

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1401 East Mulloch Drainage District, Lee County
SPONSOR(S): Rodrigues
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Miller	Miller
2) Ways & Means Committee	18 Y, 0 N	Dugan	Langston
3) Government Accountability Committee	20 Y, 0 N	Miller	Williamson

SUMMARY ANALYSIS

The East Mulloch Drainage District is an independent special district in south central Lee County. Created in 1963 under chapter 298, F.S., this water control district is responsible for maintaining canals, water retention ponds, and drainage structures in an area of approximately 3,000 acres, primarily an area known as San Carlos Park. The Board of Supervisors is comprised of three members serving staggered three year terms. Annually, the land owners in the district are entitled to elect one board member on the basis of 1 vote per acre.

Under its charter, the district may impose an annual maintenance tax not exceeding \$30.10 per acre to fund the costs of maintenance, operation, and administration. The district must be divided into four roughly equal sections. The costs of maintenance and operation within each section are to be paid only from the assessments drawn from the land owners in that section.

In 2006, a non-binding referendum of the district electors disapproved of the Lee County Commissioners becoming the governing body of the district. In 2008, the Lee County Board of County Commissioners engaged an engineering firm to study and report on the condition of drainage structures in the district. The 2008 report estimated the cost at that time to return the district drainage structures to their original, "as built" condition would cost over \$5 million and the annual cost to maintain the refurbished structures would be approximately \$140,000.

The bill extensively revises the present charter of the district:

- Beginning with the general election in 2018, the board of supervisors would be increased to five members, with two new members elected to four year terms.
- The terms of the current three members are extended until 2020, at which time three supervisors would be elected to four year terms.
- All supervisors must be Florida residents owning real property within the district.
- All elections will be nonpartisan and held on the date of the general election.
- Instead of a cap of \$30.10 per acre on annual assessments, the district will be authorized to raise revenue as provided in ch. 298, F.S., and annually must raise funds sufficient to maintain the drainage structures in the district.
- The requirement to divide the district into four sections is deleted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The East Mulloch Drainage District is an independent special district¹ comprised of approximately 3,046 acres located in south central Lee County, southwest of Lehigh Acres and west of the Village of Estero.² The district was created in 1963 by special act for “the purpose of draining and conserving the lands (described in the act)...for controlling and conserving water...and the water tables...for agricultural and sanitary purposes, and for the public health....”³ The boundaries of the district have been adjusted four times since its creation, resulting in its present configuration.⁴ As of July 2008, approximately 2,220 acres in the district were developed. The district is responsible for maintaining approximately 21 miles of canals, 20 retention ponds, and nine developed drainage structures including swales and a number of culverts.⁵

The district is governed by a three member Board of Supervisors serving staggered three year terms, with one supervisor elected at each annual meeting of the district.⁶ The annual meeting of district landowners is to be held each February in a public location within Lee County pursuant to published notice. Each landowner in the district is entitled to cast a number of votes equal to the total acres in the district owned, on a one acre/one vote basis.⁷ Votes may be cast in person or by proxy. The elected board members choose the board president and appoint a district secretary and district engineer. A competent outside individual, bank, or trust company may be employed as treasurer.⁸

The board has extensive powers to develop, operate, and maintain drainage structures throughout the district, including the power to contract,⁹ to make necessary alterations to canals and other drainage structures,¹⁰ to move water onto or from district lands into drainage structures,¹¹ and to make other changes as necessary to maintain structures in the district.¹² In addition to these enumerated powers, the board may exercise all powers and authority provided to water control districts in ch. 298, F.S.¹³ The board may purchase tax certificates sold to the state, county, or other governmental agency which include taxes levied for the district.¹⁴ Other powers include the authority to pledge maintenance tax receipts as security for a loan not exceeding five years.¹⁵

¹ See s. 189.012, F.S.

² “East Mulloch Drainage District Facility Analysis Report, Volume 1,” prepared for the Lee County Board of County Commissioners by Boyle Engineering Corporation (July 1980), herein “2008 Report,” 1. According to the 2008 Report, the district lies within the natural basin of Mulloch Creek and the developed area is known generally as San Carlos Park. 2008 Report, 4. The 2008 Report is available at <https://www.leegov.com/naturalresources/Documents/East%20Mullock%20Report.pdf> (last accessed 2/15/2017).

