

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 192

INTRODUCER: Senator Bennett

SUBJECT: Special Districts

DATE: October 4, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Toman | Yeatman | CA | Favorable |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill allows two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act. The bill allows merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by 40 percent or more of the qualified electors in each district. The bill requires independent special districts to adopt a merger plan that outlines the specific components for the proposed merger which shall be subject to a public hearing and a voter referendum.

The bill states that this act shall preempt any special act to the contrary and does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

The bill also repeals current statutory provisions addressing the merger of independent special fire control districts. In addition, it allows the Department of Economic Opportunity to declare a special district inactive if the district's governing body unanimously adopts a resolution declaring inactivity.

This bill substantially amends sections 189.4042, 191.014, and 189.4044 of the Florida Statutes.

II. Present Situation:

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.¹ Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.² A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.³ A special district does not include:

- A school district,
- A community college district,
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- A municipal service taxing or benefit unit (MSTU/MSBU), or
- A political subdivision board of a municipality providing electrical service.⁴

Special districts have similar governing powers and restrictions as counties and municipalities.⁵ Like other forms of local government, special districts operate through a governing board and can “enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services.”⁶ Special districts are held accountable to the public and are therefore subject to public sunshine laws and financial reporting requirements.⁷

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.⁸

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.⁹ Independent special districts may

¹ Ch. 189, F.S., *see* s. 189.401, F.S.

² Section 189.403(1), F.S.

³ *Id.*

⁴ *Id.*

⁵ Mizany, Kimia and April Manatt, WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).

⁶ *Id.* (alteration to original) (citation omitted).

⁷ Presentation by Jack Gaskins Jr., from the Division of Community Development in the Department of Economic Opportunity, SPECIAL DISTRICT BASICS PRESENTATION (October 4, 2011) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.

⁸ Section 189.403(2)(a)-(d), F.S.

⁹ Section 189.403(3), F.S.

encompass more than one county.¹⁰ The public policy behind special districts is to provide an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services.”¹¹

The Special District Information Program

The Special District Information Program (SDIP), administered by the Division of Community Development in the Department of Economic Opportunity (DEO or Department), is designed to collect, update, and share detailed information on Florida’s special districts with state and local agencies.¹² The Department also maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.¹³ As of October 2011, there were 1,633 special districts in the state of Florida: 627 dependent districts and 1,006 independent districts.¹⁴ Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.¹⁵

Current Merger and Dissolution Procedures

Section 189.4042, F.S., specifies the requirements for the merger or dissolution of a special district. Pursuant to this section, the merger or dissolution of a special district “created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law.”¹⁶ Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act.

An independent special district that is created by a county or municipality can be merged or dissolved by the county or municipality that created the special district pursuant to the same procedures in which the special district was created. “However, for any independent special district that has ad valorem taxation powers, the same procedure required to grant such independent special district ad valorem taxation powers shall also be required to dissolve or merge the district.”¹⁷

An independent special district created by a county or municipality through a referendum that has been declared inactive, may be dissolved by the creating county or municipality after publishing notice pursuant to s. 189.4044, F.S.¹⁸

¹⁰ *Id.*

¹¹ Section 189.402(3)-(4), F.S.

¹² Florida Department of Economic Opportunity, *Special Districts Information Program* (available online at <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-information-program.html>) (last visited on Oct. 13, 2011).

¹³ Sections 189.412(2) and 189.4035, F.S. See also Florida Department of Economic Opportunity, *Official List of Special Districts Online*, (available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm>) (last visited on October 3, 2011).

¹⁴ Florida Department of Economic Opportunity, *Special Districts Information Program* (available online at <http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm>) (last visited on March 10, 2011).

¹⁵ *Id.*

¹⁶ Section 189.4042(2), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

Inactive Special Districts

Section 189.4044, F.S., outlines special procedures for inactive special districts. Paragraph (1)(a), of this section requires the DEO to declare a special district to be inactive if it meets at least one of the following four criteria:

- 1) The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years;
- 2) Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 2 or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to the department's inquiry within 21 days;
- 3) The department determines, pursuant to s. 189.421, F.S., that the district has failed to file any of the reports listed in s. 189.419, F.S.; or
- 4) The district has not had a registered office and agent on file with the department for 1 or more years.¹⁹

After proposing a special district to be inactive, the Department, special district, or local general-purpose government must publish a notice of the proposed declaration of inactive status in a newspaper of general circulation in the county or municipality where the territory of the special district is located.²⁰ The entity must allow 21 days from the date of publication for administrative appeals to be filed.²¹ Thereafter, the entity that created the special district declared to be inactive must dissolve the special district by repealing its enabling laws or by other appropriate means.²²

If the inactive special district was created by a special act of the Legislature, then the Department must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate. This notice shall constitute as sufficient notice under Article III, section 10, of the Florida Constitution, of which the Legislature shall be authorized to repeal any special laws so reported in the notice of declaration of inactive status.²³

Oversight Review Process

Although Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act, s. 189.428, F.S., does offer an oversight review process. The oversight review process is performed in conjunction with the special district's public facilities report and the local governmental evaluation and appraisal report prescribed in ss. 189.415(2) and 163.3191, F.S.²⁴ Depending upon whether the independent special district is a single- or multi-county district, the oversight review may be conducted by the

¹⁹ Section 189.4044(1)(a), F.S.

