

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 981 North St. Lucie River Water Control District, St. Lucie County

SPONSOR(S): Local & Federal Affairs Committee; Mayfield

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Nelson	Rojas
2) State Affairs Committee	16 Y, 0 N	Stramski	Camechis

SUMMARY ANALYSIS

In 2012, the Florida Legislature extended the corporate lifetime of the North St. Lucie River Water Control District until December 31, 2111, contingent upon the District submitting a codified charter for legislative consideration. This bill satisfies that requirement.

CS/HB 981 codifies all special acts and court decrees relating to the North St. Lucie River Water Control District, an independent special district. The bill repeals all previous District special acts, and provides a single, comprehensive charter for the District.

The bill provides a legal description for the District's boundaries, a status statement, and minimum charter requirements: the purpose of the District; the powers, functions and duties of the District; the methods for establishing the District; the method for amending the District charter; the membership and organization of the District board; the maximum compensation for a board member; the administrative duties of the board; applicable financial disclosure, noticing and reporting requirements; the procedures for conducting District elections; the methods for financing the District; the method for collecting fees; and District planning requirements. The bill also preserves a District maintenance tax limit of \$25 per year.

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Water Control Districts

As early as the 1830s, the Florida Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature created the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts—through circuit court decree—and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unaltered. In 1972 and 1979, respectively, the Legislature amended the act to change the name of these districts to water management districts, and then, to water control districts. The 1979 bill also repealed provisions authorizing the creation of water control districts by circuit court decree.

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.

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.

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.

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. See, s. 298.305, F.S.

A board of supervisors also is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied. See, s. 289.47(1), F.S.

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.

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, 2004.² 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.³

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. Such a 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
- 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 North St. Lucie River Water Control District

The North St. Lucie River Water Control District (NSLRWCD or District) was originally created by judicial degree in 1917, with a corporate lifetime of 99 years.⁴ The NSLRWCD is subject to the provisions of ch. 298, F.S., and responsible for drainage, flood control and protection, water management and reclamation of the roughly 65,000 acres within its boundaries in St. Lucie County. The NSLRWCD owns, operates and maintains works for water management and regulates their use by others. This water management system includes a network of approximately 200 miles of canals, and

² 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.

³ 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.

⁴ While the staff analysis for HB 593 (ch. 2012-237, L.O.F.) lists the District's current expiration date as December 31, 2017, this is incorrect. From a copy of the original court documents, on file with the Local & Federal Affairs Committee, it appears that the District was created on November 13, 1917, and had an expiration date of November 12, 2116.

associated pumps and water control structures. The NSLRWCD currently is funded by a \$25 per acre maintenance tax.

The District's charter has been amended numerous times since 1918, but has never been codified. The special acts amending the NSLRWCD's charter include: chs. 7973 (1919), 8896 (1921), 9635 (1923), 11129 (1925), 12106 (1927), 12108 (1927), 12109 (1927), 14773 (1931), 14774 (1931), 14775 (1931), 16089 (1933), 22111 (1943), 22714 (1945), 26790 (1951), 28379 (1953), 28647 (1953), 57-842, 59-979, 59-980, 65-1225, 69-1544, 96-529, and 2012-237, L.O.F.

Last year, the Florida Legislature passed a bill which extended the corporate lifetime of the District until December 31, 2111. See, ch. 2012-237, L.O.F. The continuation of this act was contingent upon the District submitting a codified charter for legislative consideration. If a codification bill was not filed on or before the first day of the 2013 Regular Legislative Session, the act would be repealed effective July 1, 2013, and the District's current expiration date of November 12, 2116, would be reinstated.

Effect of Proposed Changes

CS/HB 981 constitutes the codification of all special acts and court decrees relating to the North St. Lucie River Water Control District. This bill provides a single, comprehensive special act charter for the District, and repeals chs. 7973 (1919), 8896 (1921), 9635 (1923), 11129 (1925), 12106 (1927), 12108 (1927), 12109 (1927), 14773 (1931), 14774 (1931), 14775 (1931), 16089 (1933), 22111 (1943), 22714 (1945), 26790 (1951), 28379 (1953), 28647 (1953), 57-842, 59-979, 59-980, 65-1225, 69-1544, 96-529, and 2012-237, L.O.F.

The bill recreates the North St. Lucie River Water Control District, and recreates and reenacts its charter, until the expiration of the District on December 31, 2111. The bill declares the District to be an independent water control district and a public corporation of the state pursuant to ch. 189, the "Uniform Special District Accountability Act of 1989," and ch. 298, F.S., and provides a legal description for its boundaries. The provisions of state law applicable to water control districts or subdistricts which are embodied in ch. 298, F.S., so far as not inconsistent with the charter, are declared to be applicable to the District.

