The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Tuesday, January 25, 2011
TIME: 8:30 —10:30 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 298** Alexander (Identical H 65)	Municipal Governing Body Meetings; Authorizes the governing bodies of certain municipalities to hold meetings within specified boundaries. CA 01/25/2011 BC	
2	**SB 224** Dean (Identical H 107)	Local Government Accountability; Amends provisions relating to the Legislative Auditing Committee to clarify when the Department of Community Affairs may institute procedures for declaring that a special district is inactive. Specifies the level of detail required for each fund in the sheriff's proposed budget. Revises the schedule for submitting a local governmental entity's audit and annual financial reports to the Department of Financial Services. Revises provisions relating to the guidelines for district school boards to maintain an ending fund balance for the general fund, etc. CA 01/25/2011 GO BC	
3	**SJR 210** Fasano (Similar SJR 390)	Homestead Property Assessed Value; Proposes amendments to the State Constitution to prohibit increases in the assessed value of homestead property if the fair market value of the property decreases and to provide an effective date. CA 01/25/2011 JU BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 232** Bennett	Century Commission for a Sustainable Florida; Revises provisions relating to the Century Commission for a Sustainable Florida. Revises the findings and intent to include the necessity for a specific strategic plan addressing the state's growth management system. Revises the planning timeframes to include a 10-year horizon. Requires that the Department of Community Affairs provide a specific line item in its annual legislative budget request to fund the commission during a specified period, etc. CA 01/25/2011 GO BC	

Interim Project 2011-110 (Merger of Independent Special Districts)

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 298
INTRODUCER:	Senator Alexander
SUBJECT:	Municipal Governing Body Meetings
DATE:	January 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill authorizes the governing bodies of certain municipalities to hold meetings within five miles of their exterior jurisdictional boundary.

This bill creates section 166.0213 of the Florida Statutes.

II. Present Situation:

The Florida Constitution grants local governments broad home rule authority. Specifically, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[1] However, the Florida Constitution states that annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.[2] Similarly, s. 166.021, F.S., gives municipalities home rule powers with the following exceptions: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitution or law.

A number of situations have arisen where small municipalities have not had the proper facilities available to act as a temporary city hall where the local government can hold public meetings. Statutory and constitutional analyses, along with multiple attorney general opinions, indicate that

[1] Art. VIII, s. 2(b), Fla. Const.; s*ee also* s. 166.021, F.S.
[2] Art. VIII, s. 2(c), Fla. Const.

there is no statutory authorization to hold public meetings outside of the jurisdiction.[3] "[I]n the absence of such statutory authorization, acts and proceedings at meetings held outside the municipal jurisdiction are void unless such actions are statutorily authorized."[4]

III. Effect of Proposed Changes:

The bill creates s. 166.0213, F.S. This section provides municipalities with a population of 500 or fewer residents with the authority to hold meeting within 5 miles of the exterior jurisdictional boundary of the municipality at a time and place prescribed by ordinance or resolution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, section 24(b) of the Florida Constitution, and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.[5]

At least one public meeting 100 miles from the relevant jurisdiction has been held to be a violation of the Sunshine Laws because it was decided that affected citizens were not given reasonable opportunity to attend.[6] Because the bill only authorizes meetings within 5 miles of the jurisdiction, it likely still affords citizens a reasonable opportunity to attend and is likely consistent with the constitutional and statutory requirements for public meetings.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[3] Art. VIII, s. 2(c), Fla. Const.; s. 166.021, F.S., Op. Att'y Gen. Fla 2008-01 (2008); Op. Att'y Gen. Fla 2003-03 (2003); Op. Att'y Gen. Fla 75-139 (1975); *see also County of Okeechobee v. Florida Nat. Bank*, 150 So. 124, 126 (Fla. 1933).
[4] Op. Att'y Gen. Fla 2008-01 (2008).
[5] Section 286.011, F.S.
[6] *Rhea v. School Bd. of Alachua County*, 636 So.2d 1383 (Fla. 1st DCA 1994).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.

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 224
INTRODUCER:	Senator Dean
SUBJECT:	Local Government Accountability
DATE:	January 10, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill provides minimum budgeting standards for counties, county officers, municipalities, and special districts. The bill requires the budget of each county, municipality, special district, water management district, school district, and certain county officers to be posted on the government entity's website. The bill requires counties, municipalities, and special districts to file their annual financial report and annual financial audit report with the Department of Financial Services and the annual financial audit report with the Office of the Auditor General within nine months of the end of the fiscal year. This bill also amends the reporting process used by the Legislative Auditing Committee and the Department of Community Affairs, to compel special districts to file certain required financial reports.

This bill substantially amends the following sections of the Florida Statutes: 11.40, 30.49, 112.63, 129.01, 129.02, 129.021, 129.03, 129.06, 129.07, 129.201, 166.241, 189.4044, 189.412, 189.418, 189.419, 189.421, 195.087, 218.32, 218.35, 218.39, 218.503, 373.536, 1011.03, 1011.051 and 1011.64.

II. Present Situation:

Local Government Budgets

The Florida Constitution specifically provides for four types of local governments: counties, municipalities, school districts, and special districts. Florida's 67 counties are subdivisions of the state that operate to provide a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the

court) pursuant to authority granted in the constitution, consistent with general law.[1] A municipality is a local government entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality. There are more than 400 municipalities in Florida, which exist pursuant to individual charters established by law and approved by the electorate in a referendum.

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[2] Counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[3] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

Local government entities have the authority to raise revenues and spend funds, subject to certain restrictions on the ability to tax, borrow, and spend as provided in both the Florida Constitution and Florida Statutes. [5] The Florida Constitution limits the millage rate that local governments can levy in ad valorem taxes[6] and allows public access to public meetings and records.[7] Section 166.241, F.S., specifies how local governments and local government officials may develop and maintain their budget each fiscal year.[8] The fiscal year for counties and municipalities begins on October 1 of each year and ends on September 30 of the following year.[9]

Florida Statutes also contain provisions designed to promote accountability and transparency in the budgetary process. Local governments are subject to financial reporting guidelines that are reviewed by the Legislature and by state agencies such as the Department of Financial Services (DFS) and Department of Management Services (DMS).[10] Section 200.065(2)(d), F.S., currently requires local government entities that have taxing authority to provide notice of their adopted tentative budget in a newspaper of general circulation in the respective county.[11]

Currently, there are no statutory provisions requiring local government entities to publish budget information on their local government website. With the exception of Calhoun, Lafayette, and Union Counties, each county within the state of Florida has an official website. Those that do not have official websites do have websites for the county clerk, which can be used to publish county information.

[1] FLA. CONST. art. VIII, s. 1.
[2] FLA. CONST. art. VIII, s. 1(f).
[3] FLA. CONST. art. VIII, s. 1(g).
[4] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021, F.S.
[5] *See* Art. VII, Fla. Const.
[6] FLA. CONST. art. VII, s. 9.
[7] FLA. CONST. art. I, s. 24.
[8] *See* s. 166.241, F.S.
[9] Section 129.04, F.S.
[10] Part III, Chapter 218; s. 112.63, F.S.
[11] Section 200.065(2)(d) and (3), F.S.

Municipal Budget Requirements
Section 166.241(2), F.S., provides that each municipality must annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.[12] Officers of a municipal government may not expend funds except according to the budgeted appropriations. A municipality may amend its budget up to 60 days following the end of the fiscal year under certain conditions.[13]

County Budget Requirements
Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year for such funds as may be required by law or by sound financial practices and generally accepted accounting principles, which controls the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.[14] The budget is prepared by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.[15] The receipts portion of the budget must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied, and must include all balances estimated to be brought forward at the beginning of the fiscal year.[16]

Section 129.01, F.S., also specifies the budget requirements relating to reserves for contingencies and cash balances to be carried over for future costs, stating that any surplus to be carried over can be placed in any other county fund and budgeted as a receipt to such other fund. [17] However, a fund for debt services cannot be transferred to another fund, and a capital outlay reserve fund may not be transferred until the funded projects have been finished and paid for. In addition to these requirements, ch. 129, F.S., also contains other detailed provisions as to:

- Budget requirements for various funds;[18]
- Requirement that county officers submit budgets in sufficient detail and containing sufficient information;[19] and
- Requirements for the preparation, adoption;[20] and amendment of such budgets.[21]

Each board of county commissioners may designate a county budget officer to carry out the duties prescribed by statute as to county budgets. If such board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget officer.[22] County fee officers are also subject to reporting requirements.[23] County fee officers are

[12] Section 166.241(2), F.S.
[13] Section 166.241(3), F.S.
[14] Section 129.01(1), F.S.
[15] Section 129.01(2), F.S.
[16] Section 129.01, F.S.
[17] Sections 129.01 and 129.02(6), F.S.
[18] Sections 129.01 and 129.02, F.S.
[19] Sections 129.01 and 129.021, F.S.
[20] Section 129.03, F.S.
[21] Section 129.06, F.S.
[22] Section 129.025, F.S.
[23] *See* s. 218.35, F.S.

defined in Florida Statutes as "those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved."[24] For example, each sheriff, clerk of the circuit court, property appraiser and tax collector has budget reporting requirements of their own in addition to the budget reporting requirements of the county.[25]

It is unlawful for the board of county commissioners to expend more than the amount budgeted for a fund absent a budget amendment. Any indebtedness contracted in excess of the amount budgeted is void and no suit for its collection may be maintained. A commissioner approving contracts for such amounts, and their surety company, may be liable for these debts.[26]

Sheriff Budget Requirements
Section 30.49, F.S., requires each sheriff to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail, excluding the cost of construction, repair, or capital improvement of county buildings during the fiscal year. The sheriff must itemize expenditures in accordance with the uniform chart of accounts prescribed by DFS, as: personal services, operating expenses, capital outlay, debt service, and non-operating disbursements and contingency reserves.

The Supreme Court of Florida has stated that "the internal operation of the sheriff's office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county."[27] Therefore, although a county can increase or reduce by lump sums the items, a county cannot dictate how the money allocated to an individual item should be used.[28]

Supervisor of Elections Budget Requirements
Section 129.201, F.S., requires each supervisor of elections to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The supervisor of elections must itemize expenditures such as: personnel compensation, operating expenses, capital outlay, contingencies, and transfers.

The proposed budget must be submitted to the board of county commissioners or county budget commission to be included in the general county budget.[29]

[24] Section 218.31(8), F.S.
[25] *See* ss. 30.49 (sheriffs' budgets), 218.35(2) (clerks of the court reporting requirements), 195.087 (property appraisers and tax collectors budget reporting requirements), F.S.
[26] Section 129.07, F.S. *See also*, *Edwards v. City of Ocala*, 58 Fla. 217, 50 So. 421 (1909) *and White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934) (discussing county commissioner liability for misappropriation of funds).
[27] *Weitzenfeld v. Dierks*, 312 So.2d 194 (Fla. 1975); Fla. Atty. Gen. Op. 93-92 (December 17, 1993).
[28] *Id.*
[29] Section 129.201(7), F.S.

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.[30] Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose.[31] A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.[32] 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.[33]

Special districts have the same governing powers and restrictions as counties and municipalities.[34] 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".[35] Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.[36]

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.[37]

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.[38] Independent special districts may encompass more than one county.[39] The public policy behind special districts is to provide an

[30] Ch. 189, F.S., *see* s. 189.401, F.S.
[31] Section 189.403(1), F.S.
[32] *Id.*
[33] *Id.*
[34] Mizany, Kimia and April Manatt, WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).
[35] *Id.* (alteration to original) (citation omitted).
[36] Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.
[37] Section 189.403 (2) (a)-(d), F.S.
[38] Section 189.403(3), F.S.
[39] *Id.*

alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services".[40]

As of January 2011, there were approximately 1,625 special districts in the state of Florida: 618 dependent districts and 1,007 independent districts.[41] 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.[42]

A. Special District Information Program

The Special District Information Program (SDIP), administered by the Department of Community Affairs (DCA) is designed to collect, update, and share detailed information on Florida's special districts with more than 685 state and local agencies.[43] The SDIP is also charged with assisting special districts to comply with Florida's local government financial reporting system. Specifically, the program:

- Provides technical assistance as it relates to the general requirements of Florida's special districts;
- Acts as a "one-stop shop" source of information about special districts;
- Promotes special district accountability by:
    - Monitoring important financial report filings;
    - Assisting state agencies and local governments in collecting delinquent reports;
    - Helping non-complying special districts come into compliance through technical assistance letters and telephone calls; and
    - When necessary, initiating legal enforcement.[44]

There are ten basic reporting requirements that each special district must follow under the Uniform Special District Accountability Act. All special districts must report it's:

- Creating document and boundary map;
- Registered agent and office;
- Annual fee and update;
- Regular public meeting schedule;
- Annual budget;
- Annual financial audit report;
- Annual financial report;
- Three retirement system reports;
- Two bond reports; and
- Three public facilities reports.[45]

[40] Section 189.402(3)-(4), F.S.
[41] Gaskins, *supra* note 36. Note: This number is subject to change daily.
[42] Florida Department of Community Affairs, OFFICIAL LIST OF SPECIAL DISTRICTS ONLINE, available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm (last visited on Jan. 10, 2010).
[43] Florida Department of Community Affairs, SPECIAL DISTRICTS INFORMATION PROGRAM, available online at http://www.floridaspecialdistricts.org (last visited on Sept. 21, 2010).
[44] *See* 189.412, F.S.
[45] Gaskins, *supra* note 36.