²⁰ Section 189.4044(1)(b), F.S.

²¹ Section 189.4044(1)(c), F.S.

²² Section 189.4044(4), F.S.

²³ Section 189.4044(3), F.S.

²⁴ Section 189.428(2), F.S.

county or municipality where the special district is located, or by the government that created the special district.²⁵

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to:

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the district's existing contracts.²⁶

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, dissolution or merger of the district.²⁷ If a legislative dissolution or merger is proposed in the final report, subsection (8) of s. 189.428, F.S., further provides that:

- (8) . . . the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:
- a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
 - b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
 - c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
 - d) Whether the proposed merger adequately provides for the assumption of all indebtedness.²⁸

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.²⁹ This section does not apply to deepwater

²⁵ Section 189.428(3), F.S. Note: dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.

²⁶ *See* s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.

²⁷ Section 189.428(7), F.S.

²⁸ Section 189.428(8), F.S.

²⁹ *Id.*

ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.³⁰

Senate Interim Project, *Interim Report 2011-210*

The Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts in 2010.³¹ The purpose of this interim report was to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report reviewed current Florida law and existing merger and consolidation laws in three other states and discussed previous merger attempts that have failed in Florida. Senate staff provided criteria for the Legislature to consider should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge prior to a Legislative Act.

Staff recommended that any adopted statutory criteria should:

- Discuss how mergers can be initiated, i.e. by resolution, voters, etc.;
- State the required statutory thresholds to approve or petition a merger;
- Require special districts to adopt a merger plan that evaluates how personnel and governing board changes will be made, how assets and liabilities will be apportioned, and how to standardize varying pay levels and benefits;
- Only apply to voluntary special district mergers; and
- Preclude special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.³²

III. Effect of Proposed Changes:

Section 1 amends s. 189.4042, F.S., to define voluntary and involuntary dissolutions and mergers of independent special districts and allows inactive districts to be dissolved by special act without referenda.

It also creates a new subsection (5) for voluntary independent special district mergers in order to:

- Allow two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act.
- Allow merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by qualified elector initiative.
- Provide definitions.
- Require independent special districts to adopt a merger plan that outlines the specific components for the proposed merger.
- Require the proposed merger plan to be subject to a public hearing and voter referendum, consistent with certain notice requirements under Florida Statutes.

³⁰ Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).

³¹ Comm. on Community Affairs, The Florida Senate, *The Merger of Independent Special Districts* (Interim Report 2011-210) (Oct. 2010).

³² *Id.*

- Provide election procedures and require a proposed merger to be approved by the majority of votes cast in each independent special district in order for merger to take effect.
- Treat each component independent special district of the merger as a subunit of the merged independent special district until such time as the Legislature formally approves the unified charter of the new merged district pursuant to special act.
 - During such time, the individual subunits shall be limited to the powers and financing capabilities of each subunit as they previously existed prior to merger.³³
- Provide for the transfer of assets, debts and liabilities of each component independent special district to the merged independent special district.
- Provide that in any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent special district shall be substituted in its place.
- Provide that ch. 171, F.S., shall continue to apply to all annexations by a city within the component independent special district's boundaries after merger occurs.
- Outline the effect of merger on current employees and governing bodies of each component independent special district participating in the merger proposal.

The bill states that this act shall preempt any special act to the contrary.

The provisions in subsection (5) addressing voluntary independent special district mergers does not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district.

This section also makes clarifying amendments to current law.

Section 2 amends s. 191.014, F.S., to delete current subsection (3), which provides specific merger procedures for independent special fire control districts.

Section 3 amends s. 189.4044, F.S., to allow the DEO to declare a special district inactive if the district's governing body unanimously adopts a resolution declaring inactivity. The district may then be dissolved without a referendum.

Section 4 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³³ Art. VII, section 2 of the Florida Constitution provides that all ad valorem taxation shall be at a uniform rate within each taxing unit. Limiting the powers of subunits to those powers existing prior to a voluntary merger maintains this uniformity.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As a result of this bill, qualified electors residing in an independent special district that is created by a special act of the legislature will be permitted to initiate voluntary merger proceedings with one or more independent special district(s) by filing a petition with the governing body of each independent special district proposing to be merged.

C. Government Sector Impact:

As a result of this bill, the governing body of an independent special district that is created by a special act of the legislature will be authorized to initiate voluntary merger proceedings with one or more independent special district(s) through a joint resolution that is approved by a majority of the governing board members of each independent special district proposing to be merged.

This bill may impact how districts are reported under the Special District Information Program within the DEO.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
