

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 921 Fellsmere Drainage District, Indian River County  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee; Grall  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N, As CS	Renner	Miller
2) Government Accountability Committee	22 Y, 0 N	Renner	Williamson

### SUMMARY ANALYSIS

A 1919 circuit court decree created the Fellsmere Drainage District (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.

The bill amends, codifies, reenacts, and repeals the special acts and court decrees relating to the District to create a single, unified charter. Additionally, the bill renames the District the Fellsmere Water Control District, removes the 99-year term limitation of the District and amends the boundaries of the District to remove lands that are no longer located within the District.

The Economic Impact Statement submitted with the bill states that it is projected to have no fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,<sup>1</sup> special act,<sup>2</sup> local ordinance,<sup>3</sup> or by rule of the Governor and Cabinet.<sup>4</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>5</sup>

An "independent special district" is characterized by having a governing board comprised of members which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality.<sup>6</sup> Additionally, a district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.

##### Formation and Charter of an Independent Special District

With the exception of community development districts,<sup>7</sup> the charter for any new independent special district must include the minimum elements required by ch. 189, F.S.<sup>8</sup> Any special laws or general laws of local application relating to any special district may not:

- Create a special district with a district charter that does not conform to the minimum requirements in s. 189.031(3), F.S.;<sup>9</sup>
- Exempt district elections from the requirements of s. 189.04, F.S.;<sup>10</sup>
- Exempt a district from the requirements for bond referenda in s. 189.042, F.S.;<sup>11</sup>
- Exempt a district from certain requirements relating to issuing bonds if no referendum is required,<sup>12</sup> requiring special district reports on public facilities,<sup>13</sup> notice and reports of special district public meetings,<sup>14</sup> or required reports, budgets, and audits,<sup>15</sup> or
- Create a district for which a statement documenting specific required matters is not submitted to the Legislature.<sup>16</sup>

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<sup>1</sup> Section 189.031(3), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 189.02(1), F.S.

<sup>4</sup> Section 190.005(1), F.S. *See, generally,* s. 189.012(6), F.S.

<sup>5</sup> 2017 – 2018 *Local Gov't Formation Manual*, p. 67, available at

<http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2911> (last viewed March 1, 2017).

<sup>6</sup> Section 189.012(3), F.S.

<sup>7</sup> Section 189.0311, F.S. *See* s. 190.004, F.S. (providing that chapter 190, F.S., governs the functions and powers of independent community development districts).

<sup>8</sup> Section 189.031(1), F.S. Section 189.031(3), F.S., sets forth the minimum charter requirements for an independent special district.

<sup>9</sup> Section 189.031(2)(a), F.S.

<sup>10</sup> Section 189.031(2)(b), F.S.

<sup>11</sup> Section 189.031(2)(c), F.S.

<sup>12</sup> Section 189.051, F.S.

<sup>13</sup> Section 189.08, F.S.

<sup>14</sup> Section 189.015, F.S.

<sup>15</sup> Section 189.016, F.S.

These prohibitions were passed by a three-fifths majority in the House and Senate when ch. 189, F.S., originally was adopted.<sup>17</sup> They may be amended or repealed only “by like vote.”<sup>18</sup>

The charter of a newly-created district must state whether it is dependent or independent.<sup>19</sup> Charters of independent special districts must address and include a list of required provisions, including the purpose of the district, its geographical boundaries, taxing authority, bond authority, and selection procedures for the members of its governing body.<sup>20</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>21</sup>

### Water Control Districts

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*

Pursuant to s. 298.01, F.S., new water control districts may only be created by special acts of the Legislature (independent water control districts) or pursuant to 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.<sup>22</sup> Supervisors serve three-year rotating terms, with one supervisor elected each year at a required annual meeting.<sup>23</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 Department of Environmental Protection is authorized to vote on any matter that may come before a landowners meeting if acreage owned by the state is subject to assessment by the district.<sup>24</sup>

The members of the board are reimbursed for their travel expenses pursuant to s. 112.061, F.S., but receive no compensation for their service unless the landowners determine at the annual meeting to pay a compensation, which in no event may exceed \$50 per day for the time actually engaged in work for the district and in attending sessions of the board.<sup>25</sup>

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<sup>16</sup> Section 189.031(2)(e), F.S. (providing that each required statement filed with the Legislature must include the purpose of the proposed district, the authority of the district, an explanation of why the district is the best alternative, and a resolution or official statement from the local general-government jurisdiction where the proposed district will be located stating the district is consistent with approved local planning and the local government does not object to creation of the district).

<sup>17</sup> Chapter 89-169, s. 67, Laws of Fla.

<sup>18</sup> Article III, s. 11(a)(21), Fla. Const. (“SECTION 11. Prohibited special laws.— (a) There shall be no special law or general law of local application pertaining to: ... (21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.”).

<sup>19</sup> Section 189.031(5), F.S.

<sup>20</sup> Section 189.031(3), F.S. (setting forth the minimum charter requirements).

<sup>21</sup> Article VII, s. 9(a), Fla. Const.

<sup>22</sup> Section 298.11(1), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 298.11(3), F.S.

<sup>25</sup> Section 298.14, F.S.

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

### *One-Acre, One-Vote*

Section 298.11(2), F.S., provides that every acre of assessable land within a district represents one share or 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 acre are entitled to one vote. The statute allows proxy voting by landowners as well. Those owning more than one acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowners' acreage has been aggregated for purposes of voting.

### *Water Control Plans*<sup>26</sup>

Effective October 1998, 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 has been removed from the purview of the circuit court.<sup>27</sup>

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 of the county, and the governing body of 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 and putting into effect the water control plan and an estimate of the benefits derived from the water control plan.

A final hearing on approval of the water control plan and the engineer's report 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 secretary of the district.