B. Special District Budget Requirements

The governing body of each special district is directed by statute to adopt a budget by resolution each fiscal year. The total funds available must equal the total of appropriated expenditures and reserves.[46] It is unlawful for any officer of a special district to spend district money in any fiscal year except pursuant to a budgeted appropriation. The proposed budget of a dependent special district shall be presented in accordance with generally accepted accounting principles, contained within the general budget of the local governing authority and be clearly stated as the budget of the dependent district. However, with the concurrence of the local governing authority, a dependent district may be budgeted separately.[47] The governing body of each special district at any time within a fiscal year, or within up to 60 days following the end of the fiscal year, may amend a budget for that year. The budget amendment must be adopted by resolution.[48]

All reports or information required to be filed with a local governing authority are filed with:

- The clerk of the board of county commissioners when the local governing authority is a county;
- The clerk of the county commission in each county when the district is a multicounty district; or
- At the place designated by the municipal governing body when the local governing authority is a municipality.[49]

Local Government Annual Financial Reports

Section 218.32 (1), F.S., requires local governments to submit an Annual Financial Report to the Department of Financial Services (DFS) covering their operations for the preceding fiscal year. DFS provides an electronic filing system for local governments to use that accumulates the financial information reported on the annual financial reports into a database.[50] This information is available to the public in an electronic format.

In order to improve government accountability by making financial information reported by Florida's local governments more comparable, and thereby enabling local taxpayers and local policy makers to better understand and evaluate local government service delivery and operations, all local governmental reports are required to follow accounting principles when preparing their Annual Financial Report.[51]

The submission deadline for the local government's annual financial report depends on whether or not the entity is required to have an annual audit.[52] If no audit is required then the entity's annual report deadline is April 30 of each year.[53] The deadline for entities that are required to provide an audit is no later than 12 months after the end of the fiscal year.[54] If DFS does not

[46] Section 189.418(3), F.S.
[47] Section 189.418(4), F.S.
[48] Section 189.418(5), F.S.
[49] Section 189.418(7), F.S.
[50] Information obtained from the Florida Department of Financial Services website, Local Government Annual Reports, available online at http://www.myfloridacfo.com/sitePages/services/flow.aspx?ut=Local+Governments (last visited on Jan. 10, 2010).
[51] Section 218.33(2), F.S.
[52] Information obtained from the Florida Department of Financial Services, *see supra* note 50.
[53] Section 218.32(e), F.S.
[54] Section 218.32(d), F.S.

receive a completed annual financial report from a local government entity within the required period, the department must notify the Legislative Auditing Committee, which must then schedule a hearing.[55]

If the Legislative Auditing Committee determines that an entity should be subject to further state action, s. 11.40, F.S., provides that the committee must:

- In the case of a local government entity or a district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction until the local government entity or the district school board is in compliance. The committee must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.
- In the case of a special district, the committee must notify the Department of Community Affairs and the department must offer assistance to the special district. If the district still fails to comply, the department must petition the circuit court in Leon County for a writ of certiorari and the court must award attorney costs and court fees to the prevailing party.[56]
- In the case of a charter school or charter technical career center, the committee must notify the appropriate sponsoring entity that may terminate the charter.[57]

Local Government Annual Financial Audit Reports

Section 218.39, F.S., provides that if a local government entity, district school board, charter school, or charter technical career center has been notified by the first day in any fiscal year that it will not be audited by the Auditor General, then each of the following entities must provide for an annual financial audit to be completed within 12 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds. The entities referenced in statute include:

- Each county, district school board, charter school, or charter technical center[58];
- Any municipality with revenues or expenditures and expenses of more than $250,000;
- Any special district with revenues or expenditures and expenses of more than $100,000;
- Each municipality with revenues or expenditures and expenses between $100,000 and $250,000 that has not been audited within the 2 preceding fiscal years; and
- Each special district with revenues or expenditures and expenses between $50,000 and $100,000 that has not been audited within the 2 preceding fiscal years.

Actuarial Reports

The "Florida Protection of Public Employee Retirement Benefits Act" located in part VII, of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. [59] The legislative intent of this Act is to "prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs

[55] Section 218.32(f), F.S.
[56] *See* also s. 189.421(3), F.S., providing that "[v]enue for all actions pursuant to this subsection shall be in Leon County."
[57] *See* s. 11.40(5)(a) –(c), F.S.
[58] Referring to charter schools established under s. 1002.33, F.S., and each charter technical center established under s. 1002.34, F.S.
[59] Section 112.61, F.S.

which may reasonably have been expected to be paid by the current tax payers."[60] The Division of Retirement (Division) within the Florida Department of Management Services (DMS) is primarily responsible for administering this Act and helping ensure that local governments maintain the necessary level of funding for public employee retirement systems and plans. In order to meet this requirement, each retirement system or plan is required to submit regularly scheduled actuarial reports to the Division for its review and approval.

If DMS determines that a local government entity's actuarial valuation of its retirement system or plan is incomplete, inaccurate, or not based on reasonable assumptions, the department can request additional information.[61] If, after a reasonable period of time, a satisfactory adjustment has not been made, the DMS may notify the Department of Revenue and the Department of Financial Services of the noncompliance and those agencies may withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report. The affected governmental entity may petition for a hearing. If the entity failing to make the adjustment is a special district, DMS also notifies the Department of Community Affairs, which must proceed under the procedures prescribed in s. 189.421, F.S., which may result in a writ of certiorari with the circuit court.

III. Effect of Proposed Changes:

Section 1 amends s. 11.40, F.S., to clarify that the Department of Community Affairs can declare a special district inactive for failure to disclose financial reports.

Section 2 amends s. 30.49, F.S., to provide that each sheriff shall annually prepare and submit a proposed budget to the board of county commissioners. This section clarifies that "personnel services," "grants and aids" and "other uses" need to be itemized by the sheriff's office. It further specifies that within each subobject code expenditures need to be itemized at the sub-code level in accordance with the uniform chart of accounts prescribed by the Department of Financial Services.[62] The board or commission is precluded from changing any expenditure at the sub-code level.

Section 3 amends s. 112.63, F.S., to provide that the failure of a special district to provide sufficient information to fulfill its actuarial reporting requirements despite requests from the Department of Management Services is considered a final agency action by the district. The Department of Management Services, Division of Retirement, can request that the Department of Community Affairs seek a writ of certiorari in accordance with the provisions set forth in s. 189.421(4), F.S.

Section 4 amends s. 129.01, F.S., to require boards of county commissioners to provide, at a minimum, that their budget show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. The bill also deletes redundant language.

[60] *Id.*
[61] Section 112.63(4), F.S.
[62] The Department of Financial Services website has additional information on expenditure object codes at http://www.myfloridacfo.com/aadir/eocodespdf.htm.

Section 5 amends s. 129.02, F.S., to require financial reports for dependent special districts included in the county budget to show budgeted expenditures and revenues in detail consistent with the annual financial report required under s. 218.32(1), F.S. The amount of money available must equal the total appropriations for expenditures and reserves.

Section 6 amends s. 129.021, F.S., to correct a cross reference.

Section 7 amends s. 129.03, F.S., to require a county's tentative budget to be posted on the county's official website at least 2 days before the public hearing to consider such budget, and to require the county's final budget be posted on the website within 30 days after adoption.

Section 8 amends s. 129.06, F.S., to clarify the budget amendment authority of counties and to require that budget amendments authorized by resolution or ordinance, rather than statute, be posted on the county's website within 5 days after adoption.

Section 9 amends s. 129.07, F.S., to clarify language explaining that a board of county commissioners may not exceed budgeted appropriations, except as provided in s. 129.06, F.S.

Section 10 amends s. 129.201, F.S., to require each supervisor of elections to itemize expenditures according to the uniform chart of accounts prescribed by the Department of Financial Services into the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The supervisor of elections must also furnish expenditures to the board at the subobject code level in accordance to the account system prescribed by the Department of Financial Services. The board or commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

Section 11 amends s. 166.241, F.S., to require municipalities to provide, at a minimum, that their budget show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. The bill requires the tentative and adopted budgets be published on the municipality's official website at least 2 days before the public hearing to consider the budget. If the municipality does not have an official website, the budget must be posted on the website of the county or counties in which the municipality is located. The final adopted budget must be posted on the municipality's official website within 30 days of adoption, or must be transmitted to the county for posting within a reasonable time established by the county. Certain budget amendments of the municipality must be posted within 5 days after adoption or must be transmitted to the county for posting within a reasonable time established by the county.

Section 12 amends s. 189.4044, F.S., to allow the Department of Community Affairs to declare any special district inactive if the district has not had a registered office and agent on file with the department for one or more years.

Section 13 amends s. 189.412(1), F.S., to require the Department of Community Affairs Special District Information Program to collect and maintain a special district noncompliance status report prepared by the Legislative Auditing Committee.

Section 14 amends s. 189.418, F.S., to require special districts to provide, at a minimum, that their budgets show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. It also requires tentative budgets to be posted on the special district's official website at least 2 days before the budget hearings and final adopted budgets within 30 days. If the special district does not have an official website, the budget must be posted on the website of the county or counties in which the special district is located. These new requirements do not apply to water management districts. Certain budget amendments of the special district must be posted on the special district's official website within 5 days after adoption, or transmitted as determined reasonable by the county or counties in which the special district is located. The bill specifies how a special district may amend its budget. The bill requires certain special districts to provide any budget information requested by the local governing authority.

Section 15 amends s. 189.419, F.S., to clarify what happens when an independent special district fails to file reports and information the district is required to file by statute. If the failure is not justified, the local general purpose government within which the independent district is located must notify the Department of Community Affairs which must proceed according to the procedures specified in s. 189.421, F.S., (see discussion of section 16 below). If a dependent special district fails to file required reports with the local governing authority, that authority must take whatever steps it deems necessary to enforce accountability including: withholding funds, removing governing board members at will, vetoing the special district's budget, conducting an oversight review process as specified in s.189.428, F.S., or amend, merge, or dissolve the special district.

If a special district fails to file a required report with a state agency, the agency must notify the Department of Community Affairs, which shall send a certified technical assistance letter to the special district summarizing the requirements and encouraging the special district to take steps to prevent the noncompliance from reoccurring. If a special district fails to file actuarial reports or information under s. 112.63, F.S., then the appropriate state agency must notify the Department which shall proceed according to s.189.421(1), F.S.. If a special district fails to file the annual financial report or annual financial audit report under ss. 218.32 and 218.39, F.S., respectively, then the state agency shall and the Legislative Auditing Committee may, notify the Department, which shall proceed according to s.189.421, F.S.

Section 16 amends s. 189.421, F.S., to provide that when a special district fails to file a report or information required under Chapter 189, or is unable to comply with the 60-day reporting deadline granted by the Department of Community Affairs, it must provide a written notice to the Department stating: (1) the reason it is unable to comply with the deadline; (2) the steps it is taking to prevent the noncompliance from recurring; and (3) the estimated date that it will file the report with the appropriate agency.

If the written response refers to the annual financial report or annual financial audit report under ss. 218.32 and 218.39, F.S., then the Department of Community Affairs must forward the written response to the Legislative Auditing Committee, which, under s. 11.40(5)(b), F.S., will determine whether state action is needed and notify the Department of Community Affairs as to whether they should proceed according to s. 189.421, F.S. If the written response refers to

special district reports listed in s.189.419 (1), F.S., then the Department of Community Affairs must forward the response to the local general-purpose government for its consideration in determining what actions to take. When the special district does not comply with its actuarial reporting requirements under s. 112.63, F.S., the DCA must forward the response to the Department of Management Services for its consideration in determining whether the special district should be subject to further action.

The additional 30-day extension provided in current law is deleted. The bill amends the law to specify that the failure of a special district to comply with actuarial reporting requirements, as well as specified financial reporting requirements, is deemed final action of the special district. The remedy for noncompliance is writ of certiorari. If the Legislative Auditing Committee or the Department of Management Services notifies the Department of Community Affairs that specific special districts have failed to file required reports the Department of Community Affairs must initiate a writ of certiorari in the circuit court within 60 days after receiving such notice (current law gives the Department of Community Affairs only 30 days).

Section 17 amends s. 195.087, F.S., to require each tax collector and property appraiser to post their final approved budget on the county's official website within 30 days after adoption of the county's budget. The bill also requires each county's official website to have a link to the tax collector or property appraiser's website where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the bill states that the final approved budget must be posted on the county's official website.

Section 18 amends s. 218.32, F.S., to require local governmental entities to file their audit with the Department of Financial Services within 9 months after the end of the fiscal year, (instead of 12 months). Local governments not required to file audits must file annual financial reports no later than 9 months after the end of the fiscal year (instead of April 30 of each year). The bill also requires the Department of Financial Services to file its report on local government entities that are not in compliance with s. 218.32, F.S., with the Department of Community Affairs Special District Information Program. The bill requires each local governmental entity's website to provide a link to the Department of Financial Services website to view the entity's annual financial report submitted to the Department. If the local government does not have an official website, then the county government's website must provide this required link.

