

**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 Committee on Community Affairs

BILL: SB 538

INTRODUCER: Senators Ring and Negron

SUBJECT: Special Districts

DATE: March 1, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Pre-meeting</b>
2.			AFT	
3.			AP	
4.				
5.				
6.				

**I. Summary:**

SB 538 requires local general-purpose governments to approve the public facilities projects of single-county independent special districts that have ad valorem taxing authority. In addition, the bill requires that affected districts include an ex-officio, non-voting representative of the local general-purpose government as a member of the district board. Certain districts are exempted from the provisions.

The bill creates section 189.414 of the Florida Statutes.

The bill amends section 189.415 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.<sup>1</sup> Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.<sup>2</sup> The public policy intent of special districts is to provide private and public sectors an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services.”<sup>3</sup> A special district can

<sup>1</sup> Chapter 189, F.S.; see s. 189.401, F.S.

<sup>2</sup> Section 189.403(1), F.S.

<sup>3</sup> Section 189.402(4), F.S.

be created by general law, special act, local ordinance, or by Governor or Cabinet rule.<sup>4</sup> 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.<sup>5</sup>

While special districts have similar governing powers and restrictions as counties and municipalities,<sup>6</sup> they do not have “local home rule” power that has been granted to general-purpose governments. Special districts have only the explicit authority granted by statute.<sup>7</sup> 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.”<sup>8</sup> Special districts are held accountable to the public and are therefore subject to public sunshine laws and financial reporting requirements.<sup>9</sup>

### **Dependent vs. Independent Special Districts**

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.<sup>10</sup>

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.<sup>11</sup> Except as otherwise authorized by general law, only the Legislature may create independent special districts.<sup>12</sup>

---

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Mizany, Kimia and April Manatt, WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002). Districts do not have “local home rule” power that has been granted to general-purpose governments; they have only the explicit authority granted by statute.

<sup>7</sup> See *Roach v. Loxahatchee Groves Water Control District*, 417 So. 2d 814 (Fla. 4<sup>th</sup> DCA 1982).

<sup>8</sup> See *supra* note 5. (alteration to original) (citation omitted).

<sup>9</sup> 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.

<sup>10</sup> Section 189.403(2)(a)-(d), F.S. Dependent districts functionally operate as an arm of either a municipality, county or state agency.

<sup>11</sup> Section 189.403(3), F.S.

<sup>12</sup> Section 189.404(4), F.S.

General laws or special acts that create or authorize the creation of independent special districts must address and require the following in their charters:

- powers, functions, and duties of the district regarding ad valorem taxation, bond issuance, other revenue-raising capabilities and budget preparation and approval,
- membership, organization and compensation of the governing board of the district,
- if authorized to do so, the procedures and requirements for issuing bonds,
- procedures for conducting any district elections or referenda required,
- if authorized to levy ad valorem taxes, the authorized millage rate,<sup>13</sup> and
- methods for collecting non-ad valorem assessments, fees, or service charges.<sup>14</sup>

### **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.<sup>15</sup> The Department also maintains an official master list of special districts throughout the state.<sup>16</sup> The list includes information on district creation methods, sources of revenue, governing board types and categorizes districts into 73 functions of interest.

Examples of district functions 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.<sup>17</sup> As of March 2, 2013, SDIP listed the following statewide numbers of special districts:

- Total: 1,648
- Independent: 1,005
- Dependent: 643
- Single County: 1,577
- Multicounty: 71
- Active: 1,631
- Inactive: 17<sup>18</sup>

Utilizing the SDIP's *Create Your Own Customized List of Special Districts* webpage yields the following independent district information related to revenue sources:<sup>19</sup>

---

<sup>13</sup> The maximum millage rate authorized for independent district ad valorem taxes varies depending on district type and the rate authority specified in general laws or special acts.

<sup>14</sup> See s. 189.404(3), F.S.

<sup>15</sup> Florida Department of Economic Opportunity, *Special Districts Information Program*, available at <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-information-program> (last visited Mar. 3, 2013).

