payment for their service unless the landowners decide to provide compensation, which may not exceed \$50 per day for the time actually engaged in work for the district and in attending sessions of the board.

Pursuant to s. 298.22, F.S., the board of supervisors has full power and authority to construct, complete, operate, maintain, repair and replace all works and improvements necessary to execute the district's water control plan.

##### *Water Control Plans*

Pursuant to s. 298.225, F.S., 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 for water control plans has been removed from the purview of the circuit courts.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider the issue. The board must publish notice of a public hearing once a week for three consecutive weeks in a newspaper of general circulation. Individual notices are mailed to landowners, the jurisdictional water management district, the county commission and any municipality in which the district is located.

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<sup>1</sup> Section 298.11(2), F.S., provides that every acre of assessable land within a district represents one share, or vote, i.e., "one acre, one 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 accessible acre are entitled to one vote. Landowners owning more than one accessible acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowner's acreage is aggregated for purposes of voting. The section allows proxy voting by landowners.

At the public hearing on the proposed plan or plan amendment, the board of supervisors considers any objections and then determines whether or not to move forward with the plan. In the event the board decides to proceed, it directs the district engineer to prepare a written report complete with maps and surveys. The report must 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 carrying out the water control plan and an estimate of the benefits derived from the plan.

A final hearing to consider approval of the engineer's report and the water control plan is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the report with the district secretary.

Before final adoption of the engineer's report and water control plan or plan amendment under s. 298.301, F.S., the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment are less than the benefits determined for the lands.

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

### *Revenue Sources*

The primary funding source for water control district activities is special assessments, which must be imposed on the property so that the assessment of a particular parcel represents 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.<sup>2</sup>

A board of supervisors also is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.<sup>3</sup>

Section 298.54, F.S., additionally authorizes a maintenance tax to maintain and preserve ditches, drains, or other improvements, and for the purpose of defraying the current expenses of the district, including any sum that may be required to pay state and county taxes on any lands which may have been purchased. The maintenance tax is apportioned upon the basis of the net assessments of benefits assessed as accruing from original construction.

### *Powers of Water Control Districts*

A water control district created pursuant to chapter 298, F.S., 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 that district.<sup>4</sup>

A water control district may be authorized to engage in various water control activities,<sup>5</sup> including the power:<sup>6</sup>

- To employ persons and purchase machinery to directly supervise, construct, maintain and operate the works and improvements described in the water control plan, or contract with others for the same.

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<sup>2</sup> Section 298.305, F.S.

<sup>3</sup> Section 289.47(1), F.S.

<sup>4</sup> Section 298.22, F.S.

<sup>5</sup> Subject to the applicable provisions of chs. 373 and 403, F.S., the "Florida Water Resources Act of 1972" and the "Florida Air and Water Pollution Control Act", respectively.

<sup>6</sup> See s. 298.22, F.S.

- To 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 the same, with any canals, drains, ditches, levees, or other works, and with any natural stream, lake or watercourse.
- To build and construct other works and improvements to preserve and maintain the works in or out of the district; acquire, construct, operate, maintain, use, purchase, sell, lease, convey or transfer real or personal property, including pumping stations, pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment.
- To 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.
- To construct or enlarge, or cause to be constructed or enlarged, 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.
- 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 said district, for right-of-way, holding basin, or for material to be used in constructing and maintaining said works and improvements for implementation of the district water control plan.
- To condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court as identified in the engineer's report, and follow the procedure set out in ch. 73, F.S., relating to eminent domain.
- To adopt resolutions and policies.
- To assess and collect reasonable fees for the connection to and use of the works of the district.
- To implement comprehensive water control activities, including flood protection, water quantity management, and water quality protection and improvement, described in the water control plan.
- To construct and operate facilities for the purpose of controlling and preventing the spread or introduction of agricultural pests and diseases.
- To construct, manage or authorize construction and management of resource-based recreational facilities that may include greenways, trails and associated facilities.

## Codification of Special District Charters

Codification of special district charters was initially required by the 1997 Legislature pursuant to s. 189.429, F.S. Current law provides for codification of all special district charters by December 1, 2004.<sup>7</sup> Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Reenactment of existing law pursuant to s. 189.429, F.S., may not be construed to grant additional authority nor to supersede the authority of an entity; will continue the application of exceptions to law contained in special acts reenacted pursuant to the section; may not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and may not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.<sup>8</sup>

## The Uniform Special District Accountability Act

The 1989 Legislature enacted ch. 189, F.S., the "Uniform Special District Accountability Act," to consolidate and unify the provisions of existing law relating to the creation and accountability of special districts. The act continues to provide for the general governance of special districts, addressing issues such as the creation and operation of special districts, financial reporting requirements, funding authority, election of board members, compliance with general law provisions such as public records and meetings requirements, and comprehensive planning within special districts.

