

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 CS Services for Seniors and Adults with Developmental Disabilities
SPONSOR(S): Goldstein and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 62

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	7 Y, 0 N, w/CS	Walsh	Liem
2) Local Government Council		Smith	Hamby
3) Finance & Tax Committee			
4) Health Care Appropriations Committee			
5) Health & Families Council			

SUMMARY ANALYSIS

HB 229 w/CS permits each county, by ordinance, to create an independent special district to provide funding for services for seniors and services for adults with developmental disabilities throughout the county (the district). The boundaries of the district must be the same as the boundaries of the county.

The county must obtain approval, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes that may not exceed 0.5 mills of assessed valuation of all properties within the county which are subject to ad valorem county taxes. The referendum required to approve the ad valorem tax levy must be held at the next general election, i.e., the general election immediately subsequent to the adoption of the ordinance creating the independent special district.

The CS provides for the districts to be governed by a "council on services for seniors and adults with developmental disabilities," (the council) consisting of 11 members: the executive director of the area agency on aging; the county director of human services; a director of programs for adults with developmental disabilities; one member of the county governing board for a 2-year term; one nonvoting member of the legislative delegation for the county appointed by the delegation chair for a 2-year term; one county representative of the Florida League of Cities for a 2-year term; and five members appointed by the Governor for a 4-year term, initially staggered, with reappointment for one additional term permitted, and who meet additional qualifications.

The CS sets forth permissive powers, duties, and the financing and budgeting requirements of these districts.

The CS allows for cooperative agreements between districts.

The CS provides for dissolution of these districts.

The CS provides that these districts must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports.

The Revenue Estimating Conference determined the bill has an indeterminate fiscal impact on local government revenues. If all counties created a district and imposed the maximum 0.5 millage in ad valorem taxes, the Conference estimated the impact to be \$621.8 to \$668.6 million in FY 2005-06.¹

¹ Revenue Estimating Conference on February 22, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The CS provides for an additional general law which permits the creation of an independent special district other than by the Legislature. The CS permits each county, by ordinance, to create such a district to provide funding for services for seniors and services for adults with developmental disabilities throughout the county.

Ensure lower taxes --- The CS provides that the county, upon creation by ordinance of the independent special district, must obtain approval at the next general election, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes that may not exceed 0.5 mills of assessed valuation of all properties within the county which are subject to ad valorem county taxes.

Empower families --- The CS permits the district councils to provide and maintain in the county preventive, developmental, treatment, rehabilitative and any other services the council determines are needed for the general welfare of the county's seniors and adults with developmental disabilities. In addition, the councils may consult and coordinate with other agencies serving seniors and adults with developmental disabilities to prevent overlapping of services.

B. EFFECT OF PROPOSED CHANGES:

Background

Defining Special Districts

A special district is a local unit of *special purpose government* whose special purpose or purposes are implemented by specialized functions and related prescribed powers within a limited boundary.² An independent special district is one which does not have any of the following:

- membership of its governing body that is identical to that of the governing body of a single county or a single municipality;
- all members of its governing body that are appointed by the governing body of a single county or a single municipality;
- members of the governing body of the special district that are subject to removal at will by the governing body of a single county or a single municipality during their unexpired terms; or
- a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.³

An independent special district must comply with the creation, dissolution, and reporting requirements set forth in ch. 189, F.S.⁴ An independent special district, except for a community development district, is also required to have a charter that meets certain minimum requirements.⁵

Restrictions on Creation of Independent Special Districts

² Section 189.403(1), F.S. (also exempting from the definition of special district: school districts, community college districts, a special improvement districts, municipal service taxing or benefit units, or boards which provide electrical service and which is a political subdivision of a municipality or is part of a municipality.

³ Section 189.403(3), F.S.

⁴ Section 189.4031(1), F.S.

⁵ Sections 189.4031(2) and 189.404(3), F.S.