Section 19 amends s. 218.35, F.S., to revise provisions specifying how a county fee officer is to prepare and submit a budget. In preparing the budget related to the clerk's duties for the commission, pursuant to s. 129.03, F.S., the bill requires that expenditures be itemized in accordance with the uniform accounting system prescribed by the Department of Financial Services using the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The bill also requires the clerk of court to provide the board with all relevant and pertinent information as the board deems necessary, including expenditures at the subobject code level in accordance with the uniform accounting system prescribed by the Department of Financial Services.

The bill requires fee officers to post the clerk of court's final approved budget on the county's official website within 30 days of adoption. The final approved budget of the clerk of the circuit court may be included in the county's budget.

Section 20 amends s. 218.39, F.S., to require certain counties, certain municipalities, certain special districts, district school boards, charter schools, and charter technical career centers, to file their annual financial audit report within 9 months after the end of the fiscal year (instead of 12 months). The bill specifies that the entity's revenues or total expenditures and expenses are as reported on the fund financial statements. The bill requires auditors to prepare auditing reports in accordance with the rules of the Auditor General. These reports must be filed with the Auditor General within 45 days after the delivery of the report to the audited entity but no later than 9 months after the end of the fiscal year.

The bill also requires the Auditor General to notify the Legislative Auditing Committee of any audit report that indicates an audited entity has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports. It provides the Legislative Auditing Committee with the authority to direct a local governmental entity to provide a written statement concerning the lack of corrective action or describing corrective action that will be taken in the future. If the Committee determines that the written statement is not sufficient, it may require the entity to appear before the Committee.

The bill further authorizes the Committee to take certain actions prescribed in s.11.40(5), F.S., against an audited entity that has failed to take full corrective action and for which there is no justifiable reason for the entity's inaction, or if the entity has failed to comply with the Committee's requests.

Section 21 amends s. 218.503, F.S., to clarify that a deficit in the fund financial statements of entities required to report under governmental financial reporting standards or on nonprofit financial statements shall constitute a financial distress indicator that shall subject the entity to review and oversight for financial emergency. The bill replaces the term "fixed or capital assets" with "property, plant, and essential equipment" as types of property that if necessary will not be considered resources available to cover the deficit.

Section 22 amends s. 373.536, F.S., to require water management districts to post their tentative budgets on their official website at least 2 days before budget hearings. The final adopted budget must be posted on the website within 30 days after adoption.

Section 23 amends s. 1011.03, F.S., to require district school boards to post a summary of their tentative budgets on the district's official website within 2 days before the budget hearing. The bill also states that the district school board's final adopted budget must be posted on the district's official website within 30 days after adoption, and any budget amendments must be posted on their official websites within 5 days after adoption.

Section 24 amends s. 1011.051, F.S., to amend accounting terminology.

Section 25 amends s. 1011.64, F.S., to amend accounting terminology.

Section 26 provides that this act shall take effect on October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Article VII, of the State Constitution, prohibits any general law that would require cities and counties to spend funds or take action requiring the expenditure of funds unless the legislature determines that the law fulfills an important state interest and one of the following exceptions apply:

- Estimated funds are appropriated to cover the mandate;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate sufficient funds, by a simple majority vote of the governing body of each county or municipality;
- It is approved by a two-thirds vote of the membership in each house of the legislature;
- Similarly situated persons are all required to comply; or
- The law is required to comply with a federal requirement or for a federal entitlement.[63]

Subsection (d) of section 18 of Article VII, of the State Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.[64] An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 $1.9 million).[65]

Although there will be some costs to local government entities associated with posting budget information on their website, the costs probably do not rise to the level of a constitutional mandate. If it is determined that this bill has more than an insignificant fiscal impact (i.e. the costs exceed $1.9 million), the bill would require a finding of an important state interest and a two-thirds vote of the membership of each house of the Legislature to effectively bind cities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[63] FLA. CONST. art. VII, s. 18(a).
[64] FLA. CONST. art. VII, s. 18(d).
[65] Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

B. Private Sector Impact:

This bill will provide easier access to local government annual financial reporting information for individuals, due to amendments to the reporting process and by providing such information through the government entity's official website.

C. Government Sector Impact:

This bill requires certain government entities to post annual financial reporting information on the entity's official website. The fiscal impact on local governments as a result of this requirement is unknown at this time.

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.

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:	SJR 210
INTRODUCER:	Senator Fasano
SUBJECT:	Homestead Property Assessed Value
DATE:	January 12, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This joint resolution proposes an amendment to Article VII, section 4, of the State Constitution, to prohibit increases in the assessed value of homestead property in any year where the market value of the property decreases.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, s. 4, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on

[1] *See Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

[2] The constitutional provisions in article VII, section 4, of the Florida Constitution, were implemented in Part II of ch. 193, F.S.

the basis of their character or use.[3] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[4] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[5] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[6] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[7]Certain working waterfront property is assessed based upon the property's current use.[8]

C.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[9]

"Save Our Homes" Assessment Limitation

The "Save Our Homes" provision in article VII, s. 4(d) of the State Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).[10] The Save Our Homes limitation was amended into the Florida Constitution in 1992, to provide that:

- All persons entitled to a homestead exemption under section 6, Art. VII of the State Constitution, have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year could not exceed the lower of three percent of last year's assessment or the Consumer Price Index (CPI) for All Urban Consumers, U.S. City Average, all items 1967= 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 2008, Florida voters approved an additional amendment to article VII, s. 4(d), of the State Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

[3] FLA. CONST. art. VII, s. 4(a).
[4] FLA. CONST. art. VII, s. 4(c).
[5] FLA. CONST. art. VII, s. 4(e).
[6] FLA. CONST. art. VII, s. 4(f).
[7] FLA. CONST. art. VII, s. 4(i).
[8] FLA. CONST. art. VII, s. 4(j).
[9] FLA. CONST. art. VII, ss. 3 and 6.
[10] FLA. CONST. art. VII, s. 4(d).

Section 193.155, Florida Statutes
In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the "Save Our Homes" amendment into s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994.[11] Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the "Save Our Homes" provision in section 4(d), Art. VII, State Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lower of:

- Three percent of the assessed value from the prior year; or
- The percentage change in the CPI for All Urban Consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics. [12]

Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds the just value, the assessed value must be lowered to just value of the property.

Rule 12D-8.0062, Florida Administrative Code (F.A.C.): "The Recapture Rule"
In October 1995, the Governor and the Cabinet adopted rule 12D-8.0062, F.A.C. of the Department of Revenue, entitled "Assessments; Homestead; and Limitations".[13] The administrative intent of this rule is to govern "the determination of the assessed value of property subject to the homestead assessment limitation under article VII, s. 4(c), Florida Constitution, and s. 193.155, F.S."[14]

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the "recapture rule". This provision requires property appraisers to increase the prior year's assessed value of a homestead property by the lower of three percent or the CPI on all property where the value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., which is referred to as the "recapture provision" states:

> (5) Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year's assessed value ….[15]

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the "Save Our Homes"

[11] *See Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (stating that "the clear language of the amendment establishes January 1, 1994, as the first "just value" assessment date, and as a result, requires the operative date of the amendment's limitations, which establish the "tax value" of homestead property, to be January 1, 1995").
[12] Section 193.155(1), F.S.
[13] While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.
[14] Rule 12D-8.0062(1), F.A.C.
[15] Rule 12D-8.0062(5), F.A.C. (emphasis added)

cap whose property is assessed at less than just value may see an increase in the assessed value of their home during years where the just/market value of their property decreased.[16]

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year's assessed value decreased by that percentage.

Markham v. Department of Revenue[17]

On March 17, 1995, William Markham, a Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed "recapture rule" within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious".[18] Markham also claimed that subsection (5) of the rule was at variance with the constitution - specifically that it conflicted with the "intent" of the ballot initiative and that a third limitation relating to market value or movement[19] should be incorporated into the language of the rule to make it compatible with the language in article VII, s. 4(c), of the State Constitution.

A final order was issued by The Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsections (5) and (6) of the administrative rule were consistent with article VII, s. 4(c), of the State Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.[20]

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.[21]

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to Article VII, section 4, of the State Constitution, to prohibit increases in the assessed value of a homestead property in any year where the market value of the property decreases.

The joint resolution also deletes obsolete language in Article VII, section 4(d), of the State Constitution.

If approved by Florida voters, this joint resolution will take effect on January 1, 2013.

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[16] *Markham v. Dep't of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995) (stating that "subsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero").
[17] *Id.*
[18] *Id*.
[19] *Id.*at ¶ 21 (stating that "[t]his limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").
[20] *Id.* at ¶ 20.
[21] *Id.* at ¶ 22.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 1, Art. XI, of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(e), Art. XI, of the State Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

Section 5(d), Art. XI, State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution $106.14 for this fiscal year. The division estimates the full publication costs to advertise this constitutional amendment to be $190,733.58.[22]

The United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction, the equal protection of law."[23] In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.[24] In these instances, courts have used the rational

[22] Florida Department of State, *Senate Joint Resolution 210 Fiscal Analysis* (Jan. 18, 2011) (on file with the Senate Committee on Community Affairs).
[23] U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.
[24] *Reinish v. Clark*, 765 So.2d 197 (Fla. 1st DCA 2000) (holding that the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause). *See also Lanning v. Pilcher*, 16 So.3d 294 (Fla. 1st DCA 2009) (holding that the Save Our Homes Amendment of the State Constitution did not violate a nonresident's rights under the Equal Protection Clause). *See also Nordlinger v. Hahn*, 505 U.S. 1 (1992) (stating that the

basis test to determine the constitutionality of discriminatory treatment in property tax assessments.[25] Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.[26]

It has been argued that the recapture rule provided in ss. (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.[27] To the extent that this view is adopted, taxpayers may argue that the elimination of the recapture rule creates a stronger argument for an Equal Protection Clause violation. If this argument is made, the court would need to determine whether the components of this joint resolution are rationally related to a legitimate state interest.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If approved by the voters, the joint resolution will reduce local revenue as described in "Government Sector Impact".

B. Private Sector Impact:

If approved by the voters, taxes will be reduced for those taxpayers whose homesteads have depreciated but are still assessed at less than just value. The joint resolution will redistribute the tax burden. It may benefit homestead property that has a "Save Our Homes" differential; however, non-homestead and recently established homestead property will pay a larger proportion of the cost of local services. To the extent that local governments do not raise millage rates, taxpayers may experience a reduction in government and education services due to any reductions in ad valorem tax revenues.

C. Government Sector Impact:

When addressing similar legislation filed last year (2010 SJR 718), the Revenue Estimating Conference determined that the fiscal impact on ad valorem revenues, if the joint resolution was approved by the voters, would have been an $11 million reduction in 2011-12 and a $37 million recurring reduction for school purposes, and an $87 million recurring reduction for all levies.

Section 5(d), Art. XI, State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth

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constitutional amendment in California that limited real property tax increases, in the absence of a change of ownership to 2% per year, was not a violation of the Equal Protection Clause.)

[25] *Nordlinger,* at 33-34, stating that a "classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose".).

[26] *Id.*

[27] Walter Hellerstein et al., Shackelford Professor of Taxation, LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA'S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES, at 83 (on file with the Senate Committee on Community Affairs).

week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year. The division estimates the full publication costs to advertise this constitutional amendment to be $190,733.58.[28]

If this joint resolution is approved by Florida voters, the Department of Revenue will have a minimal cost associated with amending Rule 12D-8.0062, F.A.C.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If this joint resolution is approved by Florida voters and enacted into law, similar provisions will likely be proposed for the assessment limitations provided in subsections 4(g) and (h), Art. VII, of the State Constitution.[29]

Section 4(g), Art. VII, of the State Constitution, provides that for all levies other than school levies, the assessed value of residential real property containing nine or fewer units may not be increased annually by more than 10 percent of the assessment in the prior year.

Section 4(h), Art. VII, of the State Constitution, provides that for all levies other than school levies, the assessed value of real property not subject to limitations in other provisions of the constitution may not be increased annually by more than 10 percent of the assessment in the prior year.

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.

[28] Florida Department of State, *Senate Joint Resolution 210 Fiscal Analysis* (Jan. 18, 2011) (on file with the Senate Committee on Community Affairs).

[29] Article VII, sections 4(g) and (h), of the Florida Constitution, were created in January 2008, when Florida electors approved Amendment 1 to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses.

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 232
INTRODUCER:	Senator Bennett
SUBJECT:	Century Commission for a Sustainable Florida
DATE:	January 17, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill adds new members to the Century Commission, redirects the Century Commission's focus toward creating a state plan for growth, and sunsets the commission in 2013.

This bill substantially amends section 163.3247 of the Florida Statutes.

II. Present Situation:

Florida's growth management structure has been reviewed, analyzed, and revised for over thirty years in an effort to ensure that Florida can support growth and manage its resources.[1] Florida has utilized a series of task forces and committees to evaluate growth problems and recommend appropriate legislative responses. Periodically reviewing and evaluating Florida's growth problems and the effectiveness of legislative responses, these commissions have produced a series of reports and recommendations for establishing and fine-tuning Florida's growth management systems.[2]

Century Commission

The Century Commission was created in 2005 as a standing body charged with helping the state to envision and plan for the future using a 25-year and a 50-year planning horizon.[3] The Century Commission must submit an annual report containing specific recommendations for addressing growth management in the state. The report, which must be submitted to the Governor, the

[1] TIMOTHY S. CHAPIN, CHARLES E. CONNERLY, & HARRISON T. HIGGINS, GROWTH MANAGEMENT IN FLORIDA: PLANNING FOR PARADISE, 7, 12 (2007).
[2] *Id.*
[3] Section 163.3247, F.S.