³ Ch. 63-930, s. 1, Laws of Fla. Until 1980, drainage districts could be created either by special act or circuit court decree. See s. 298.01, F.S., and historical note. Since 1978, all existing drainage districts operating under the authority of ch. 298, F.S., are legally designated as water control districts. Section 298.001, F.S.

⁴ See chs. 83-443, 84-464, 86-425, 88-480, Laws of Fla.

⁵ 2008 Report, 2. At the time of the report, the Three Oaks and Caloosa Trace subdivisions, both located outside the district, were paying district assessments and the district maintained their drainage structures as well. 2008 Report, 10.

⁶ Ch. 63-930, s. 3(1), Laws of Fla.

⁷ Ch. 63-930, s. 3(3), Laws of Fla.

⁸ Ch. 63-930, s. 14, Laws of Fla.

⁹ Ch. 63-930, s. 4(1), Laws of Fla.

¹⁰ Ch. 63-930, s. 4(2), Laws of Fla.

¹¹ Ch. 63-930, s. 4(3), Laws of Fla.

¹² Ch. 63-930, s. 4(6), Laws of Fla.

¹³ Ch. 63-930, s. 4(5), Laws of Fla. The powers enumerated in ch. 63-930, s. 4, effectively are included within the statute and applicable to the district. See s. 298.22, F.S.

¹⁴ Ch. 63-930, s. 12, Laws of Fla.

¹⁵ Ch. 63-930, s. 13, Laws of Fla.

Under the present charter, the board must divide the district into four approximately equal sections designated A, B, C, D. District work benefitting only those lands in a particular section may not be assessed against any land in the three other sections. The cost of district work benefitting lands in more than one section is to be apportioned between those sections only.¹⁶ The district may impose an annual maintenance tax not to exceed \$30.10 per acre to pay the costs district administration, operations, and maintenance.¹⁷ As with other real property taxes, the maintenance tax creates a lien on the property assessed as of January 1.¹⁸

Maintenance taxes are deposited by the district in the maintenance fund and the money distributed only for district purposes.¹⁹ The board must prepare an annual budget and the district's fiscal year begins November 1 and ends the following October 31.²⁰ District assessments are collected through the Lee County Tax Collector.²¹

The charter makes willfully damaging a ditch, canal, or other structure constructed by the district punishable as a misdemeanor.²²

Charter Issues

The present charter of the district contains several archaic references to ch. 298, F.S., pertaining to drainage and water control. The charter excepts the district from the applicability of ss. 298.30, 298.31, 298.32, 298.33,²³ 298.42, 298.43, 298.44, 298.45, and 298.46,²⁴ F.S., all of which have been repealed.²⁵ The charter also incorporates text subsequently added to ch. 298, F.S., making the charter now duplicative of the controlling law.²⁶

In 1997, the Legislature required each special district to draft a codified charter comprised of the special acts creating and empowering the district.²⁷ The district never submitted a codified charter for reenactment by the Legislature and its charter remains a collection of its special acts.²⁸

¹⁶ Ch. 63-930, s. 6(1), Laws of Fla.

¹⁷ Ch. 63-930, s. 6(2), Laws of Fla., imposing an original annual cap of \$15.00 per acre. Chapter 84-464, s. 2, Laws of Fla., increased the annual cap to \$29.29 per acre, subject to the approval of the district voters in a referendum. The present maximum assessment is \$30.10 per acre, as provided in ch. 86-425, s. 2, Laws of Fla., and approved by the district voters in a referendum. The charter still contains the provision authorizing the initial board to levy a tax of \$1.00 per acre for the initial expenses of starting up the district after its creation. Ch. 63-930, s. 15, Laws of Fla.

¹⁸ Ch. 63-930, s. 16, Laws of Fla.

¹⁹ Ch. 63-930, s. 7, Laws of Fla.

²⁰ Ch. 63-930, s. 8, Laws of Fla., as amended by ch. 65-912, s. 2, Laws of Fla. The original chapter law for the district inadvertently had two sections numbered 8. The second section 8 described procedures for the board to create a list of all assessable district lands to be transmitted to the county tax assessor. This process appeared duplicative of the statutory procedures and duties of county property appraisers and tax collectors and was repealed two years later. Ch. 65-912, s. 3, Laws of Fla.

²¹ Ch. 63-930, s. 9, Laws of Fla., as amended by ch. 65-912, s. 4, Laws of Fla. The charter later reiterates the responsibility of the tax collector, and anyone else responsible for the assessment and collection of taxes, to remit the taxes and assessments collected to the district treasurer. Ch. 63-930, s. 11, Laws of Fla. This general responsibility for all water control districts is now stated in s. 298.365, F.S.