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 cost of construction contemplated in the plan or amendment is 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 burden on every parcel bears a just proportion to that imposed on every other. In other words, the assessment of a particular parcel must represent a fair, proportional part of the total cost and maintenance of the improvement.<sup>28</sup> Special assessments are limited to the

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<sup>26</sup> Section 298.225, F.S.

<sup>27</sup> Section 298.01, F.S.

<sup>28</sup> "In reviewing a special assessment, a two-prong test must be addressed: (1) whether the services at issue provide a special benefit to the assessed property; and (2) whether the assessment for the services is properly apportioned." *Lake County v. Water Oak Management Corp.*, 695 So. 2d, 667, 669 (Fla. 1997).

property benefited and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. Special assessments may be determined legislatively or judicially.<sup>29</sup>

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.<sup>30</sup>

Section 298.54, F.S., also authorizes a maintenance tax to maintain and preserve the ditches, drains, or other improvements, and for the purpose of defraying the current expenses of the district, including any sum which 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.

### *Power of Water Control Districts*

A water control district created pursuant to this chapter 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>31</sup> A water control district may be authorized to engage in various water control activities,<sup>32</sup> including 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- Adopt resolutions and policies.

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<sup>29</sup> Section 298.305, F.S.

<sup>30</sup> Section 298.305(2), F.S.

<sup>31</sup> Section 298.22, F.S.

<sup>32</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.

- Assess and collect reasonable fees for the connection to and use of the works of the district.
- Implement comprehensive water control activities, including flood protection, water quantity management, and water quality protection and improvement, described in the water control plan.
- Construct and operate facilities for the purpose of controlling and preventing the spread or introduction of agricultural pests and diseases.
- Construct, manage, or authorize construction and management of resource-based recreational facilities that may include greenways, trails and associated facilities.<sup>33</sup>

### Codification

Codification is the process of bringing a special district's charter up-to-date by consolidating it in one place. 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.

Current law provided for codification of all special district charters by December 1, 2004. 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.<sup>34</sup> Reenactment of existing law should not be construed to grant additional authority nor to supersede the authority of an entity; modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; or 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>35</sup> However, such reenactment will maintain exceptions to law contained in special acts reenacted pursuant to s. 189.019, F.S.

### The Fellsmere Drainage District

A 1919 circuit court decree (1919 Court Decree) created the Fellsmere Drainage District (District) and gave it a 99-year lifespan.<sup>36</sup> 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.

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

- Provide drainage and land reclamation services.<sup>37</sup>
- Issue notes or certificates of indebtedness.<sup>38</sup>
- Maintain, preserve, repair, and restore the ditches, drains, and other improvements of the District.<sup>39</sup>
- Levy a drainage tax and an annual maintenance tax.<sup>40</sup>
- Sell, assign, or authorize redemption of any drainage tax certificates for less than face value, and to accept unpaid bonds for drainage tax payment.<sup>41</sup>
- 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.<sup>42</sup>

<sup>33</sup> See section 298.22, F.S.

<sup>34</sup> Section 189.019, F.S.

<sup>35</sup> Section 189.019(3), F.S.

<sup>36</sup> *In re Fellsmere Drainage District*, Decree of Circuit Court of the 15<sup>th</sup> Judicial District in and for St. Lucie County, FL (no docket no., April 8, 1919). See also Fellsmere Drainage District, *Background*, available at <http://www.fellsmerewatercontroldistrict.com/Background.html> (last visited March 3, 2017).

<sup>37</sup> 1919 Court Decree.

<sup>38</sup> Ch. 8877, Laws of Fla. (1921).

<sup>39</sup> Ch. 12023, Laws of Fla. (1927).

<sup>40</sup> *Id.*

<sup>41</sup> Ch. 14719, Laws of Fla. (1931).

- Acquire land, easements, or rights of way to provide continuous and adequate facilities for improvement outfall drainage.<sup>43</sup>

### Effect of Proposed Changes

The bill amends and codifies the special acts and court decrees relating to the District to create a unified District charter. The bill renames the District the Fellsmere Water Control District. The bill also removes the 99-year term limitation of the District originally provided by court decree issued in 1919, thereby preserving the District's existence and authority. The bill also amends the District's boundaries to remove lands no longer located within the District.

In accordance with s. 189.031(3), F.S., the following minimum requirements are provided for the charter of the District:

- The District is organized and exists for all purposes set forth 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 as the "Board of Supervisors of the Fellsmere 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 landowners in the district; however, landowners owning less than one acre in the aggregate are entitled to one vote. Landowners owning more than one 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 the charter and 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 established in its charter, ch. 298, F.S., and other applicable general laws of the state.
- 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.
- The District's geographic boundary is as set forth in its charter.

The Economic Impact Statement submitted with the bill states that it is projected to have no fiscal impact.

<sup>42</sup> Ch. 61-1414, Laws of Fla.

<sup>43</sup> *Id.*

B. SECTION DIRECTORY:

- Section 1** Provides for the codification of all special acts and court decrees relating to the Fellsmere Drainage District; renames the Fellsmere Drainage District the Fellsmere Water Control District.
- Section 2** Amends, codifies, reenacts, and repeals chs. 8877 (1921), 11555 (1925), 12023 (1927), 14719 (1931), 16998 (1935), 28418 (1953), 61-1414, and 69-1161, L.O.F.
- Section 3** Amends the boundaries of the District.
- Section 4** Repeals chs. 8877 (1921), 11555 (1925), 12023 (1927), 14719 (1931), 16998 (1935), 28418 (1953), 61-1414, and 69-1161, L.O.F.
- Section 5** Provides an effective date of upon becoming a law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 7, 2017

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, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 15, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment is technical in nature and corrects the District's boundaries.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.