President of the Senate, and the Speaker of the House of Representatives, must also contain discussions regarding the need for intergovernmental cooperation and the balancing of environmental protection with future development, as well as recommendations regarding dedicated funding sources for sewer facilities, water supply and quality, transportation facilities, and educational infrastructure.

The Century Commission has presented a number of reports to the Governor and Legislature on the future of growth in Florida. Additionally, they have facilitated a dialog on oil spill issues and created research projects on topics such as:

- Critical Lands & Waters Identification Project (CLIP), and the Cooperative Conservation Blueprint initiative.
- Citizen Visioning, Values, and Indicators for Growth Planning.
- Sustainability Science, including Energy and Climate Change.
- Sustainable Water Supply Planning.

The Century Commission consists of 15 members representing local governments, school boards, developers, homebuilders, the business, agriculture, environmental communities and other appropriate stakeholders. The membership is appointed as follows:

- 5 by the Governor,
- 5 by the President of the Senate, and
- 5 by the Speaker of the House of Representatives.

The commissioners serve without compensation, but, with the exception of FY 2010-11,[4] may receive reimbursement for per diem and travel expenses while in performance of their duties. Meetings of the commission are held at least three times a year in different regions of the state to collect public input and the Department of Community Affairs provides staff and other resources necessary for the Century Commission to accomplish its goals. The Century Commission was not funded for FY 2010-11.

State Comprehensive Plan

Chapter 187 of the Florida Statutes sets out the State Comprehensive Plan. The State Comprehensive Plan was intended to be a direction-setting document that would provide long-range policy guidance for the orderly social, economic, and physical growth of the state. The State Comprehensive Plan contains specific goals and policies with regard to: education, children, families, the elderly, housing, health, public safety, water resources, coastal and marine resources, natural systems and recreational lands, air quality, energy, hazardous and nonhazardous materials and waste, mining, property rights, land use, urban and downtown revitalization, public facilities, cultural and historical resources, transportation, governmental efficiency, the economy, agriculture, tourism, employment, and plan implementation.[5] There are provisions in the law requiring the plan to be reviewed and revised biennially,[6] but the State Comprehensive Plan has been largely ignored from a planning perspective.[7]

[4] Chapter 2010-153, L.O.F.
[5] Section 187.201, F.S.
[6] Section 186.008, F.S.
[7] CHAPIN, *supra* note 1, at 12.

III. Effect of Proposed Changes:

The bill amends s. 163.3247, F.S., relating to the Century Commission for a Sustainable Florida.

The bill provides a statement that the Legislature finds that it is imperative that the state have a specific strategic plan addressing its growth management system.

The bill reorganizes the commission to consist of 18 members as follows:

- Decrease the number of members appointed by the Governor to 2;
- Include the chairs of the legislative growth management committees;[8]
- Include the Secretaries of:
  - The Department of Community Affairs,
  - The Department of Environmental Protection, and
  - The Department of Transportation.
- Include the director of the Office of Tourism, Trade, and Economic Development.

There will be two vacancies on the commission, and Senator Bennett, the chair of the Senate growth management committee, is already a member. Therefore, adding the three Secretaries, a Florida House member, and the director of OTTED, will result in a committee that has 18 members.

The bill revises the way the chair of the commission is selected. Rather than being appointed by the Governor, the members elect the chair. However, the chairs of the legislative growth management committees, the Secretaries of the designated state agencies, and the director of OTTED may not serve as chair.

The bill removes language that set up staggered terms for the members and provides for a 4-year term for each of the members. However, members who are appointed on or before January 1, 2011, shall have their terms automatically extended to June 30, 2013, to ensure continuity during the development of the strategic plan.

The bill provides that the fiscal year for the commission begins July 1 each year and ends June 30 of the following year. The commission meets at least 6 times per fiscal year (an increase from the 3 meetings required under current law). The bill specifies how the commission shall set its meeting calendar.

The bill removes many of the duties of the Century Commission. Specifically, the bill removes the following responsibilities. The obligation to:

- Conduct a process through which the commission envisions the future for the state and then develops and recommends policies, plans, action steps, or strategies to assist in achieving the vision.
- Review and consider existing growth management schemes in its inquiry of how the state can best accommodate projected increased populations while maintaining the natural, historical, cultural, and manmade life qualities that best represent the state.

[8] The Florida Senate Committee on Community Affairs and the House Committee on Economic Affairs or the House Subcommittee on Community and Military Affairs.

- Serve as a repository of good community-building ideas and as a source to recommend strategies and practices to assist others in working collaboratively to problem solve on issues relating to growth management.
- Annually present to the Governor and Legislature a report containing specific recommendations for addressing growth management in the state and the issues to be addressed in the report (instead the commission will submit by Nov. 15, 2012, its strategic plan).

Instead, the commission would focus on the goal of bringing together people representing varied interests to develop a shared image of the state and its developed and natural areas. The process should involve exploring the impact of the estimated population increase and other emerging trends and issues; creating a vision for the future; and developing a strategic action plan to achieve that vision using 10-year, 25-year, and 50-year intermediate planning timeframes. The plan would:

- focus on essential state interests, defined as those interests that transcend local or regional boundaries and are most appropriately conserved, protected, and promoted at the state level;
- accommodate the projections for an increase in population while maintaining the state's natural, historical, cultural, and manmade life qualities; and
- be developed through a coordinated, integrated, and comprehensive effort across agencies, local governments, and nongovernmental stakeholders.

Under the bill, the executive director of the commission shall be appointed by the Secretary of Community Affairs and ratified by the commission. The executive director will serve at the pleasure of the commission under the direction of the chair.

The bill limits the requirement that the Department of Community Affairs provide the Century Commission with staff and other resources to only providing that assistance for completion of the strategic plan. The bill expressly allows the department to obtain additional money for grants. The bill requires the department to provide a specific line item in its annual legislative budget to fund the commission for the period beginning July 1, 2011, through June 30, 2013.

The bill sunsets the Century Commission on June 30, 2013.

The bill has an effective date of July 1, 2011.

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:

There would be a cost to the state associated with developing a state plan. However, there may be long-term cost savings if the commission (1) recommended a workable plan for guiding growth in the state while minimizing the impact to state fiscal and natural resources and (2) the plan was implemented.

VI. Technical Deficiencies:

The bill requires the department to provide a specific line item in its annual legislative budget to fund the commission for the period beginning July 1, 2011, through June 30, 2013. This requirement is somewhat problematic in that it places a requirement on the Department of Community Affairs to place a request for funds to the Governor to present to the Legislature prior to the effective date of this act. It would not be a problem for the 2012-2013, fiscal year. However, a line item request for an undefined amount is not a guarantee of funding.

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.

The Florida Senate

Interim Report 2011-110 *October 2010*

Committee on Community Affairs

MERGER OF INDEPENDENT SPECIAL DISTRICTS

Issue Description

Under Florida law, an independent special district created by a special act can only be dissolved or merged by the Legislature.[1] Pursuant to this statutory requirement, two independent special districts formed under individual special acts require a special act of the Legislature before they can merge. The unique structure and organization of independent special districts makes merger propositions a lengthy and expensive process. Currently, there are minimal statutory guidelines in Florida for special districts to follow during mergers or consolidations.

The purpose of this interim report is to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report will begin by reviewing current Florida law and the existing merger and consolidation laws in other states. The report will then discuss previous merger attempts that have failed in Florida and provide 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 or consolidate prior to a Legislative Act.

Background

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.[2] Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose.[3] A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.[4] 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.[5]

Special districts have the same governing powers and restrictions as counties and municipalities.[6] 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".[7] Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.[8]

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[1] Section 189.4042, F.S.
[2] Ch. 189, F.S., *see* s. 189.401, F.S.
[3] Section 189.403(1), F.S.
[4] *Id.*
[5] *Id.*
[6] Mizany, Kimia and April Manatt, WHAT'S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).
[7] *Id.* (alteration to original) (citation omitted).
[8] Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.

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.[9]

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.[10] Independent special districts may encompass more than one county.[11] 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".[12]

The Special District Information Program (SDIP), administered by the Department of Community Affairs (DCA) is designed to collect, update, and share detailed information on Florida's special districts with more than 685 state and local agencies.[13] 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.[14] As of May 2010, there were approximately 1,624 special districts in the state of Florida: 615 dependent districts and 1,009 independent districts.[15] 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.[16]

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".[17]

Florida Statutes currently do not provide statutory guidelines to facilitate the merger or consolidation of independent special districts prior to a Legislative Act. However, s. 189.428, F.S., does offer an oversight review process that allows counties and municipalities to evaluate the degree of special district services and determine the need for adjustments, transitions or dissolution.[18] 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.[19] 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.[20]

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[9] Section 189.403 (2) (a)-(d), F.S.
[10] Section 189.403(3), F.S.
[11] *Id.*
[12] Section 189.402(3)-(4), F.S.
[13] Florida Department of Community Affairs, *Special Districts Information Program* (available online at http://www.floridaspecialdistricts.org) (last visited on Sept. 21, 2010).
[14] Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Community Affairs, *Official List of Special Districts Online*, (available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm) (last visited on August 11, 2010). Note: This list is updated on October 1 of each year.
[15] Gaskins, *supra* note 8. Note: This number is subject to change daily.
[16] Florida Department of Community Affairs, *Official List of Special Districts Online* (available online at http://www.floridaspecialdistricts.org/OfficialList/index.cfm) (last visited on August 11, 2010).
[17] Section 189.4042(2), F.S.
[18] *See* s. 189.428, F.S.
[19] Section 189.428(2), F.S.
[20] Section 189.428(3), F.S., Note: that dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.

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 districts' existing contracts.[21]

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.[22] 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.[23]

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.[24] This section does not apply to deepwater ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.[25]

Chapter 191, F.S., The Independent Special Fire Control District Act

Statutory procedures for the creation, expansion, and merger of independent special fire control districts are addressed in s. 191.014, F.S. Under the provisions of this section, an independent special fire control district "may be modified, extended or enlarged upon the approval or ratification by the Legislature." In regards to fire district mergers, subsection (3) of s. 191.014, F.S., provides that:

> The merger of a district with all or portions of other independent special districts or dependent fire control districts is effective only upon ratification by the Legislature. A district may not, solely by reason of a merger with another governmental entity, increase ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless approved by the electors of the district by referendum.[26]

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[21] *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.
[22] Section 189.428(7), F.S.
[23] Section 189.428(8), F.S.
[24] *Id.*
[25] 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.).
[26] Section 191.014(3), F.S.

Exclusive of debt service bonds, s. 191.009, F.S., prohibits an independent special fire control district board from imposing ad valorem taxes for operating purposes above 3.75 mills, unless previously authorized by law and approved by referendum.[27]

Mergers and Consolidations of Special Districts

Mergers and consolidations can be achieved in various forms and capacities, ranging from mutual aid agreements to formal mergers, and from incremental consolidations to immediate mergers. [28] The model and scope of any particular agreement depends upon the goals and aspirations of the districts involved. There is no "one-size-fits all" consolidation or merger format.[29]

The most common types of cooperative efforts between independent special districts include mutual or automatic aid agreements, consolidations, and mergers. Consolidations can also include administrative/operational consolidation, functional consolidation, partial consolidation, or full consolidation. These cooperative efforts are defined as follows:

- Mutual or Automatic Aid Agreements are defined as interlocal agreements between two or more districts whereby participants can request or provide automatic assistance (respectively) from the neighboring district. An example includes reciprocal assistance or first response agreements for fire rescue and emergencies.
- Administrative/Operational Consolidation includes the consolidation of the administrative or operational aspects of two or more districts, while remaining legal individual and separate districts. Operational tasks may include communications and information databases.
- Functional Consolidation involves the consolidation of one or more duties normally performed by one district, between two or more districts while remaining legal individual and separate districts. This may include joint human resources and training or bulk purchasing.
- Partial Consolidation occurs when two or more separate districts share certain resources or specific functions, but remain autonomous special districts. This may include sharing apparatus or system databases.
- Full Consolidation takes place when two or more separate districts combine all the administrative and operational components of each district into a single district with a single organizational structure.
- Merger occurs when two or more districts legally dissolve and combine to become an entirely new individual district. [30]

Other States' Merger and Consolidation Laws

The diverging merger and consolidation procedures enacted in other states can be used as a foundation for merger or consolidation legislation in Florida. "By doing so [the state can] enjoy the benefits of progress without the need to invent each step anew as we proceed."[31] This report will focus on the different merger and consolidation procedures in three states: Arizona, California, and New York.[32]

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[27] Section 191.009(1), F.S.

[28] Senate professional staff found a number of articles and literature reviews that discuss the effects and procedures for mergers and consolidations. However, this report will only focus on the types of cooperative efforts. For more general information on special district mergers, *See* Chief Jack W. Snook, and Chief Jeffery D. Johnson, COOPERATIVE SERVICE THROUGH CONSOLIDATIONS, MERGERS, AND CONTRACTS …MAKING THE PIECES FIT (ESCG 1997).

[29] Drozd, Otto III, CONSOLIDATION/REGIONALIZATION OF THE HIALEAH FIRE DEPARTMENT: A PRAGMATIC EVALUATION ON SERVICE DELIVERY, 14 (June 2004).