²² Ch. 63-930, s. 17, Laws of Fla. These would be punishable as second degree misdemeanors under s. 775.081(2), F.S., with maximum imprisonment of 60 days and maximum fine of \$500. Sections 775.082(4)(b), 775.083(1)(e), F.S.

²³ Ch. 63-930, s. 18, Laws of Fla.

²⁴ Ch. 63-930, s. 9(1), and s. 10, as amended by ch. 65-912, s. 5, Laws of Fla. The charter also excepts the district from s. 298.73, F.S., which is still in effect.

²⁵ See ch. 72-291 & ch. 97-40, Laws of Fla.

²⁶ Ch. 63-930, s. 10, as amended by ch. 65-912, s. 5, Laws of Fla., pertains to the subject of collection and enforcement of taxes, within the scope of s. 298.465, F.S., which became statute in 1972. See ch. 72-291, s. 19, Laws of Fla. Ch. 63-930, s. 19, as amended by ch. 65-912, s. 6, Laws of Fla., is identical to s. 298.366, F.S., which also became statute in 1972. See ch. 72-291, s. 17, Laws of Fla.

²⁷ Ch. 97-255, s. 24, Laws of Fla. Under the original law the bill proposed to recodify a charter could not contain amendments, a provision subsequently removed. See ch. 98-320, s. 3, Laws of Fla.; s. 189.019, F.S.

²⁸ The original deadline to submit charters for recodification was December 1, 2001. The next year the deadline was changed to December 1, 2004. Ch. 98-320, s. 3, Laws of Fla.

Financial Issues

As early as 1983, the Legislature recognized problems within the district and provided for the automatic repeal of all acts enabling the district, and the dissolution of the district without further action, if Lee County by ordinance took responsibility for the drainage and maintaining the district structures.²⁹ Twenty five years later, the County explored this option by commissioning the 2008 report. According to the 2008 report, the cost at that time to return the drainage structures to “as built” condition was \$5,003,079, and the annual cost of maintenance and operation of the district was \$140,000.³⁰ In the general election held in 2006, the qualified voters in the District rejected having the County assume responsibility for the operations of the district.³¹

Despite maintaining a positive net assets balance, in recent years the district apparently has struggled to maintain the drainage structures and fulfill its responsibilities. In its 5 most recent annual financial reports filed with the Department of Financial Services (DFS)³² the district reported the following totals:

Year	Beginning Net Assets	Revenues	Expenses	Ending Net Assets
2011	\$172,790	\$66,028	\$66,902	\$171,916
2012	\$171,916	\$66,155	\$55,622	\$182,449
2013	\$182,449	\$66,213	\$62,730	\$185,932
2014	\$185,932	\$65,423	\$61,616	\$189,739
2015	\$189,739	\$65,423	\$53,532	\$201,802

The district maintained a growing fund reserve and expended less than annual revenues. However, the amount spent annually on maintenance is less than one-half the amount recommended for annual maintenance (if the drainage structures were returned to “as built” condition) in the 2008 report.

Effect of Bill

The bill substantially revises the district charter by requiring the members of the board of supervisors be popularly elected. With the general election of 2018, the board is expanded to five with the election of two new members. The three supervisors currently serving remain on the board until the general election of 2020, when three supervisors are elected, after which the supervisors will serve staggered four year terms. All elections will be held on the date of the statewide general election. Board members must be Florida residents and own real property in the district.

The bill eliminates the cap of \$30.10 per acre for annual assessments. The bill also eliminates the requirement to divide the district into four sections and restrict assessment and spending for a section’s projects only to the land owners within that specific section. Instead, the charter is conformed to the provisions of the water control law authorizing the district to impose non-ad valorem assessments and maintenance taxes in the amount necessary for proper maintenance of the drainage structures and improvements within the entire district.³³ Finally, the bill deletes and repeals old, unnecessary, and outdated charter sections.

B. SECTION DIRECTORY:

Section 1: Amends ch. 63-930, s. 3 and ss. 5-20, Laws of Fla.³⁴

²⁹ Ch. 83-455, Laws of Fla.

³⁰ 2008 Report, 53. However, even if repaired and maintained, the existing improvements would not solve the flooding issues in the district according to the authors of the report. See 2008 Report, 58.

