

**STORAGE NAME:** h1099.fpr.doc

**DATE:** April 11, 2001

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
FISCAL POLICY & RESOURCES  
ANALYSIS**

**BILL #:** HB 1099

**RELATING TO:** Florida Airport Authority Act

**SPONSOR(S):** Representative(s) Diaz de la Portilla and others

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) TRANSPORTATION (CRI) YEAS 13 NAYS 1
  - (2) LOCAL GOVERNMENT & VETERANS AFFAIRS (LGVA) YEAS 9 NAYS 0
  - (3) FISCAL POLICY & RESOURCES
  - (4) COUNCIL FOR READY INFRASTRUCTURE
  - (5)
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**I. SUMMARY:**

Currently, counties can either create an airport authority as a unit of local government, or seek a special act from the Legislature.

HB 1099 creates the "Florida Airport Authority Act." The bill requires any county with more than 1.5 million residents, and no existing airport authority, to schedule a referendum for local voters to decide whether to create an airport authority. The airport authority would be comprised of no fewer than five, but no more than nine, members; two would be appointed by the Governor, one by the county ethics commission, and the rest by the county governing board. The bill contains provisions governing the activities of such an authority, such as allowing it to acquire property, borrow money, and enter into agreements with individuals and other governmental entities. The bill is based on the same conceptual framework as the Florida Expressway Authority Act (Part I of Chapter 348, F.S.).

Only Miami-Dade and Broward counties are affected by HB 1099, based on the population threshold and because they currently do not have airport authorities.

The bill has an indeterminate, but probably insignificant, fiscal impact on state and local governments.

HB 1099 would take effect July 1, 2002.

On April 5, 2001, the Committee on Local Government & Veterans Affairs considered HB 1099, adopted 1 amendment, and passed the bill. The amendment, which is traveling with the bill, is explained in this bill analysis. (See section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:")

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government                      Yes       No       N/A

HB 1099 gives voters in Miami-Dade and Broward counties the opportunity to create, via referendum, airport authorities to replace the units of county government that currently exist to manage aviation issues. These airport authorities will have power to fix rates, fees, rentals and other charges, and to borrow money.

2. Lower Taxes                              Yes       No       N/A

3. Individual Freedom                      Yes       No       N/A

4. Personal Responsibility                      Yes       No       N/A

5. Family Empowerment                      Yes       No       N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Individual airport authorities have been created by enactment of local bills in a number of counties. At last count, there are 29 airport authorities in Florida, but not all of them are active. The authorizing language for these authorities appears as various chapters of the Laws of Florida, and are not codified in the Florida Statutes. In addition, many airports are operated by units of local government, generally as a department or office within the local government structure.

Prior to 1990, individual expressway, bridge and transportation authorities were created by specific legislative enactment in several counties. These authorities are set forth in Parts II through IX, of Chapter 348, F.S. Jacksonville has its transportation authority codified in Chapter 349, F.S. In 1990, the Legislature enacted Part I of Chapter 348, F.S., which allows any county, or two or more contiguous counties, to form their own expressway authority by resolution of the board or boards of county commissioners. This part provides for membership of the governing body and sets out provisions that would govern the activities of such an authority.

During the 2000 legislative session, CS/HB 315, 2<sup>nd</sup> engrossed, proposed the creation of the "Florida Airport Authority Act," modeled on Part I of Chapter 348, F.S. The bill passed the House by a vote of 115-2, but died in the Senate when the Legislature adjourned last May.

C. EFFECT OF PROPOSED CHANGES:

HB 1099 would create the Florida Airport Authority Act. Key provisions of the act include:

- Any county which has a population of more than 1.5 million people is required to schedule a countywide referendum giving voters the opportunity to approve the creation of an airport authority. Based on 2000 U.S. Census figures, Miami-Dade and Broward counties meet the population requirements.
- Such an authority could have from five to nine members, who must be permanent residents of the county they are representing. Two members would be appointed by the Governor (subject to confirmation by the state Senate); one would be appointed by the county ethics commission; and the remainder by the county governing board. The appropriate DOT district secretary will serve as a nonvoting member. The authority members will elect from among

their number the chairperson, and select a secretary and a treasurer who do not need to be authority members.