<sup>16</sup> 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 Mar. 3, 2013).

<sup>17</sup> *Id.*

<sup>18</sup> Florida Department of Economic Opportunity, *Official List of Special Districts Online: Statewide Totals*, available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (last visited Mar. 3, 2013).

<sup>19</sup> See <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last visited Mar 3, 2013).

- Active Independent Districts reporting Ad Valorem as a Revenue Source: 143<sup>20</sup>
- Active Independent Districts reporting Assessments as a Revenue Source: 653<sup>21</sup>
- Active Independent Districts reporting Fees as a Revenue Source: 71<sup>22</sup>

### **Public Facilities**

Section 189.403(7), F.S., defines special district “public facilities” to mean “major capital improvements, including, but not limited to, transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and, except for spoil disposal by those ports listed in s. 311.09(1), F.S., spoil disposal sites for maintenance dredging in waters of the state.”

Each independent special district submits a public facilities report and an annual notice of any facilities changes to each local general-purpose government in which it is located.<sup>23</sup> The initial report must be submitted within one year of the district’s creation and must then be updated every seven years. The report must include descriptions of existing owned and operated public facilities and notification of any proposed facilities within the next seven years.

### **Oversight Review Process**

Section 189.428, F.S., provides local governments with an oversight review process for special districts serving within their boundaries. This procedure is permissive but can lead to a modification, dissolution or merger of the district.

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.<sup>24</sup> Depending upon whether the independent special district is a single- or multi-county district, the oversight review may be conducted by the county or municipality where the special district is located, or by the government that created the special district.<sup>25</sup>

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;

---

<sup>20</sup> District functions include children’s services, community development, downtown development authorities, fire control, hospital, mosquito control, and water management.

<sup>21</sup> District functions include community development, drainage, water control, fire control, and parks and recreation.

<sup>22</sup> District functions include airport authorities, community development districts, hospital districts, port authorities, soil and water conservation and utilities authorities.

<sup>23</sup> See s. 189.415, F.S.

<sup>24</sup> Section 189.428(2), F.S.

<sup>25</sup> 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.

- 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

### **Executive Order 12-10: Review of Special Districts**

Executive Order 12-10, issued on January 11, 2012, directs the Governor's Office of Policy and Budget to conduct a review of special districts in the state and make recommendations on the role of districts.<sup>29</sup> The executive order provides that the review is to determine whether special districts are:

- serving a legitimate purpose,
- governed efficiently,
- levying taxes, fees, and assessments appropriately,
- being held accountable to the taxpayers whose lives they directly impact,
- operating in a transparent manner, and
- prudently spending taxpayer dollars.

<sup>26</sup> 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.

<sup>27</sup> Section 189.428(7), F.S.

<sup>28</sup> Section 189.428(8), F.S.

<sup>29</sup> State of Florida, Office of The Governor, *Executive Order 12-10: Review of Special Districts*, available at <http://www.flgov.com/wp-content/uploads/2012/01/EO-12-10.pdf> (last visited Mar. 3, 2013).

### III. Effect of Proposed Changes:

**Section 1** creates s. 189.415, F.S., requiring local government approval of public facilities projects of certain independent special districts. Districts requiring such approval must have ad valorem taxing authority and must serve an area within a single-county. The public facilities projects must be approved by the county or municipality in which the district is located or by the local government that created the district. Any district that serves an area beyond the boundaries of one general-purpose government must be approved by the county. These location parameters are the same as those outlined in the oversight review process in s. 189.428, F.S.

In addition, this section requires that affected districts include an ex-officio, non-voting representative of the local general-purpose government as a member of the district board. The requirement for local government approval under this section does not apply to children's services districts, fire control districts, and hospital districts.

**Section 2** amends s. 189.415, F.S., to make conforming cross references.

**Section 3** provides an effective date of October 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

None.

#### C. Government Sector Impact:

Indeterminate costs may arise for affected local governing and special district boards as a result of the ex-officio representative provision of the bill.

**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.

---