

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1281	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Local & Federal Affairs Committee; Caldwell	114 Y's	0 N's
COMPANION BILLS:	N/A	GOVERNOR'S ACTION:	Vetoed

SUMMARY ANALYSIS

CS/HB 1281 passed the House on April 26, 2013, and subsequently passed the Senate on April 30, 2013.

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.

This bill authorizes the District to finance, plan, construct, and operate street lights and sidewalks in Lee County. The bill also provides that the District may levy non-ad valorem tax assessments on a per-project basis that require the majority approval of electors who will be benefited and obligated to pay.

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.¹ 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.

¹ 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.²

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

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

The supervisors of a water control district created pursuant to ch. 298, F.S., have a variety powers provided in s. 298.22, F.S.⁴ These include the 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.⁵ Additionally, this section provides in pertinent part that a water control district:

may build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said 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.⁶

Limitation on Granting Additional Authority to Water Control Districts

² Section 298.305, F.S.

³ Section 289.47(1), F.S.

⁴ 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.

⁵ Section 298.22, F.S.

⁶ Section 298.22(3), F.S.

Section 298.76, F.S., provides that 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 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 of a district;
- extends the corporate life of a district;
- consolidates adjacent districts; or
- authorizes the construction or maintenance of roads for agricultural purposes.

Additionally, s. 298.76, F.S., authorizes special or local legislation that:

- changes the method of voting for a board of supervisors for any water control district;
- provides a change in the term of office of the board of supervisors and changes the qualifications of the board of supervisors of any water control district; and
- changes the governing authority or governing board of any water control district.

Finally, s. 298.76, F.S., provides that any special or local law enacted by the Legislature pertaining to a water control district prevails as to that district and has 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.

East County Water Control District

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 is responsible for the maintenance of drainage infrastructure for 70,000 acres in these counties. The District was created by circuit court decree in 1958 and derives its statutory authority from ch. 298, F.S., and is considered to be created pursuant to this chapter.⁷

According to the codification of the District's special laws and charter,⁸ the District may exercise all powers, functions, and duties in chs. 189, 197, and 298, F.S., and ch. 2000-423, L.O.F. Pursuant to these authorities, the codification was accompanied by additional grants of power relating to public improvements and community facilities, specifically relating to conservation, parks, and navigation.

This bill's proposed additional powers regarding street lights and sidewalks are statutorily authorized in ch. 298, F.S. Section 298.22(3), F.S., provides that water control districts may build and construct any works and improvements deemed necessary to preserve and maintain the works in or out of said district.

Effect of Changes

The bill amends ch. 2000-423, L.O.F., as amended, granting the District's board of commissioners the power to finance, plan, construct, and operate street lights and related facilities and sidewalks in the Lee County portion of the District. Furthermore, the bill provides for funding of said projects through non-ad valorem assessments on a per-project basis. These assessments require a majority approval of those electors that would be benefited and obligated to pay. The bill adds street lighting and sidewalk powers to the board's current additional powers relating to conservation, parks, and navigation.

The bill is effective upon becoming law.

⁷ See s. 298.01, F.S.

⁸ Chapter 2000-423, L.O.F., pursuant to s. 189.429, F.S.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 2, 2013

WHERE? *The News-Press*, a daily and Sunday paper published in Lee 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