

**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 Ethics and Elections

**BILL:** CS/SB 538

**INTRODUCER:** Community Affairs Committee; Senators Ring and Negron

**SUBJECT:** Special Districts

**DATE:** March 13, 2013      **REVISED:** \_\_\_\_\_

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

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 538 establishes the following provisions for certain single-county independent special districts wholly located within a county. These districts must:

- commence administrative consolidation efforts with a local general purpose government,
- present the district’s proposed budget, financial audit report, and any tax levy, fee or special assessment to a local government for review,
- have future governing board members appointed by the general-purpose local government,
- restrict district health care or retirement benefit packages to value levels not exceeding comparable packages provided by the local government.

In addition, the bill requires all special districts to comply with state provisions on per diem and travel expenses and to post district board member names and contact information on websites.

The bill also requires community development districts to present their proposed budget, financial audit report, and any tax levy, fee or special assessment to local governing authorities and to make proposed, amended and final budgets available on district websites.

The bill creates section 189.4052 of the Florida Statutes.

The bill amends sections 189.4035, 189.404, 189.412, 189.416, and 190.008 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 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:

<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.

<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.

- 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>

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,

<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.

<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. 7, 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. 7, 2013).

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>

- 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>

### 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.<sup>23</sup>

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>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. 7, 2013).

<sup>19</sup> See <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last visited Mar 7, 2013).

<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> Merger and dissolution procedures for special districts are outlined in s. 189.4042, F.S. There are specific methods for 'voluntary' and 'involuntary' processes. Referendum approval is required in certain mergers and dissolutions.

<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 (GOPB) 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).

According to the GOPB, all 70+ special district function types will be reviewed within the Governor's current term.<sup>30</sup> The review of mosquito control districts has been released and the review of fire control districts is near completion. Reviews of expressway and transit authorities and community redevelopment districts are in process.

### **Ad valorem Tax and Special Districts**

Local governments may levy ad valorem taxes subject to the following limitations:

- ten mills for county purposes,
- ten mills for municipal purposes,
- ten mills for school purposes,
- a millage fixed by law for a county furnishing municipal services,
- a millage authorized by law and approved by voters for special districts.<sup>31</sup>

County government millages are composed of four categories of millage rates:<sup>32</sup>

- the nonvoted county millage rate set by the county's governing body,
- county debt service millage,
- county voted millage,
- county dependent special district millage as set by the county's governing body.

Municipal government millages are composed of four similar categories of millage rates which includes any municipal dependent special district millage as set by the municipality's governing body.<sup>33</sup>

Independent special district millages are the rates set by the district's governing body, and the following issues must be addressed.<sup>34</sup>

- Whether the millage authorized by a special act is approved by the electors pursuant to Section 9(b), Art. VII, State Constitution; authorized pursuant to Section 15, Art. XII, State Constitution; or otherwise authorized.
- Whether the tax is to be levied countywide, less than countywide, or on a multicounty basis.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 189.4052, F.S., related to the administrative consolidation of independent special districts. "Administrative functions" is defined to mean, but is not limited to, staffing and personal, assorted management operations and leasehold interests. Single-county independent districts affected by administrative consolidation are segregated (districts wholly within a municipality vs. other county districts) and exemptions from this affected group are provided for airport and aviation facilities, children's services districts, emergency medical services districts, fire control districts, hospital districts, port districts and the Reedy Creek Improvement District.

<sup>30</sup> Conversation with Jeff Woodburn, Governor's Office of Policy and Budget (Mar. 4, 2013). The office is currently developing a website that will provide access to all reviews generated by the executive order.

<sup>31</sup> See Section 9, Article VII, Florida Constitution, Chapters 192-197 and 200, Florida Statutes.

<sup>32</sup> Section 200.001(1), F.S.

<sup>33</sup> Section 200.001(2), F.S.

<sup>34</sup> Section 200.001(4), F.S.

This section directs the SDIP to notify districts and local governments of their consolidation partners, i.e., the municipality or county, by September 1, 2013.

Given the parameters for determining affected districts, it is estimated that approximately 300 single-county districts would be subject to the provisions outlined in this section of the bill. The types of districts affected include those addressing beach facilities, downtown development, drainage and water control, housing authority, mosquito control, and transportation systems.<sup>35</sup>

Notwithstanding any general law, special act, ordinance or charter provision, an affected single-county district shall commence administrative consolidation with its respective municipality or county by October 1, 2013. The consolidation is managed and directed by the respective local government and must result in increased efficiencies and cost savings in the provision of special district services. If an affected single county district fails to comply with the consolidation efforts, the applicable local government shall send notice to the Speaker of the House of Representatives and the President of the Senate which can lead to the repeal of the district's enabling special act. If the local government determines that efficiencies or cost savings are not achievable, it shall notify the Speaker and the President of this finding and no consolidation is required.

Notwithstanding any general law, special act, ordinance or charter provision, this section also addresses an affected district's governing board and, if offered, its health and retirement benefits. Upon expiration of the term of a district governing board member, the applicable municipality or county shall appoint the member's replacement. Over time, this board member replacement provision will effectively convert affected single-county independent special districts into dependent districts. This will include district boards that may have previously been popularly elected. In addition, a district's provision for life, health, accident, hospitalization, or annuity or retirement benefits, if provided, may not exceed the value of comparable insurance and benefits provided by the district's county or municipality consolidation partner.