[30] These definitions were provided from three separate pieces of literature by Otto Drozd and Jack Snook, and David Nichols. *See* Drozd, *supra* note 29, at 9-12. *See also* Snook, *supra* note 28, at 16-19. *See also* David Nichols, FUNCTIONAL CONSOLIDATION: IMPROVING THE DELIVERY OF FIRE AND EMERGENCY SERVICES IN SOUTH CENTRAL PENNSYLVANIA, at 13 (Nov. 2006).

[31] Colin A. Campbell Associates, Inc., FIRE DEPARTMENT CONSOLIDATION- WHY & HOW TO DO IT… RIGHT, 58 (VFIS Publication 1994) (alteration to original) (citation omitted).

[32] According to the professional staff of the Arizona and California State Legislatures, there does not appear to be any statewide data on the cost-savings generated from mergers and consolidations since these changes are conducted at the local level. The New York Attorney General's office articulated that it is too early to determine the effects of the recent New York Government Reorganization and Citizen Empowerment Act, which became law on March 21, 2010.

Arizona

Arizona's merger and consolidation statutes only apply to fire districts.[33] Pursuant to A.R.S. §§ 48-820 and 48-822, fire districts can merge or consolidate through one of two methods: by election or via non-election procedures.[34] With certain exceptions, "[t]he statutory procedures for fire district mergers and consolidations are essentially the same."[35] The report will first address the general non-election and election requirements, and then discuss the additional statutory requirements that apply specifically to the merger or consolidation of fire districts.

Non-Election Method: In order to qualify for a non-election merger or consolidation, the governing body of each fire district must "obtain written consent to the merger from any single taxpayer residing within each of the affected districts, who owns 30 percent or more of the net assessed valuation of the total net assessed valuation of the district".[36] Once the districts meet this requirement, the governing body of each fire district must adopt a resolution by majority vote and consider the merger or consolidation at a public hearing. During the public hearing, the district governing bodies listen to comments from the county board of supervisors and the public to determine if the proposed boundary change would promote the "public health, comfort, convenience, necessity or welfare".[37] If the governing bodies adopt the resolution by a three-fourths vote at the hearing, then the merger or consolidation is approved and recorded with the board of supervisors.[38]

Election Method: If the fire districts are *not* able to obtain the written consent from a taxpayer residing within each of the affected districts who owns 30 percent or more of the net assessed valuation of the total net assessed valuation of the district, then the merger or consolidation can only be accomplished through election.[39] Election orders for mergers and consolidation can only be called once every two years in conjunction with the general election and all election expenses must be reimbursed by the fire districts to the counties.[40] Under the election method, once a resolution for merger or consolidation has been approved by the governing bodies, the board of supervisors calls an order for election and provides property owners with written notice of a public hearing on the resolution.[41] The election ballot language must be formatted as a simple YES/NO vote, and must be approved by a majority of the votes cast in each affected district.[42]

Special Requirements for Merger: Once a fire district merger is approved at the public hearing or by election, the governing body of each fire district must call a joint meeting within 30 days to appoint a new governing board.[43] The new governing board must be composed of five members that currently serve on the governing bodies of each district, of which no more than three can have terms expiring that year or be from the same fire district board.[44] The newly appointed board must then elect a chairman and a clerk, and declare the districts merged by resolution.[45]

Special Requirements for Consolidation: After a resolution for consolidation is approved by a majority vote of the governing body if each district, the two fire districts must prepare an impact statement formulated by mutual agreement. The impact statement must be available for comment and governing body approval at the public hearing, and shall include the following information:

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[33] ARIZ.REV.STAT. §48-820 (merger of fire districts) and §48-822 (consolidation of fire districts).
[34] *Id.*
[35] Ariz. H.R. Comm. on Gov't, HB 2432 (2010) Staff Analysis, 2 (March 5, 2010) (on file with the Florida Senate Committee on Community Affairs).
[36] Subsections (G) and (J), ARIZ.REV.STAT. §48-820. *See also* Paragraph (C)(15) and (E) of ARIZ.REV.STAT. §48-822.
[37] Subsection (F), ARIZ.REV.STAT. §48-820. *See also* Paragraph (C)(8) of ARIZ.REV.STAT. §48-822.
[38] *Id.* Note: ARIZ.REV.STAT. §48-822(C)(7)-(8), pertaining to the consolidation of fire districts does not specify the required governing board approval rate and only states that the governing body must determine that consolidation will "promote the public health, comfort, convenience, necessity or welfare".
[39] Subsection (G), ARIZ.REV.STAT. §48-820. *See also* Subsection (E) of ARIZ.REV.STAT. §48-822.
[40] Subsection (A), ARIZ.REV.STAT. §48-820. *See also* Subsection (A) of ARIZ.REV.STAT. §48-822.
[41] *Id.*
[42] Subsections (A)-(B), ARIZ.REV.STAT. §48-820. *See also* Subsections (A)-(B) of ARIZ.REV.STAT. §48-822.
[43] Subsection (H), ARIZ.REV.STAT. §48-820.
[44] *Id.*
[45] Subsection (I), ARIZ.REV.STAT. §48-820.

- A legal description of the boundaries of the proposed consolidated district,
- An estimate of the assessed valuation in the proposed district,
- An estimate in the change of property tax liability, and
- A list and explanation of benefits and injuries that will result from the proposed consolidated district.[46]

Unlike merged fire district governing boards, the governing board of a newly consolidated fire district is only composed of the governing members of the district into which consolidation was requested. "[T]he governing body of the fire district requesting consolidation is eliminated."[47] The consolidated fire district governing board must consist of at least five members, unless the new district population is greater than 50,000 people, at which point two additional members may be appointed. [48]

California

In California, local government consolidation procedures are governed by The Cortese-Knox-Hertzberg Local Government Reorganization Act.[49] Under the provisions of this Act, special district consolidations can be initiated three ways: initiation by the Local Agency Formation Commission (LAFCO); initiation by resolution; and initiation by petition.[50]

LAFCO[51] is an independent regulatory commission that was created by the California Legislature in 1963 to regulate and establish local government boundary changes.[52] Today, all 58 counties in California have their own LAFCO. [53] The membership of each individual LAFCO is generally composed of two county supervisors, two city council members or a mayor, one public member, two district commissioners if applicable,[54] and an executive officer that is responsible for preparing reports and recommendations for the commissioners.[55]

LAFCO can only initiate consolidation proceedings if it determines that the reorganization would be consistent with the results and recommendations of the local government's existing governmental agencies, spheres of influence, and municipal services review.[56] A local government's "spheres of influence" and "municipal service review" are planning documents developed and updated by LAFCO to estimate the local entity's current and projected land use and services.[57] Prior to consolidation, LAFCO must also determine that the public service costs

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[46] ARIZ.REV.STAT. §48-822(C)(2) a.-e.
[47] Ariz. H.R. Comm. on Gov't, HB 2432 (2010) Staff Analysis, *supra* note 35, at 2. *See also* ARIZ.REV.STAT. §48-822(C)(10).
[48] ARIZ.REV.STAT. §48-822(C)(11).
[49] CAL. GOV'T CODE §56000. Note: This section will only discuss the consolidation of local government entities. "Merger" is defined differently in California, as "[t]he extinguishment, termination, and cessation of the existence of a district of limited powers by the merger of that district with a city." *See* CAL. GOV'T CODE §56056.
[50] Best, Best & Krieger, *White Paper, The Metamorphosis of Special Districts: Current Methods for Consolidation, Dissolution, Subsidiary District Formation and Merger*, 2-10 (August 2008) (on file with the Senate Committee on Community Affairs).
[51] Hereinafter also referred to as "the commission".
[52] Tami Bui and Bill Ihrke, IT'S TIME TO DRAW THE LINE, A CITIZEN'S GUIDE TO LAFCOS: CALIFORNIA'S LOCAL AGENCY FORMATION COMMISSIONS, 2nd ed., 6 -7 (May 2003) (stating that "LAFCOs regulate all city and most special district boundaries . . . [but] *do not* regulate boundaries for counties and certain local governments such as air pollution control and community college districts") (citations omitted) (alteration to original) (on file with the Senate Committee on Community Affairs).
[53] *Id.* at 7. Pursuant to 2000 legislation, LAFCOs' are now funded by county governments, of which each sector pays one third of LAFCO's budget. *See id.* at 25.
[54] Note: Of the 58 LAFCO's in California, approximately half of them have special district representation, while the remaining 29 LAFCOs just have five commissioners. E-mail from Peter Detwiler, Staff Director of the California Senate Local Government Committee (Sept. 22 2010) (on file with the Senate Committee on Community Affairs).
[55] CAL. GOV'T CODE § 56325(a)-(d). Note: the statutes also provide special commission membership requirements for certain counties *see* §§ 56326- 56328.5. *See also* Tami Bui and Bill Ihrke, *supra* note 52, at 23.
[56] CAL. GOV'T CODE § 56375(a)(3). *See also* CAL. GOV'T CODE§§ 56378, 56425, and 56430.
[57] CAL. GOV'T CODE §§ 56076, and 56425. Statutes suggest that these studies be updated once every five years.

in the boundary change proposal are likely to be less or substantially similar to alternative service methods, and that consolidation would promote public access and accountability.[58]

Initiation by resolution occurs when the governing bodies of one or more special district(s) adopts a Resolution of Application and submits it to the county's LAFCO executive officer.[59] The voters or landowners of one or more special districts can also initiate consolidation proceedings through a Petition of Application that is signed by the requisite number of registered voters or landowners. Prior to circulating the petition, the proponent must file a Notice of Intention to Circulate the Petition with the county's LAFCO executive officer.[60] A petition for the consolidation of one or more special districts must contain the signatures of at least 5% of the registered voters within each district, or in the case of landowner-voter districts: 5% of the landowners-voters that own land in each district owning not less than 5% of the assessed value of land within each district.[61]

Consolidation Procedures: Special districts must undergo four, and sometimes five, procedures to consolidate. These steps include: (1) application with LAFCO, (2) LAFCO review and approval, (3) conducting authority proceedings (4) possible election (depending on the petition threshold), and (5) certificate of completion.[62]

Application: District governing board(s) or petitioners that wish to consolidate with one or more other special district(s) under the first two consolidation methods must begin by submitting an application for consolidation to the county's LAFCO executive officer.[63] Each application must contain:

- A petition or resolution of application initiating the proposal;
- A statement of the nature of each proposal;
- A map and description, acceptable to the executive officer, of the boundaries of the subject territory for each proposed change of organization or reorganization;
- Any data and information as may be required by any regulation of the commission;
- Any additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the commission; and
- The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the report by the executive officer and who are to be given mailed notice of the hearing.[64]

Before LAFCO can consider an application for consolidation, the affected local agencies must adopt a mutual resolution agreeing to the exchange of property tax revenues.[65]

Review and Approval: The executive officer must examine the application and prepare recommendations for the commission.[66] LAFCO must then review the proposal and hear public testimony and debate.[67] After the commission hearing, LAFCO has 35 days to approve or disapprove the proposal, with or without conditions.[68] In making its decision, the commission must consider certain statutory factors relating to the individual districts' current local structure, land use designations, governmental services and per capita assessments.[69] Pursuant to the California Environmental Quality Act (CEQA), the commission is also required to "review the environmental effects of proposed boundary changes". If LAFCO determines that the boundary change may have a significant adverse environmental effect, LAFCO will also require an Environmental Impact Report (EIR).[70]

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[58] CAL. GOV'T CODE § 56881(b)(1)-(2) (alteration to original) (citation omitted).
[59] CAL. GOV'T CODE §§ 56654(a), and 56658(a).
[60] CAL. GOV'T CODE § 56700.4(a).
[61] CAL. GOV'T CODE § 56865(a)-(b).
[62] Bui and Ihrke, *supra* note 52, at 18.
[63] CAL. GOV'T CODE § 56658(a) (2008). Note: this step does not apply in LAFCO-initiated consolidation proposals.
[64] CAL. GOV'T CODE § 56652(a)-(f).
[65] CAL. REV. &TAX. CODE § 99(b) (6). *See also* CAL. GOV'T CODE § 56810 (discussing the procedures for Property Tax Exchange).
[66] CAL. GOV'T CODE § 56665.
[67] CAL. GOV'T CODE § 56666.
[68] CAL. GOV'T CODE §56880.
[69] *See* CAL. GOV'T CODE § 56668.
[70] Bui and Ihrke, *supra* note 52, at 20. *See also* CAL. PUB. RES. CODE §2100, et seq.