- The Governor's appointees will have four-year terms, while the remaining members will serve three-year terms. The Governor's appointments may not hold any elective office during their terms on the authority.
- Members of the authority and their spouses are prohibited from owning certain stocks and bonds. As a condition of appointment, each appointee must affirm to the "Speaker" and the "President" his or her qualification by a specified certification.
- The authority members must file full and public financial disclosure, pursuant to s. 112.3144, F.S.
- A member of the authority is prohibited from contributing to the campaign account of any elected official and from soliciting any campaign contributions for any elected official. (See "Comments" section.)
- The authority may employ staff members and set the salaries for the following positions: executive director; executive secretary; counsel and legal staff; technical experts, consultants, and advisors; engineers and employees as it may require. It also may employ a fiscal agent, from among at least three persons or companies that submit sealed proposals.
- The authority must submit facility reports, audits and other reports required of special districts under Chapter 189, F.S., and it must notice its meetings and keep records, available to the public, of what transpired.
- An authority may acquire, hold, construct, improve, maintain, operate, own, and lease an airport system. Additional airports may be constructed only if the additional airport is financially feasible and compatible with the authority's existing plans. Each new airport must have the written consent of the board of county commissioners.
- The authority is empowered to sue and be sued, adopt a corporate seal, acquire and use any real or personal property in carrying out its purposes, make leases or lease-purchase agreements, establish and collect fees, rentals and charges for its services and facilities, borrow money, and issue bonds under the State Bond Act, Chapter 215, F.S. It also could accept grants from and enter into contracts with a federal, state, or county agency, and would have the power of eminent domain.

Any bonds pledging the full faith and credit of the State of Florida would have to be issued by the Board of Administration's Division of Bond Finance on behalf of the authority, upon express written consent of the board of county commissioners.

The bill also contains standard "covenant of the state" language, specifying that the state pledges not to limit or alter the rights of the authority as it pertains to the authority's use of bonds.

- The authority also would be able to consider unsolicited proposals from private entities for planning, constructing, maintaining or operating its airport system. An airport constructed under this provision must have state and federal approval, and the prior express written consent of the board of county commissioners.
- The authority is prohibited from undertaking any construction that is not consistent with federal aviation requirements, the statewide aviation system plan, and the county's comprehensive plan.
- The authority may appoint the county as its agent for construction projects, and may enter into contracts, leases or other agreements with other governmental entities or individuals.

- The authority is exempt from all state and local taxes except for the corporate tax pursuant to Chapter 220, F.S.

HB 1099 is not applicable to a county in which an airport authority has been created by a general or special act of the Legislature, nor do its provisions apply to any county that has created its own airport authority.

The bill takes effect July 1, 2002.

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1: Creates ss. 332.201-332.211, F.S., the Florida Airport Authority Act. Specifies membership, powers and duties of an authority created under this act. Specifies that such an authority is exempt from paying all state and local taxes, except for the corporate tax. Exempts counties who have airport authorities created by general or special act of the Legislature from the provisions of this act.

Section 2: Specifies that the provisions of this act do not apply to any county that has created its own airport authority.

Section 3: Requires members of airport authorities created pursuant to this act to file full and public disclosure of financial interests, pursuant to s. 112.3144, F.S.

Section 4: Specifies this act shall take effect July 1, 2002.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. Presumably an existing airport that comes under the jurisdiction of an airport authority created pursuant to this act has been receiving state funds for projects, and that likely would continue.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Indeterminate. See "D. Fiscal Comments."

2. Expenditures:

Indeterminate. See "D. Fiscal Comments."

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. See "D. Fiscal Comments."

D. FISCAL COMMENTS:

Currently, airports are operated generally either as an office or department of a county or municipality, or as an authority created for that purpose. The private sector plays a significant role in operating and financing commercial airports, with private companies -- airlines, concessionaires, and contractors -- delivering most airport services. Airport funding comes from state and federal aviation programs, local funds, and revenues generated by the airport. A substantial portion of airport development is financed through long-term debt financed with airport-generated revenues.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

**Limitation on Campaign Contributions/Constitutional Issues**

Subsection (5) of s. 332.203, F.S., as created by this bill, provides, in part:

"A member of the authority shall not contribute to the campaign account of any elected official, nor solicit any campaign contributions for any elected official."