## Limitation on Special Acts

Section 11(a)(21), Art. III of the State Constitution provides that no special law or general law of local application may 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, F.S., is an example of such a general law passed by a three-fifths vote of the membership of each house. That statute prohibits a special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S. Section 298.76, F.S., does not prohibit special or local legislation that:

- amends an existing special act that provides for the levy of an annual maintenance tax;
- extends the corporate life of a district;
- consolidates adjacent districts; or
- authorizes the construction or maintenance of roads for agricultural purposes.

Section 298.76, F.S., specifically authorizes special or local legislation that:

- changes the method of voting for a board of supervisors;
- provides a change in the term of office of the board of supervisors and changes the qualifications of the board of supervisors; and

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<sup>7</sup> To date, only 213 special districts have codified their charters. *See*, the "Local Bill Policies and Procedures Manual," 2012-2013, Local & Federal Affairs Committee, page 22.

<sup>8</sup> Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

- changes the governing authority or governing board.

Finally, s. 298.76, F.S., provides that any special or local laws enacted by the Legislature pertaining to any water control district will prevail as to that district and have the same force and effect as though it had been a part of ch. 298, F.S., at the time the district was created and organized.

### The Fellsmere Water Control District

A 1919 circuit court decree created the District and gave it a 99 year lifespan. Its original purposes were to reclaim land and provide water control in order to make these lands available, acceptable, and habitable for settlement and agriculture. Today, the District provides water control services and infrastructure to maintain its approximately 27,000 acres for residential and agricultural purposes. The majority of this acreage is in the municipal limits of the Town of Fellsmere.

Various special acts gave the District a limited number of powers, including the power:

- To provide drainage and land reclamation services.
- To issue notes or certificates of indebtedness.
- To maintain, preserve, repair, and restore the ditches, drains, and other improvements of the District.
- To levy a drainage tax and an annual maintenance tax.
- To sell, assign, or authorize redemption of any drainage tax certificates for less than face value; and to accept unpaid bonds for drainage tax payment.
- To manage, conserve, and control drainage waters; to construct and install works of improvement necessary to accomplish this; and to modify any plan of reclamation, plan of improvement, or facilities if approved by landowners and the board of supervisors.
- To acquire land, easements, or rights of way to provide continuous and adequate facilities for improvement outfall drainage.

### **Effect of Changes**

This bill codifies all previous special acts and court decrees relating to the District into one unified document.<sup>9</sup> In addition to codification, this bill amends the District's charter. These changes include:

- Revising the District's boundaries to reflect the St. Johns River Water Management District's acquisitions of former District lands.
- Removing the current sunset date of 2018 in order to ensure the continued water control services of the District.
- Renaming the District the "Fellsmere Improvement District."
- Granting the District all powers and authorities of ch. 298, F.S.,<sup>10</sup>
- Subjecting the District to ch. 189.<sup>11</sup>

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<sup>9</sup> Pursuant to s. 189.429, F.S.

<sup>10</sup> Chapter 298, F.S. governs water control districts.

<sup>11</sup> Uniform Special District Accountability Act.

- Granting community development authority to the District.<sup>12</sup>

This community development authority allows the District to provide services beyond drainage and flood control. The bill authorizes the District:

- To sue and be sued in its name in any court of law or in equity, to make contracts, to adopt and use a corporate seal, and to alter the same at pleasure.
- To acquire by purchase, gift, or condemnation real and personal property, either or both, within or without the district, and to convey and dispose of such real and personal property, either or both, as may be necessary or convenient to carry out any of the purposes of this act and ch. 298, F.S.
- To finance, fund, plan, establish, construct, equip, operate, and maintain canals, ditches, drains, levees, lakes, ponds, control structures, or similar devices for water control and diversion and other works for water management and control purposes.
- To acquire, purchase, finance, fund, plan, establish, equip, operate, and maintain pumps, plants, and pumping systems for water management and control purposes.
- To finance, fund, plan, establish, construct, equip, operate, and maintain irrigation works, machinery, and plants.
- To finance, fund, plan, establish, construct, improve, pave, equip, operate, and maintain roadways and roads necessary and convenient for the exercise of any of the powers or duties of said district or the supervisors thereof and to include parkways, bridges, landscaping, irrigation, drainage, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system as a component of such roadways and roads.
- To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for providing transportation throughout the district, including private or contract carriers, buses, vehicles, railroads, and other transportation facilities, to meet the transportation requirements of the district in activities conducted within the district.
- To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain parking facilities within the district boundaries.
- To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses.
- To acquire, construct, finance, fund, plan, establish, equip, operate, and maintain water plants and systems to produce, purify, and distribute water for consumption.
- To acquire, construct, finance, fund, establish, plan, equip, operate, and maintain sewer systems for the collection, disposal, and reuse of waste and wastewater and to prevent water pollution in the district.