Conducting Authority Proceedings: Once LAFCO approves the consolidation proposal, it holds a conducting authority proceeding to measure public protests.[71] During this time, any landowner or registered voter subject to the proposed boundary change is welcome to file a written protest against the consolidation.[72] "The number of protests [received at the conducting authority proceedings] determines whether or not the boundary change requires voter approval."[73] After the protest proceedings are complete, LAFCO calculates the value of protests and issues a resolution that either:

- Allows the consolidation *without* an election, if less than 25% of the registered voters or landowners within the affected territory file a protest petition;[74]
- Allows the consolidation *subject to* an election, if the number of protests received at the conducting authority proceedings is between 25%-50% of the registered voters or landowners within the affected territory[75]; or
- Terminates the consolidation proposal, if 50% or more of the registered voters or landowners protest against the consolidation.[76]

Possible Election: If the conducting authority proceeding generates the statutorily mandated number of protests, then the commission is required to hold an election within the territory of each district ordered to be consolidated.[77] The election must be held in accordance to the general and local election provisions of the Election Code and must be favored by a majority of the votes cast in each district.[78]

Certificate of Completion: After all the necessary parties approve the consolidation proposal, LAFCO may file a certificate of completion. The certificate of completion must be prepared by the LAFCO executive officer and must include the name and boundary description of the new district along with any terms and conditions of the change or reorganization.[79] The effective date of the consolidation shall be as prescribed in the LAFCO resolution or if not provided, the date the certificate of completion is executed or recorded with the county recorder. [80]

Expedited Consolidation Procedures: California also provides expedited consolidation procedures for two or more local agencies that adopt substantially similar resolutions of application for consolidation.[81] In this instance, LAFCO is required to approve or conditionally approve the consolidation proposal without an election, unless it acquires a majority number of protests as specified above.[82]

New York

The "New N.Y. Government Reorganization and Citizen Empowerment Act" was recently adopted during the 2009 legislative session and came into effect on March 21, 2010.[83] The legislative intent of this Act is to reduce property tax burdens and simplify consolidation and dissolution procedures for local government entities.[84] The newly enacted reorganization procedures applies to "towns, villages, fire districts, fire protection districts, fire alarm districts, special improvement districts or other improvement districts, library districts, and other districts

[71] Bui and Ihrke, *supra* note 52, at 21. *See also* CAL. GOV'T CODE §57007. Note: §56663(c) states that these protest proceedings may be waived in uninhabited territories so long as all residing landowners provide written consent, and no subject agency has submitted written opposition.
[72] CAL. GOV'T CODE §57051.
[73] Bui and Ihrke, *supra* note 52, at 21.
[74] CAL. GOV'T CODE §57081, and 57078.
[75] *Id. See also* Bui and Ihrke, *supra* note 52, at 21.
[76] CAL. GOV'T CODE § 57078.
[77] CAL. GOV'T CODE § 57118(a).
[78] CAL. GOV'T CODE §§ 57125-57126. *See also* CAL. GOV'T CODE § 57177.5(a).
[79] CAL. GOV'T CODE § 57201.
[80] CAL. GOV'T CODE § 57202.
[81] CAL. GOV'T CODE § 56853(a).
[82] *Id.*, E-mail from Peter Detwiler, Staff Director of the California Senate Local Government Committee (Sept. 22 2010) (on file with the Senate Committee on Community Affairs).
[83] 2009 NY AB 8501(N.S.) and 2009 NY SB 5661(N.S.). *See also* N.Y. Gen. Mun. Law, Ch.24, Art. 17-A (2009).
[84] Nicholas Confessore, *Senate Passes Bill to Ease Government Consolidation*, The New York Times (June 4, 2009) (available online at http://www.nytimes.com/2009/06/04/nyregion/04consolidate.html?_r=1) (last visited on September 16, 2010).

created by law."[85] Under the new law, contiguous local government entities can initiate consolidation proceedings by a joint resolution of the governing body or bodies of the local government entities to be consolidated or through elector initiative.[86]

Joint Consolidation Agreement: The governing bodies of two or more contiguous special districts can commence a consolidation proceeding by a joint resolution of the governing body or bodies of the local government entities to be consolidated that endorses a proposed joint consolidation agreement.[87] The proposed joint consolidation agreement must include the name of the local governmental entities proposing to consolidate, as well as the proposed consolidated entity's:

- Rights, duties and obligations;
- Territorial boundaries;
- Type and/or class;
- Governmental organization as it relates to elected/appointed officials and public employees;
- A transitional plan and schedule for elections and appointments of officials;
- A fiscal estimate of the costs and savings that may result from consolidation;
- Each entity's assets, liabilities, and indebtedness and terms for the disposition thereof;
- Terms for the common administration and uniform enforcement of local laws, ordinances, resolutions, etc.;
- The effective date of the consolidation; and
- The time and place for the public hearing on the proposed joint consolidation agreement.[88]

The governing body of each affected district must provide sufficient notice of the proposed joint consolidation and hold a public hearing no less than 35 days and no more than 90 days after the consolidation proceedings have commenced, to provide interested parties a reasonable opportunity to comment on the resolution.[89] After the public hearing, the governing body or bodies of the local government entities to be consolidated may amend the proposed joint consolidation agreement and approve or decline to move forward with further consolidation proceedings. [90] If the governing bodies decide to amend the proposed agreement, the amendments must be re-publicized for comment.[91] If the governing bodies decide to approve the proposed amendment, then approval must occur within 180 days of the final hearing.[92] A joint consolidation agreement that proposes the consolidation of two or more towns or villages, or one or more towns and villages, is subject to a referendum following the procedures discussed below.[93]

Elector Initiative: The electors of two or more special districts can also initiate a consolidation proceeding by filing a petition with the clerk that contains the signatures of at least 10% of the electors or 5,000 electors, whichever is less, in each district to be consolidated.[94] In smaller entities with a population of 500 or fewer electors, the petition must contain the signatures of at least 20% of the electors.[95]

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[85] New York Department of State, Local Government Shared Services, THE NEW N.Y. GOVERNMENT REORGANIZATION AND CITIZEN EMPOWERMENT ACT, A SUMMARY OF THE PROCESS FOR CONSOLIDATION AND DISSOLUTION (June 2009) (stating that this Act does not apply to school districts, city districts and special purpose districts established by counties under local law). (available online at http://www.dos.state.ny.us/lgss/pdfs/ConsolidationDissolutionLaw.pdf) (last visited on August 18, 2010).
[86] N.Y. Gen. Mun. Law § 751(2).
[87] N.Y. Gen. Mun. Law § 752.
[88] N.Y. Gen. Mun. Law §752(2)(a)-(m).
[89] N.Y. Gen. Mun. Law §754.
[90] N.Y. Gen. Mun. Law §754(3).
[91] Subsection (4) of N.Y. Gen. Mun. Law §754.
[92] *See id.*
[93] *See* N.Y. Gen. Mun. Law §§ 755, 756 and 758.
[94] N.Y. Gen. Mun. Law § 757(2).
[95] *Id.*

After the petition is filed, each local entity must hold a voter referendum no more than 20 days apart.[96] Similar to Arizona law, the referendum ballot must be drafted in a simple YES/NO format. In addition, the vote must be held at a special election, unless a general election is held within the time the referendum must be held, and cannot be initiated within four years of a failed consolidation referendum. [97] A majority of the electors voting in each district must vote in favor of the referendum in order to approve the consolidation.[98]

If the referendum passes, the governing bodies of each local entity must develop a proposed written plan implementing the voters' decision.[99] The plan must follow the same statutory format, notification, and public hearing requirements that are listed above for a joint consolidation agreement and must be approved within 60 days of the final hearing.[100] The consolidation shall take effect on the date specified in the plan, which must be at least 45 days after the governing bodies' final approval.[101]

Within those 45 days, citizens residing in the affected districts have the option to file a petition for a permissive referendum to decide whether the elector-initiated consolidated plan should take effect. [102] The petition must contain the signatures of at least 25% of the number of electors or 15,000 electors, whichever is less.[103] The governing body of the local government entity must within 30 days, enact a resolution calling for a referendum to be held, and a referendum on the petition must be held not less than 60 or more than 90 days later.[104] If the majority of the electors voting on the permissive referendum do not approve the adopted plan, then the elector-initiated consolidation plan fails.[105]

Governing bodies that fail to abide by the statute for elector-initiated consolidation proceedings can be compelled to do so by court-ordered consolidation or mediation.[106]

Attempted Special District Mergers in Florida

"Consolidation in Florida is seen as a way to meet increased demand for services due to population growth and development."[107] Mergers and consolidations have also become an attractive vehicle in Florida for independent special districts combating government funding limits, tax reforms and service duplications. Section 163.01, F.S., currently allows local governmental units, including special districts, to enter into interlocal agreements in order "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the need and development of local communities".[108] Numerous consolidation and merger attempts in Florida have stemmed from such interlocal agreements; however, a majority of these efforts has succumbed to political and financial obstacles.

Cedar Hammock and Southern Manatee Fire Districts (Manatee County)

The Cedar Hammock and Southern Manatee Fire Control Districts operated cooperatively under an interlocal agreement from 1995 to 2001.[109] As part of their cooperative agreement, both fire districts "shared a fire chief and administrative structure, and fire and emergency personnel were deployed within a single, combined

[96] N.Y. Gen. Mun. Law § 758(2).
[97] N.Y. Gen. Mun. Law §§ 758(1) and (4), § 759(4). Note: the referendum procedures in sections 758 and 759 also apply to joint consolidation agreements requiring a referendum under N.Y. Gen. Mun. Law §755.
[98] N.Y. Gen. Mun. Law § 759(3).
[99] N.Y. Gen. Mun. Law §760(1).
[100] N.Y. Gen. Mun. Law §§760, 761, and 762.
[101] N.Y. Gen. Mun. Law §763.
[102] N.Y. Gen. Mun. Law §763(2).
[103] N.Y. Gen. Mun. Law § 763(3).
[104] N.Y. Gen. Mun. Law §763(4)–(5).
[105] N.Y. Gen. Mun. Law § 763(8).
[106] N.Y. Gen. Mun. Law § 764.
[107] Drozd, *supra* note 29, at 11.
[108] Section 163.01(1)-(2), F.S., known as the "Florida Interlocal Cooperation Act of 1969".
[109] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature (OPPAGA), *Fire Department Coordination Beneficial; Merger Guidelines Would Be Helpful*, Report No. 01-67, at 5 (Dec. 2001) (available online at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0167rpt.pdf) (last visited August 10, 2010).

jurisdiction".[110] During that time, the districts reported an increase in the quality of protection service, higher insurance service office ratings, and $1.8 million in cost savings from shared administrative services.[111]

In 2001, Cedar Hammock and Southern Manatee decided to continue their cooperative efforts and proposed legislation was filed to merge the two districts into a single district in Manatee County.[112] However, while awaiting the passage of the 2001 Legislative Act, Cedar Hammock and Southern Manatee abandoned their merger proposal due to new political disagreements.[113] According to a special report by the Florida Office of Program Policy Analysis and Government Accountability, conflicts between the two fire districts arose when Cedar Hammock began making unilateral decisions without the consultation of Southern Manatee.[114] Tensions were set in motion starting January 2001, when Cedar Hammock dismissed their long-term fire chief and provided promotions and salary increases for its employees.[115] Consequently, Southern Manatee withdrew its merger proposal and the interlocal agreement between the two districts was dissolved.[116]

In December of 2001, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a special report on fire district mergers in response to the failed merger attempt between the Cedar Hammock and Southern Manatee Fire Control Districts.[117] The OPPAGA report recommended that the state develop statutory guidelines that could be used by local communities to "plan . . . and implement cooperative agreements and mergers".[118] Although Florida Statues currently provide general statutes on district mergers, OPPAGA accentuated that "no law or administrative rule requires fire departments to evaluate the feasibility of mergers, develop merger plans, or implement pre-merger agreements.[119] The OPPAGA report further recommended that the Department of Community Affairs and the Division of State Fire Marshal establish a task force that can provide assistance in formulating effective statutory guidelines.[120]

In the conclusion of their report, OPPAGA declared that "it is appropriate for the state to establish a mechanism to provide guidance to local communities to assist them in planning and in determining optimal approaches to achieving and maintaining cooperation."[121]

Bonita Springs, Estero, and San Carlos Park Fire Districts (Lee County)

The fire chiefs of Bonita Springs, Estero, and San Carlos Park Fire Districts began discussing service improvement options in 2007, at which point they formed a committee composed of two members from each district to study the possibility of consolidation or merger.[122] Today these committees continue to meet quarterly to provide updates on how the districts can operate functionally.[123] In 2009, the fire districts hired the independent consulting firm TriData Division, to evaluate the benefits and shortfalls of consolidation.[124] The report

[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] SB 2356/HB 921 (2001 Reg. Session).
[114] OPPAGA, *supra* note 142, at 5.
[115] *Id.*
[116] *Id.*
[117] *Id.* at 4.
[118] *Id.* at 1 (citation omitted).
[119] *Id.* at 7. (citing ss. 191.014, 189.4042, and 189.4045, F.S.)
[120] Office of Program Policy Analysis and Gov't Accountability (OPPAGA), *supra* note 109, at 7.
[121] *Id.* at 8.
[122] The information in this paragraph was obtained from the White Paper study conducted for the potential merger of the Bonita Springs, Estero, and San Carlos Fire Districts. *See* P.H. Kinsey Jr., Jeffrey Lindsey and Natale Ippolito, *White Paper: Merger and Consolidation of Bonita Springs, Estero, and San Carlos Park Fire Districts* (Jan.15, 2008) (on file with the Senate Committee on Community Affairs).
[123] Telephone interview with Fire Chief Nat Ippolito, San Carlos Fire Department, in Tallahassee, FL (August 23, 2010).
[124] TriData Division, SYSTEM PLANNING CORPORATION, FINAL COOPERATIVE SERVICES FEASIBILITY AND CONSOLIDATION STUDY, BONITA SPRINGS, ESTERO, AND SAN CARLOS PARK FIRE PROTECTION AND RESCUE SERVICE DISTRICTS (December 2009) (on file with the Senate Committee on Community Affairs).