In accordance with s. 189.404(3), F.S., the following minimum requirements are provided for the charter of the North St. Lucie River Water Control District:

- The District is organized and exists for all purposes set forth in its charter and ch. 298, F.S.
- The District has all of the powers and authorities conferred in its charter and ch. 298, F.S.
- The District's charter may be amended only by special act of the Legislature.
- In accordance with ch. 189, F.S., the charter, and ss. 298.11 and 298.12, F.S., the governing board of the District is designated the "Board of Supervisors of the North St. Lucie River Water Control District" and composed of three persons, who are qualified to hold such office if they are landowners within the district, residents of the state, and citizens of the United States, elected on a one-acre, one-vote basis by the owners of assessable land in the district; however, landowners owning less than one assessable acre in the aggregate are entitled to one vote. Landowners owning more than one assessable acre are entitled to one additional vote for any fraction of an acre greater than one-half acre owned, when a landowner's acreage has been aggregated for purposes of voting. The membership and organization of the governing board are as set forth in the charter and ch. 298, F.S., provided the charter controls with respect to any inconsistency.
- The compensation of the governing board members is governed by ch. 298, F.S.
- The administrative duties of the governing board are as set forth in the charter and chs. 189 and 298, F.S.

- Requirements for financial disclosure, meeting notices, reporting, public records maintenance, and per diem expenses for District officers and employees are as set forth in chs. 112, 189, 190, 286 and 298, F.S., and all other applicable general laws of the state.
- The procedures and requirements governing the issuance of bonds, notes and other evidence of indebtedness by the District are as set forth in chs. 189 and 298, F.S., and applicable general laws.
- The procedures for conducting District elections or referenda and for qualification of electors are pursuant to chs. 189 and 298, F.S., however, a quorum for purposes of holding the annual meeting or any special meetings consists of those landowners present in person or represented by proxy at said meeting.
- The District may be financed by any method authorized by its charter, ch. 298, F.S., and other applicable general laws of the state.
- The District is authorized to assess and levy a minimum maintenance tax in an amount not to exceed \$25 per year upon each tract or parcel of land within the district without regard to the net assessment of benefits assessed.
- The methods for collecting non-ad valorem assessments, fees, or service charges are as set forth in chs. 197 and 298, F.S., and other applicable general laws of the state.
- The District's planning requirements are as set forth in chs. 189 and 298, F.S.⁵
- The District's geographic boundary is set forth in its charter.

This bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Codifies all special acts and court decrees relating to the North St. Lucie River Water Control District.

Section 2: Amends, codifies, reenacts and repeals all previous special acts relating to the North St. Lucie River Water Control District.

Section 3: Recreates and reenacts the charter for the North St. Lucie River Water Control District.

Section 1: Provides a status statement and boundaries.

Section 2: Provides minimum charter requirements.

Section 3: Provides for existence of the District until December 31, 2111.

Section 4: Provides for applicability of other laws.

Section 5: Provides for severability.

Section 6: Provides for construction of act

Section 4: Repeals previous special acts relating to the North St. Lucie Water Control District.

Section 5: Provides for an effective date.

⁵ The District's planning requirements are set forth in s. 298.225, F.S.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 23, 2013.

WHERE? The *St. Lucie News-Tribune*, a daily newspaper of general circulation published in St. Lucie 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Authorization to Impose Assessment

Traditionally, an assessment on property is tied to the amount of benefits accruing to the property as a result of services made possible by the assessment.⁶ Absent special legislative authorization, a water control district is restricted in its ability to impose a maintenance tax by the amount of benefits that will inure to a tract or parcel of land.⁷ The minimum maintenance tax of up to \$25 per parcel of land, without regard to the net assessment of benefits, as reauthorized by this bill may result in a taxation scheme where an owner of multiple small parcels of land may be required to pay more in assessments than an owner of one large parcel, in spite of receiving ostensibly fewer benefits from the efforts of the District than the owner of the large parcel.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Local & Federal Affairs Committee adopted a strike-all amendment that:

- corrects the legal description for the District;
- repeals two additional special acts relating to the District;
- with regard to District elections, adds references to “assessable” acres;
- removes language stating that the compensation of governing board members is pursuant to the act; and

⁶ See *Lainhart v. Catts*, 75 So. 47, 53 (Fla. 1917) (stating that “[s]pecial assessments [...] are made upon the assumption that a portion of the community is to be specially and peculiarly benefited in the enhancement of the value of property peculiarly situated as regards a contemplated expenditure of public funds”).

⁷ See s. 298.54, F.S.

- substitutes the phrase “authorized by” for “established in,” with regard to District financing methods.

This analysis is drafted to the committee substitute for the bill as adopted by the Local & Federal Affairs Committee.