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<sup>12</sup> Similar to the authority of Community Development Districts created pursuant to ch. 190, F.S.

- To levy non-ad valorem assessments; to prescribe, fix, establish, and collect rates, fees, rentals, fares, or other charges; and to revise the same from time to time for the facilities and services furnished or to be furnished by the district and to recover the cost of making connection to any district facility or system.
- To provide for the discontinuance of service and reasonable penalties, including attorney fees, against any user or property for any such rates, fees, rentals, fares, or other charges that become delinquent and require collection. However, no charges or fees shall be established until after a public hearing of the board of supervisors of the district at which all affected persons shall be given an opportunity to be heard.
- To enter into agreements with any person, firm, or corporation for the furnishing by such person, firm, or corporation of any facilities and services of the type provided for in this act.
- To enter into impact fee credit agreements with local general purpose governments. In the event the district enters into an impact fee credit agreement with a local general purpose government where the district constructs or makes contributions for public facilities for which impact fee credits would be available, the agreement may provide that such impact fee credits shall inure to the landowners within the district in proportion to their relative assessments, and the district shall, from time to time, execute such instruments, such as assignments of impact fee credits, as may be necessary or desirable to accomplish or confirm the foregoing.
- To finance, fund, plan, establish, equip, construct, operate, and maintain facilities and take measures to control mosquitoes and other arthropods of public health importance.
- To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property.
- To borrow money and issue negotiable or other bonds of said district as hereinafter provided; to borrow money, from time to time, and issue negotiable or other notes of said district therefor, bearing interest at not exceeding the maximum interest allowable by law, in anticipation of the collection of levies and assessments or revenues of said district; to pledge or hypothecate such levies, assessments, and revenues to secure such bonds, notes, or obligations; and to sell, discount, negotiate, and dispose of the same.
- To provide public safety, including, but not limited to, security, guardhouses, fences and gates, electronic intrusion detection systems, and patrol cars, when authorized by proper governmental agencies, except that the district may not exercise any police power but may contract with the appropriate local general purpose government agencies for an increased level of such service within the district boundaries.
- To provide systems and facilities for fire prevention and control and emergency medical services, including the construction or purchase of fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
- To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for school buildings and related structures, which may be leased, sold, or donated to the school district for use in the educational system when authorized by the district school board.



- To establish and create such departments, committees, boards, or other agencies, including a public relations committee, as from time to time the board of supervisors may deem necessary or desirable in the performance of the acts or other things necessary to the exercise of the powers provided in this act, and to delegate to such departments, committees, boards, or other agencies such administrative duties and other powers as the board of supervisors may deem necessary or desirable.
- To exercise all other powers necessary, convenient, or proper in connection with any of the powers or duties of the Fellsmere Water Control District. The powers and duties of the Fellsmere Water Control District shall be exercised by and through the board of supervisors of the district, which board of supervisors shall have the authority to employ engineers, attorneys, agents, employees, and representatives as the board of supervisors may, from time to time, determine and to fix their compensation and duties. In addition thereto, said district shall have all of the powers provided for in ch. 298, F.S. All powers and authority of the district shall extend and apply to the district as a whole and to each unit of development as, from time to time, may be designated by the board of supervisors.

This expanded authority encourages sustainable growth and balances the needs of urban and rural uses. Furthermore, this avoids creating a patchwork of CDDs within the District boundaries with overlapping layers of bureaucracy and cost.

This bill will have no immediate economic impact and the District will be able to provide the infrastructure (roads, streetlights, sewer systems, parks, etc.) to support future development. The landowners benefitting from the improvements will shoulder the expense.

The bill is effective upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 24, 2013

WHERE? The *Indian River Press Journal*, a daily newspaper published in Vero Beach in Indian River County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes  No