recommended two consolidation methods: "an immediate full merger or a gradual consolidation with cooperative agreements slowly bringing the districts together."[125]

According to fire district officials, Bonita Springs, Estero and San Carlos Park Fire Districts have already adopted functional consolidation methods, including but not limited to: closest unit response agreements, joint training and maintenance divisions, unified standard and operational protocols, and centralized information technology software and hardware.[126]

There are certain key issues that the fire districts still need to address prior to moving forward, including: who will serve on the new district governing board, how the tax base can be preserved, how personnel will be merged, and how to make human resources adjustments.[127] The disparate millage rates amongst the three fire districts, has also been an issue of prominent concern during governing board meetings.[128] The 2009 TriData Division report estimated that the consolidated district would need a millage rate of 1.9802 to maintain current revenue levels.[129] According to the Florida Department of Revenue, the participating district's 2009 millage rates are 1.7950 for Bonita Springs Fire District, 2.0000 for Estero Fire District, and 2.5000 for San Carlos Park Fire District.[130] A full merger would therefore require increases in the current millage rates of at least one district: an unpopular notion for voters.[131]

Although a current fiscal analysis is not available, the 2009 report projected that consolidating the three fire districts could create a cost savings of up to $4.18 million annually in salaries after attrition, and $2.5 million in vehicle disposition.[132]

Collier County Independent Special Fire Control Districts

There are currently five independent special fire control districts in Collier County, including: the Big Corkscrew Island Fire Control and Rescue District, the East Naples Fire Control and Rescue District, the Immokalee Fire Control and Rescue District, the Golden Gate Fire Control and Rescue District, and the North Naples Fire Control and Rescue District.[133] At the time these independent special fire districts were created, "they met a local need for emergency [and] fire rescue protection . . . but [a]s the county became more urbanized", services became duplicated and less efficient.[134]

These redundancies have compelled the fire districts of Collier County to explore the concept of merger and consolidation. The driving forces supporting consolidation of the five independent fire districts include rising local government costs, duplication of services, redundant administrative burdens, increasing tax rates, and the possibility of efficient alternatives.[135] Consolidation "has been explored at least four different times in Collier County's recent past"; however, these efforts were derailed by legal, political, and cultural obstacles.[136] In a 2009

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[125] Aaron Hale, *Poll Talk of Bonita Springs, Estero, San Carlos Park fire merger heats up*, NAPLESNEWS.COM (April 25, 2010) (available online at http://www.naplesnews.com/news/2010/apr/25/talk-bonita-springs-estero-san-carlos-park-fire-me/) (last visited on August 23, 2010) (citation omitted).
[126] Telephone interview with Fire Chief Nat Ippolito, San Carlos Fire Department, in Tallahassee, FL (August 23, 2010).
[127] TriData *supra* note 124, at 9-12.
[128] Telephone interview with Fire Chief Nat Ippolito, San Carlos Fire Department, in Tallahassee, FL (August 23, 2010). *See also* Hale, *supra* note 125.
[129] TriData *supra* note 124, at 59 (Table 13: Revenue Generation and Millage Rates) (Current Millage Rates: Bonita Springs 1.795, Estero 2.0, and San Carlos Park 2.5).
[130] Florida Department of Revenue Report, *2009 Single County Independent Special District Compliance with Millage Levy Calculation* (available online at http://dor.myflorida.com/dor/property/trim/pdf/MillCapComp010110.pdf) (last visited on August 23, 2010).
[131] Hale, *supra* note 125. *See also* TriData *supra* note 124, at 59 (Table 13: Revenue Generation and Millage Rates) (Current Millage Rates: Bonita Springs 1.795, Estero 2.0, and San Carlos Park 2.5).
[132] TriData *supra* note 124, at 61.
[133] Robert Metzger, ANALYSIS OF CONSOLIDATION OF INDEPENDENT FIRE DISTRICTS IN COLLIER COUNTY, FLORIDA, 22 (Summer 2009) (on file with the Senate Committee on Community Affairs).
[134] *Id.* at 5.
[135] *Id.* at 6.
[136] *Id.*

report titled the *Consolidation of Independent Fire Districts in Collier County*, researchers concluded that the following barriers still need to be addressed before consolidation can be considered: the fire districts' disparate millage rates,[137] lack of stakeholder support, constituent's misconception of immediate cost-savings, and the resolution of current collective bargaining units.[138]

In May 2010, Collier County commissioners voted to include a straw-ballot referendum in the county's November election that will ask voters if they support the consolidation or merger of the county's unincorporated fire districts.[139] The November vote will be non-binding and will consider the consolidation of the county's five independent and two dependent special fire districts.[140] In response to the county referendum, the East Naples Fire Control and Rescue District has decided to hold its own straw ballot on the consolidation of its fire district. The East Naples straw ballot will also take place in November, but only applies to registered voters residing within the district.[141]

Findings and/or Conclusions

The Benefits of Mergers and Consolidations

Successful special district mergers and consolidations can provide increased government efficiency and services at lower costs.[142] These cooperative efforts also provide greater career enhancement opportunities for employees through newly created positions and career specialization.[143] Furthermore, mergers and consolidations promote the sufficient use of scarce resources by allowing participating special districts to pool investment funds in order to provide better services and eliminate borrowing costs or bankruptcy potentials.[144]

Independent special districts that merge or consolidate can achieve long-term cost savings through:

- Joint training and human resource departments,
- Shared equipment and maintenance facilities,
- Common standard operating procedures,
- Central inventory, accounting, and distribution centers,
- Economies of scale through volume purchasing,
- The elimination of duplicated services, personnel, and facilities, and
- An expanded tax base.[145]

In addition to the cost-saving benefits listed above, the merger and consolidation of independent special fire control districts can also result in faster response times, shared apparatus and emergency facilities, and can potentially lower the department's Insurance Service Office (ISO) ratings.[146]

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[137] *Id.* at 32 (providing that the 2007 individual fire district millage rates are as follows: Big Corkscrew Island: 1.8397 (cap of 2.0), East Naples: 1.5, Golden Gate 1.5 (as of 2010), Immokalee: 3.0, and North Naples: 1.0) (further stating that the merged new district would need to charge a millage rate of 1.169).

[138] *Id* at 37-39 and 41-42.

[139] Aaron Hale, *Voters Will Have Voice in Fire District Consolidation in Collier County*, NAPLESNEWS.COM (May 25, 2010) (available online at http://www.naplesnews.com/news/2010/may/25/voters-will-have-say-fire-district-consolidation-c/) (last visited on August 10, 2010).

[140] *Id.* Note: According to the Collier County Code of Ordinances, these two dependent special fire districts are classified as Municipal Service Taxing or Benefit Units (MSTUs). *See* COLLIER COUNTY, FLA., CODE §122-226(a) (Ochopee Fire Control District). *See also* COLLIER COUNTY, FLA., CODE § 122-606(a)-(b) (Isles of Capri Fire Services Taxing District).

[141] Naplesnews.com, Naples Daily News Editorial Board interview with Tom Cannon and East Naples Fire Control and Rescue District Fire Chief Douglas Dyer, *Election 2010: Fire District Consolidation Straw Vote* (Sept. 21, 2010) (available online at http://www.naplesnews.com/videos/detail/fire-district-consolidation-vote-2010/) (last visited on September 23, 2010).

[142] Drozd, *supra* note 29, at 10.

[143] *Id.* at 17. *See also* Colin A. Campbell Associates, Inc., *supra* note 31, at 4.

[144] Michael Curry, AN ANALYSIS OF A PROPOSED FOUR FIRE DISTRICT MERGER IN ADA COUNTY: STRATEGIC MANAGEMENT OF CHANGE, 10 (March 1999).

[145] This information was provided by Drozd, *supra* note 29, at 10 and 17. *See also* Colin A. Campbell Associates, Inc., *supra* note 31, at 5. *See also* P.H. Kinsey Jr., Jeffrey Lindsey and Natale Ippolito, *supra* note 122, at 6-9.

Obstacles to Mergers and Consolidations

There are three main obstacles to mergers and consolidations:

- Political obstacles,
- Cultural obstacles, and
- Legal obstacles

Elected officials and employees have a personal stake in mergers and consolidations, since these cooperative efforts may result in job replacements and eliminations.[147] "It is difficult to imagine a situation where there are two people of equal rank and one person is willing to step down and allow the other person to step in."[148] The fear of losing control and local autonomy can cause elected officials and special districts members to become territorial, creating political obstacles to merger or consolidation.[149] The lack of full and sincere support from important stakeholders and elected officials is a strong indicator that a merger or consolidation proposal will fail. States like California have eased these political tensions by allowing temporary expanded board memberships and separate advisory committees that help maintain local identities and control.[150]

Cultural obstacles can also hinder merger or consolidation proposals between two or more special districts. Conflicting objectives, morals, economics, or operational procedures create additional barriers to successful cooperative efforts.[151] Modifications and adjustments are anticipated in mergers and consolidations. To facilitate these changes, participating local entities should be compatible and maintain the same goals. Special districts can minimize cultural obstacles by conducting pre-feasibility studies prior to entering into merger or consolidation proposals.[152]

Special districts may also face legal obstacles due to disparate millage rates, existing labor service and retirement contracts, and state or local consolidation and merger restrictions.[153] Prior to initiating merger or consolidation proceedings, participating special districts have to look at state and local laws to see if they allow for mergers and consolidations, and if so, determine what legal procedures must be followed.[154] Uniting two or more labor contracts with different terms and agreements can be a complex political process for everyone involved. Contractual inconsistencies must be addressed and negotiated, with possible assistance from outside legal consultants and experts.[155] Finally, if the participating special districts have disparate millage rates, both parties need to address whether the new consolidated or merged special district's millage rate will be assessed through subunits or through a uniform blended rate established by voter referendum.

To overcome the obstacles to consolidation, special districts "must learn how to manage perceived loss of control, address loss of community or organization identity, establish management of associated costs, determine the various funding options, and identify the new governing structure."[156]

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[146] Drozd, *supra* note 29, at 17. Note: I.S.O. stands for Insurance Service Office, which is an independent organization that rates a community's fire protection services to determine premiums for fire insurance, ranging from Class 1 to Class 10 based on the fire department, fire alarm and communication system, and water supply. *See* Brian Juntikka, FIRE CONSOLIDATION REALITIES REPORT: A REVIEW OF THE FACTS, 4th ed., 50, at 14-15 (March 19, 2007) (on file with the Senate Committee on Community Affairs).

[147] Curry, *supra* note 144, at 28 and 30-31.

[148] Snook, *supra* note 28, at 99.

[149] *Id.* at 97. *See also* Drozd, *supra* note 29, at 17.

[150] Telephone interview with Peter Detwiler, Staff Director of the California State Senate Local Government Standing Committee, in Tallahassee, FL (Aug. 4, 2010).

[151] Snook, *supra* note 28, at 18.

[152] *Id.* at 91.

[153] Colin A. Campbell Associates, Inc., *supra* note 31, at 43-44. *See also* Metzger, *supra* note 133, at 37. *See also* Curry, *supra* note 144, at 22-24.

[154] Curry, *supra* note 144, at 24.

[155] Snook, *supra* note 28, at 91 (stating, "the two most important professional services you can acquire during a merger or consolidation are an accountant or economist and legal counsel").

[156] Metzger, *supra* note 133, at 18 (discussing disparate millage rates) *citing* Smith, C., Henschel, E., Lefeber R., CONSOLIDATION AND SHARED SERVICES: A PROVEN METHOD FOR SAVING TAX DOLLARS, *Government Finance Review*, (Oct. 2008).

Essential Components of Mergers and Consolidations

Special district mergers and consolidations should begin with a pre-feasibility study that provides a cost-benefit analysis and evaluates each district's: administrative structure, assets, liabilities, support services, contracts, and potential legal ramifications.[157] The results of this pre-merger study will determine whether it is politically and economically feasible for the participating independent special districts to merge or consolidate. [158]

A good merger or consolidation agreement is one that addresses:

- The pace and the duration of the agreement: whether it will be an incremental or immediate merger, how and when the merger or consolidation will go into effect, and the conditions for renewal, amendment, default and termination.
- The proposed organizational structure of the new district: how and when new district board members will be elected and how communication and administrative services will be provided.
- The services that will be provided: how certain services will be supplied after merger or consolidation, and how the district will deal with any increase in services and associated costs.
- Procedures for implementing personnel changes: how personnel adjustments will be made in regards to staff attrition and any changes in employee benefits, training and performance evaluations.
- A fiscal analysis: how costs and revenues will be calculated, and how debts and liabilities will be apportioned.
- A legal analysis: how the merger or consolidation will interact with state and local laws as well as existing labor and union contracts. If the participating districts have disparate millage rates, whether future millage rates will be assessed by subunits or through a uniform blended rate approved by voter referendum.
- A method for combining equipment and facilities: whether facilities and equipment will be combined or purchased, and whether individual district facilities will be shared or remain separate.[159]

Options and/or Recommendations

Mergers and consolidations provide a mechanism for independent special districts to increase government efficiency while saving taxpayer money.[160] Independent special district mergers and consolidations can generate cost-savings through volume purchasing, standardized operating procedures, pooled investments, joint training, efficient personnel allocation, and cost avoidance.[161]

Senate professional staff recommends that the Legislature consider enacting guidelines to assist with the voluntary merger or consolidation of certain independent special districts.[162] These statutory guidelines would apply to both formal mergers and the different types of consolidation.[163]

If the Legislature chooses to enact new legislation in this area, Senate professional staff recommends that the Legislature consider the following criteria:

- The fiscal, legal, and administrative components that should be evaluated in pre-merger or consolidation feasibility studies;[164]
- How merger and consolidation proceedings can be initiated;
- What information must be included in a proposition or application for merger or consolidation;[165]

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[157] Snook, *supra* note 28, at 60 and 65-73. *See also* Colin A. Campbell Associates, Inc., *supra* note 31, at 43-44.
[158] Snook, *supra* note 28, at 73-74.
[159] *See* Drozd, *supra* note 29, at 15-16. *See also* Colin A. Campbell Associates, Inc., supra note 31, at 50-52.
[160] Drozd, *supra* note 29, at 10.
[161] Nichols, *supra* note 30, at 1.
[162] *See* Office of Program Policy Analysis and Gov't Accountability (OPPAGA), *supra* note 109, at 7.
[163] *See* page 4 of this report for a description of the different types of consolidations.
[164] In determining the criteria for merger/consolidation pre-feasibility studies, the Legislature could utilize the statutory criteria provided in s. 189.428, F.S., for the oversight review process; s.165.041, F.S., for the proposed incorporation of a municipality, and the standards for incorporation, merger and dissolution of a municipality in s.165.061, F.S, as a basis.