³¹ Lee County Supervisor of Elections archive page, at <http://docs.lee.vote/history/elhis06/download/elhis06/061107/result2.html> (last accessed 2/19/2017).

³² See s. 218.32, F.S.

³³ Section 298.54, F.S.

³⁴ As amended by chs. 65-912, 84-464, 86-425, and 88-480, Laws of Fla.

- Expands to five the board of supervisors beginning with the 2018 general election and the election of two new supervisors to four year terms.
- Extends to 2020 the terms being served by the three present supervisors, at which time three supervisors will be elected to four year terms.
- Supervisors will be elected by popular vote of the qualified electors in the district in nonpartisan elections, beginning in 2018.
- Supervisors will serve staggered four year terms.
- Provides for the Governor to fill vacancies on the board, which appointments last until the next general election.
- Clarifies the statutory authority to reimburse board members for allowable expenses.
- Amends ch. 63-930, s. 6, Laws of Fla.,³⁵ deleting the requirement to divide the district into four sections, removing the cap on annual drainage taxes, authorizing the district to impose non-ad valorem assessments and maintenance taxes under ch. 298, F.S., and requiring the district to impose and collect amounts sufficient to pay the obligations of the district.
- Revises the requirements for the annual organizational meeting of the board of supervisors.
- Removes obsolete language and corrects cross references.

Section 2: Revises and renumbers ch. 63-930, ss. 20, 21, 22, 23, Laws of Fla., as amended, as a legislative finding and ch. 63-930, ss. 18, 19, 20, Laws of Fla., as amended, removing obsolete language.

Section 3: Repeals ch. 83-455, Laws of Fla.

Section 4: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 4, 2017

WHERE? News-Press in Fort Myers, Lee 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:

The Florida Constitution prohibits special laws on any subject in turn prohibited by general law passed by three-fifths vote in each chamber of the Legislature.³⁶ In 1980, by three-fifths vote in each chamber the Legislature prohibited providing additional authority, powers, rights, or privileges to any water control district created under ch. 298, F.S.³⁷ However, the same section allows local legislation amending a special act providing for the levy of an annual maintenance tax,³⁸ changing the method of

³⁵ As amended by chs. 65-912, 84-464, and 86-425, Laws of Fla.

³⁶ Art. III, s. 11(a)(21), Fla. Const. The prohibiting law may be amended or repealed by three-fifths vote.

³⁷ Ch. 80-281, s. 5, Laws of Fla., creating s. 298.76(1), F.S.

³⁸ Section 298.76(1)(a), F.S.

voting for members of the board of supervisors,³⁹ changing the term of office or qualifications of the board of supervisors,⁴⁰ or changing the governing authority or board of a district.⁴¹ The changes to the membership and authority of the board of supervisors appear to fall within the statutory exemptions and the three-fifths vote provision does not appear to be implicated.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

³⁹ Section 298.76(2), F.S.

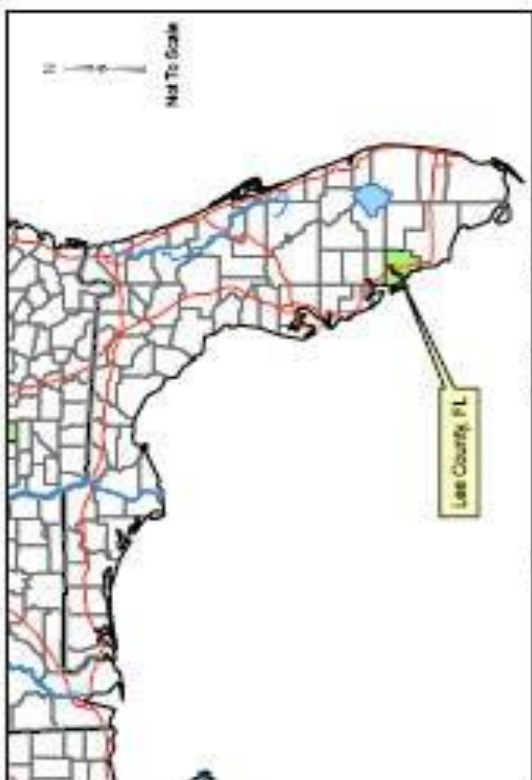
⁴⁰ Section 298.76(3), F.S.

⁴¹ Section 298.76(4), F.S.

APPENDIX A



East Mulloch Drainage District



State of Florida



Lee County, Florida