This provision may be subject to judicial scrutiny as possibly violating First Amendment rights. It is well established that making campaign contributions is a form of speech and is protected under the First Amendment to the United States Constitution. Both the United States Supreme Court and the Florida Supreme Court have held that although campaign contributions are a form of protected speech, the states may still prohibit some contributions under certain circumstances. In order to impose a prohibition on contributions, the state must prove two things: (1) that it has a compelling interest; and (2) that the prohibition is narrowly tailored to meet that interest. See Federal Elections Commission v. National Conservative Political Action Committee, 470 U.S. 480 (1985).

B. RULE-MAKING AUTHORITY:

Page 8, lines 23-28, of HB 1099 directs the airport authorities created under this act to adopt rules or policies in compliance with s. 334.30, F.S., that deal with accepting, reviewing, planning, financing, etc., "unsolicited proposals" from the private sector for airport projects. Section 334.30, F.S., regulates how the Department of Transportation handles private-sector proposals for private transportation projects.

C. OTHER COMMENTS:

**Committee on Local Government & Veterans Affairs**

**Local Bills and Miami-Dade County**

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County has the authority "to adopt, revise, and amend from time to time a home rule charter government for Dade County." (Art. VIII, Section 11 of the Constitution of 1885, as amended). The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status, as it is the only county with its full charter included in the State Constitution.

Article VIII, Section 6(e) of the Florida Constitution provides that the Metropolitan Dade County Home Rule Charter provisions shall be valid if authorized under Article VIII, Section 11 of the Constitution of 1885, as amended.

As the Miami-Dade electors adopted the charter, the charter may only be amended by the electors of Dade County, (Article VIII, Section 11(3) of the 1885 Constitution). Article VIII, Section 11(5) of the 1885 Constitution prohibits any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County and any other one or more counties. Dade County v. Wilson, 386 So. 2d 556 (Fla. 1980).

Article VIII, Section 11(5) of the Florida Constitution further provides that this charter and any subsequent ordinances enacted pursuant to this charter may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Metropolitan Dade County Home Rule Charter may implicitly, as well as expressly, amend or repeal a special act, when it conflicts with a Miami-Dade County ordinance.

In Chase v. Cowart, 102 So. 2d 147 (Fla.1958), the Florida Supreme Court concluded that:

When the Legislature enacted Chapter 31420, Laws of 1956, creating the metropolitan charter and providing the method of presenting the home rule charter to the voters of Dade County, and more specifically when the electors of Dade County adopted the home rule charter on May 21, 1957, the authority of the Legislature in affairs of local government in Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise this power only through passage of general acts applicable to Dade County and any other one or more counties, or a municipality in Dade County and any other one or more municipalities in the State.

In a 1989 opinion, the Attorney General cited Dade County v. Dade County League of Municipalities, 104 So. 2d 512, 517 (Fla. 1958), for the proposition that, following adoption of the Dade County Home Rule Charter, the Legislature is limited to enacting only general laws relating to Miami-Dade County and may not amend a special act relating to a municipality within Miami-Dade County that was enacted prior to the adoption of the Dade County Home Rule Charter. (AGO 1989-9) See Dickenson v. Board of Public Instruction of Dade County, 217 So.2d 553, 555 (Fla. 1969).

**Committee on Transportation**

HB 1099 incorporates much of its 2000 session predecessor, CS/HB 315, 2<sup>nd</sup> Engrossed, which originally allowed multiple counties to join together and create airport authorities. As such, authority membership requirements, project approvals, and other activities required consent or participation

by the "board of county commissioners of each county located within the geographic boundaries of the authority." In preparing HB 1099, the drafters picked up that now-extraneous phrasing.

The bill also is unclear as to when an airport authority referendum would occur. Subsection (1) of s. 332.203, F.S., states, "Any county which has a population of more than 1.5 million people shall at *the countywide election* hold a referendum in which the electors shall decide whether to form an airport authority, which shall be an agency of the state, pursuant to this act." It is unclear whether the sponsor's intent is for the referendum to occur at the *next* countywide election following the July 1, 2002, effective date of HB 1099, or at *any* countywide election, which gives the county commissions of the two affected counties some discretion on when to bring the issue to a referendum.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 2001, the Committee on Local Government & Veterans Affairs considered HB 1099, adopted 1 amendment, and passed the bill. The amendment, which is traveling with the bill, increases from 1.5 million to 2.1 million the minimum population of a county to which the bill applies. The effect of the amendment is to limit the bill's application to Miami-Dade County.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Joyce Pugh

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Staff Director:

Phillip B. Miller

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Thomas L. Hamby, Jr.

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AS FURTHER REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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