- The necessary statutory thresholds to approve or petition an independent special district merger or consolidation (i.e. how many electors' signatures are needed and what percentage of voters must approve the merger/consolidation);[166]
- Due process requirements for merger or consolidation, including what constitutes sufficient notice, statutory timelines, required public hearings, and permitted testimonies or protests;
- How varying staff qualifications requirements, existing labor contracts, benefits, and pay levels can be standardized;[167]
- How administrative structures should be consolidated and how governing boards will work together until the merger or consolidation is finalized (i.e. whether statutes will allow for temporary expanded board memberships similar to California);[168]
- How each independent special district's assets, liabilities, and obligations will be distributed during and after the merger or consolidation;
- How the merger or consolidation will correlate with existing local laws and millage rates until the merger or consolidation is finalized.[169]; and
- How independent special districts that merge or consolidate prior to a subsequent Legislative act will meet the financial reporting requirements under chapter 189, F.S.[170]

In review of other states' merger and consolidation laws, the Legislature may want to begin with the format provided in Arizona by limiting the application of any enacted statutory guidelines to certain independent special districts, such as independent fire control districts.[171] If the statutory guidelines subsequently prove to be effective and generate sufficient cost savings for local governments, the Legislature could then consider expanding the scope of the merger and consolidation guidelines to include other independent special districts. The Legislature may also want to consider paralleling New York's legislation and only allow contiguous independent special districts to merge or consolidate.[172] Should the Legislature choose to forego state legislation in this area, and allow merger and consolidation procedures to be established at the local level instead, it could create local independent regulatory commissions similar to California's LAFCOs that can be used to supervise and facilitate independent special district mergers.[173]

As a final point, any enacted legislation should only apply to voluntary mergers and consolidations, and should prohibit a special district that consolidates or merges prior to Legislative Act from exceeding the powers originally granted to the individual special districts in their existing charters, until a formal subsequent act provides otherwise.

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[165] As illustrated in Arizona's consolidation law, this can include a map and legal description of the affected territorial boundaries, and estimated changes in assessed valuation or property tax liabilities. *See* ARIZ.REV.STAT. §48-822(C)(2) a.-e.

[166] Requiring a specified threshold in each special district would prevent larger special districts from overshadowing the votes of a smaller special district in a merger or consolidation proposal.

[167] Office of Program Policy Analysis and Gov't Accountability (OPPAGA), *supra* note 109, at 8.

[168] *Id.*

[169] *See* N.Y. Gen Mun. Law § 769 (stating, "all current laws, ordinances, and rules shall remain in effect until new laws are adopted not later than two years after consolidation").

[170] Note: Special district reporting databases within the Department of Community Affairs and the Department of Financial Services currently do not have the ability to indicate the consolidation or merger of independent special districts operating under separate special acts, prior to a formal merger by the Legislature. To avoid inaccurate or misleading reports, any adopted legislation should require independent special districts that merge or consolidate prior to a Legislative Act, to file separate financial and administrative reports under ch. 189, F.S., until the districts are formally merged or consolidated. Interview with Jack Gaskins, Department of Community Affairs, Office of Special Districts, in Tallahassee, FL (Sept. 21, 2010); Phone interview with Debra White, Department of Community Affairs, Legislative Auditing Committee, in Tallahassee, FL (Sept. 21, 2010); and Phone interview with Justin Young, Department of Financial Services, Bureau of Local Government, in Tallahassee, FL (Sept. 21, 2010) (the latter stating possible concerns in reviewing the merged or consolidated special districts' prior financial records).

[171] *See* ARIZ.REV.STAT. §48-820 (merger of fire districts) and §48-822 (consolidation of fire districts).

[172] *See* N.Y. Gen. Mun. Law § 751.

[173] *See* CAL. GOV'T CODE § 56375(a)(2).

THE MERGER OF INDEPENDENT SPECIAL DISTRICTS

Senate Committee on Community Affairs

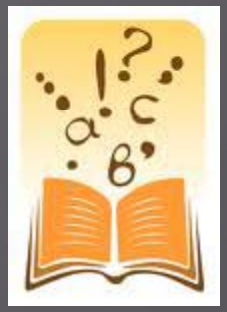
January 25, 2011

- The purpose of this report is to explore potential statutory guidelines to facilitate independent special district mergers or consolidations.

- Roadmap
  - Current Florida law
  - Existing merger & consolidation laws in three other states
  - Merger attempts in Florida
  - Recommendations

What is a Special District?

- Section 189.403(1), F.S., defines a special district as a confined local government unit established for a special purpose.
  - Examples:
    - Fire control and rescue districts
    - Water management districts
    - Mosquito control districts



- A special district does NOT include:
  - A school district,
  - A community college district,
  - A special improvement district *Seminole & Miccosukee Tribes-s. 285.17, F.S.,*
  - A municipal service taxing and benefit unit (MSTU/MSBU), or
  - A municipal subdivision board providing electrical services.

Special Districts

- Creation
  - By general law
  - By special act
  - By local ordinance
  - By governor or cabinet rule
- Powers
  - Essentially same powers and restrictions as counties and municipalities
  - Operate through governing boards, can enter contracts, employ workers, impose taxes, and are subject to FL Sunshine laws
- Types
  - Dependent Special Districts
    - Created and governed by the individual county/municipality where the district is located in terms of membership, budget, etc.
  - Independent Special Districts
    - Do not have dependent characteristics and not governed by county/city
    - May encompass more than one county

The Special District Information Program

- Administered by the Dept. Community Affairs
  - Collect & share detailed information on Florida's special districts

- Official master list
  - Individual functions and status of each special district throughout the state

- Approximately 1,625 special districts in Florida:
  - 618 dependent special districts
  - 1,007 independent special districts

Current Law

Under Florida law,

- "... an independent special district ... created and operating pursuant to a special act may only be merged or dissolved by the Legislature unless otherwise provided by general law."
  - s. 189.4042, F.S. (Indep. Fire Districts require ratification by Legislature s. 191.014, F.S.)

- Currently, there are minimal statutory guidelines in Florida for independent special districts to follow during mergers or consolidations.

Oversight Review Process

Section 189.428, Florida Statutes

- Who/What : Allows counties & municipalities to evaluate the degree of special district services to determine the need for adjustments, transitions, or dissolution.

- When: Conducted in conjunction with the special district's public facilities report and local governmental evaluation and appraisal report. (5/7 years)

- If dissolution or merger is proposed: (*plan that evaluates)*
  - Best alternative for delivering services?
  - Effect on existing local services and facilities?
  - Consistent with state/local government comprehensive plans?
  - Adequately provide for the assumption of existing debts?

Common types of Cooperative Efforts:

*There is no **"one-size-fits-all"** merger or consolidation format.*

- Mutual/Automatic Aid Agreements - interlocal agreement between two or more districts to request/provide assistance from a neighboring district.
  - *Fire district first response agreement*
- Partial Consolidation - two or more districts share certain resources/functions but remain separate districts.
  - *Shared apparatus and/or facilities*
  - *Joint human resources*
  - *Volume purchasing*
- Full Consolidation – two or more special districts combine all of the administrative and operational components of each district into a single district with one organizational structure.
- Merger – two or more districts legally dissolve and then combine to become an entirely new individual district.
  - *(Note that some states, such as California, define merger differently)*

Arizona

A.R.S. 48-820 & A.R.S. 48-822

- Arizona's merger and consolidation statutes *only apply* to fire districts.

- Merger and Consolidation Methods:

1. Non-election method
   - Written Consent : from any taxpayer that resides within each district who owns 30% or more of the net assessed valuation of the district.
   - Resolution : subject to a public hearing and must be approved by the governing body of each district.
     - Promote *"public health, comfort, convenience, necessity or welfare"*.

2. Election method
   - Resolution & Impact Statement : subject to a public hearing and must be approved by the governing body of each fire district.
   - Order for Election : once every 2 years during general election.
   - Approval : Majority of the votes cast in *each* affected district.

California

California Cortese-Knox-Hertzberg Local Government Reorganization Act.

- **Three ways to initiate consolidation proceedings:**
  - By Resolution
    - Governing bodies adopt & submit Resolution of Application.
  - By Petition
    - At least 5% of the registered voters/landowners in *each* district who own no less than 5% of the assessed value of land in each district.
  - By Local Agency Formation Commission (LAFCO)
    - Independent regulatory commission that regulates and establishes local boundary changes (58 LAFCO's).

- **Consolidation procedures:**
  1. Application with LAFCO
  2. Review and Approval
  3. Conducting Authority Proceedings (measures # of protests)
  4. Possible Election
  5. Certificate of Completion

- Expedited Consolidation (substantially similar resolutions of appl. for consolid.).

New York

The New N.Y. Government Reorganization and Citizen Empowerment Act

1. Joint Consolidation Agreement
   - Resolution adopted by governing body of *each* district
   - Public Hearing/Approval
   - Contents
     - New district's boundaries
     - Effect on elected officials/employees
     - Transitional plan
     - Costs and savings
     - Effective date

2. Elector Petition
   - Signed by the lesser of 10% or 5,000 electors in *each* district
   - Voter referendum
   - Written plan/Public Hearing (45 days)
   - Caveat- Petition for Permissive Referendum *(lesser of 25%/15,000)*

Florida

- Attempted Fire District Mergers/Consolidations:
  - Cedar Hammock and Southern Manatee Fire Districts
  - Bonita Springs, Estero, and San Carlos Park Fire Districts
  - Collier County's five Independent Fire Control Districts
- Lessons Learned:
  - There are limited statutory guidelines to assist local government cooperative efforts. *(2001 OPPAGA Report)*
- Common Concerns:
  - Who will serve on the new governing board
  - How to make personnel changes
  - How to address disparate millage rates
  - Obtaining constituent/governing board support
  - Resolution of current collective bargaining agreements

Mergers and Consolidations

BENEFITS

- Increased government efficiency
  - Sufficient use of scarce resources through pooled investments
  - Elimination of duplicated services and costs
  - Faster response times for fire districts
- Career enhancement opportunities
  - Newly created positions
  - Career specialization
- Annual Cost savings
  - Joint training and human resources
  - Shared equipment and facilities
  - Economies of scale through volume purchasing
  - Lower Insurance Service Office (ISO) ratings for fire districts

OBSTACLES

- Political Obstacles
  - Possible job replacements or eliminations
  - Fear of losing control or local identity
- Cultural Obstacles
  - Conflicting objectives, finances, or operational procedures
- Legal Obstacles
  - Disparate millage rates
  - Existing labor contracts

Recommendations

- Senate professional staff recommends that the Legislature consider enacting statutory guidelines to facilitate independent special district mergers and consolidations.

- Any enacted statutory guidelines should:
  - Only apply to *voluntary* mergers & consolidations, and
  - Preclude special districts from exceeding the powers originally granted to them in their existing charters.

Criteria to Consider:

- **<u>Any enacted statutory guidelines should address:</u>**
  - Initiation procedures *(petition, resolution)*
  - Statutory thresholds to approve or petition a merger/consolidation
  - Notice requirements *(sufficient notice, timelines, public hearings)*

- **<u>Enacted legislation should also require special districts to develop a merger or consolidation plan that evaluates:</u>**
  - How & when new board members will be elected/appointed *(temp. expanded boards?)*
  - How personnel changes will be decided
  - How to standardize varying pay levels/benefits
  - How assets and liabilities will be apportioned
  - How to address existing labor and union contracts
  - How to address disparate millage rates *(subunits or uniform blended rates)*
  - Effective date of the merger/consolidation

- The plan should be adopted by a resolution of the governing bodies and approved by majority of the voters in each special district .

- The legislature should determine whether it will allow participating independent special districts to operate as "taxing subunits" of the new merged/consolidated district until a subsequent formal merger occurs by a special act of the Legislature.

Thank you for your time,

Any Questions?