This section also requires each affected district, effective with the fiscal year beginning on October 1, 2013, to annually present, at a duly noticed public meeting, the district's proposed budget, financial audit report, and any tax levy, fee, or special assessment to the appropriate county or municipality for review.

Any existing general laws, special acts, ordinances or charter provisions that may conflict with this section appear to be resolved by bill language that 'notwithstands' such laws, acts, ordinances, or provisions.

**Section 2** amends s. 189.4035, F.S., to require the DEO to include the names and contact information of current special district governing board members in its official list of special districts.

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<sup>35</sup> The *Create Your Own Customized List of Special Districts* available online at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm> provides a way to identify special districts by certain criteria.

**Section 3** amends s. 189.404, F.S., to make special district reimbursement for travel and per diem expenses of officers and employees consistent with s. 112.061(6) and (7), F.S., for public officers and employees.

**Section 4** amends s. 189.412, F.S., to have the SDIP's master list of independent and dependent special districts provide links to special district websites.

**Section 5** amends s. 189.416, F.S., to require special district submission of the names and contact information of current and future board members to the DEO for inclusion on the department's official list of special districts and for posting on the district's respective local governing authority's website.

**Section 6** amends s. 190.008, F.S., to require a CDD to present its proposed annual budget, any long-term financial plan, any financial audit, and any tax levy, fee, or special assessment at a noticed meeting of the local governing authorities that have jurisdiction over the area included in the district. Currently, a CDD is only required to *submit* the proposed budget and any long-term financial plan to local governing authorities. The budget and revenue presentation must occur at least two weeks prior to budget adoption. The current submission of a budget must occur at least 60 days prior to budget adoption.

This section also requires CDDs to post certain district information on websites in a manner similar to that specified in the special districts general provisions of s. 189.418, F.S. The section requires a proposed budget to be posted on the district's website two days prior to consideration; a budget amendment must be posted within five days of adoption; the final budget must be posted within 30 days after adoption. If the district does not operate a website, provisions are included to have a local general-purpose government post the documents on its website.

**Section 7** provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

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

Article VII, s 18(a), Florida Constitution, states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and counties or municipalities; or
- The law is required to comply with a federal requirement.

Subsection 18(d) provides an additional applicable exemption. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average

statewide population for the applicable fiscal year times \$0.10 (which is \$1.9 million for FY 2012-13<sup>36</sup>) are exempt.

The extent of this bill's fiscal impact has not yet been determined; however, if the costs incurred by counties or municipalities are greater than \$1.9 million, the law may be unenforceable unless passed by two-thirds in each house of the Legislature.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The board member replacement provision of the bill, over time, will effectively convert affected single-county independent special districts into dependent districts. When a previously independent district becomes a dependent district, any existing millage attributable to the district would be subject to the constitutional ad valorem millage caps for the municipality (ten mills) or the county (ten mills) to which it would now be dependent. It is unknown if there would be instances where the conversion from an independent to dependent district would impact a municipal or county millage cap.

**B. Private Sector Impact:**

The Revenue Estimating Conference has not reviewed the bill. To the extent that administrative consolidations between affected special districts and local governments occur, increased efficiencies in district services may result in indeterminate cost savings to district residents.

**C. Government Sector Impact:**

The Revenue Estimating Conference has not reviewed the bill. Initial indeterminate costs may arise for affected special districts and local governments as they begin administrative consolidation. These initial costs are intended to be recouped through the increased efficiencies provided by consolidation. Because the bill conditions any consolidation on cost savings, a municipality or county would determine if it is in their best interests to incur short-term initial costs that would then lead to long-term savings.

As discussed above in the Tax/Fee section, the board conversion provision ultimately converts independent districts into dependent districts within a municipality or county.

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<sup>36</sup> Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: <http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf>.

Upon conversion, existing independent special district bonds would become part of the local government's debt portfolio. How this might affect a local government's credit or debt rating would depend upon the specific financial circumstances of each affected district and its conversion partner.

Affected special districts and local governments may also incur indeterminate costs related to scheduling and implementing the budget and revenue presentations required under the bill.

The Special District Information Program, administered by the Division of Community Development in the Department of Economic Opportunity will incur indeterminate costs related to the identification and notification of consolidation partners. In addition, there may be costs related to updating the Program master lists and websites with the newly required board member information, but the costs are indeterminate at this time.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The bill's provisions specify that a district that serves an area beyond the boundaries of a single municipality shall commence administrative consolidation with the county. In some instances, the vast majority of an affected district's service area lies within a municipality with only a small area reaching beyond. The increased efficiencies and cost savings sought through consolidation may be better realized by partnering with the municipality in these cases.

#### **VIII. Additional Information:**

##### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Community Affairs on March 7, 2013:**

- Establishes a process for local governments to consider administratively consolidating with certain single-county independent special districts.
- Requires an affected single-county district to present its proposed budget, financial audit report, and any tax levy, fee or special assessment to a local government for review.
- Requires an affected single-county district to have future board members appointed by the general-purpose local government.
- Restricts an affected single-county district's health care or retirement benefit packages to value levels not exceeding comparable packages provided by the local government.
- Requires all special districts to comply with state provisions on per diem and travel expenses.
- Requires all special districts to post district board member names and contact information on websites.

- Requires a community development district to present its proposed budget, financial audit report, and any tax levy, fee or special assessment to local governing authorities;
- Requires a community development district make proposed and final budgets and any budget amendments available on district websites.

**B. Amendments:**

None.