Only the Legislature may create *independent* special districts, except as otherwise authorized by general law.⁶ The exceptions currently authorized by general law include:

- Municipalities, counties, or the Governor and Cabinet may create community development districts created by as provided by law.⁷
- Counties may create independent special districts for children's services,⁸ county health and mental health care⁹, or hospitals¹⁰ by adopting the required charter.
- Any combination of two or more counties, municipalities, or the Governor and Cabinet may create a regional water supply authority.¹¹
- Any combination of two or more counties may create a regional special district to provide for regional jails.¹²
- Any combination of two or more counties, municipalities, or other political subdivisions may create a regional special district to act as a regional transportation authority.¹³

Effect of Proposed Changes

Creation of Independent Special District by County Ordinance

HB 229 provides for an additional general law which permits the creation of an independent special district other than by the Legislature. The CS creates s. 125.903, F.S., to permit each county, by ordinance, to create an independent special district to provide funding for services for seniors and services for adults with developmental disabilities throughout the county. [The CS includes definitions of "senior"¹⁴ and "adult with development disabilities"¹⁵ to clarify that the districts are to provide two distinct types of services.] The boundaries of such a district must be the same as the boundaries of the county.

The county must obtain approval, by a majority vote of those electors voting on the question, to annually levy ad valorem taxes that may not exceed 0.5 mills of assessed valuation of all properties within the county which are subject to ad valorem county taxes. The referendum required to approve the ad valorem tax levy must be held at the next general election, i.e., the general election immediately subsequent to the adoption of the ordinance creating the independent special district.

The CS provides the legislative intent that funds collected through the creation of a district be used to support improvements in services for seniors and services for adults with developmental disabilities and that such funds not be used as a substitute for existing resources or for resources that would otherwise be available for those services.

District Governing Board

The governing board of the district is a "council on services for seniors and adults with developmental disabilities" (the council). The council must consist of 11 members:

- the executive director of the area agency on aging, or his or her designee who is a director of senior programs, as a permanent position;

⁶ Section 189.404(4), F.S.

⁷ Section 190.005, F.S.

⁸ Section 125.901, F.S. *et seq.*

⁹ Section 154.331, F.S.

¹⁰ See ch. 155, F.S.

¹¹ Section 373.1962, F.S.

¹² Section 950.001, F.S.

¹³ Section 163.567, F.S.

¹⁴ "Senior" means a person who is at least 60 years of age. HB 229 at lines 80-81.

¹⁵ "Adult with developmental disabilities" means an adult with developmental disabilities who is at least 22 years of age.

HB 229 at lines 80-83.

- the county director of human services or his or her designee who is a director of elderly services, as a permanent position;
- a director of programs for adults with developmental disabilities or his or her designee, as a permanent position;
- one member of the county governing board for a 2-year term;
- one nonvoting member of the legislative delegation for the county appointed by the delegation chair for a 2-year term;
- one county representative of the Florida League of Cities for a 2-year term; and
- five members appointed by the Governor for 4-year terms, initially staggered, with reappointment for one additional term permitted, and meeting these additional qualifications -
 - these members must, to the greatest extent possible, represent the cultural diversity of the county's population;
 - one of these members must be a caretaker or family member of a person who has a developmental disability and is 22 years of age or older;
 - one these members must be 60 years of age or older;
 - these members must have been residents of the county for the previous 24-month period; and
 - the county must provide three recommended names for each vacancy, determined by category, and the Governor must make a selection within a 45-day period or request a new list of candidates.

The Governor may remove a member for cause or upon the written petition of the county governing body. If any of the members of the council required to be appointed by the Governor resign, die, or are removed from office, the vacancy is filled by appointment by the Governor, using the same method as the original appointment, and such appointment to fill a vacancy shall be for the unexpired term of the person who resigns, dies, or is removed from office.

Members of the council shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses consistent with s. 112.061, F.S.

District Permissive Powers

The district council is given a number of permissive powers:

1. provide and maintain in the county such preventive, developmental, treatment, and rehabilitative services for seniors and for adults with developmental disabilities as the council determines are needed for their general welfare;
2. provide any other services as the council determines are needed for the general welfare of the county's seniors and adults with developmental disabilities;
3. allocate and provide funds for other agencies in the county which are operated for the benefit of seniors and adults with developmental disabilities;
4. collect information and statistical data and conduct research that will be helpful to the council and the county in deciding the needs of the county's seniors and adults with developmental disabilities;
5. consult and coordinate with other agencies serving seniors and adults with developmental disabilities to prevent overlapping of services;
6. lease or buy real estate, equipment, and personal property and construct buildings as needed to execute district powers and functions. Such purchases must be paid for with cash on hand or secured by funds deposited in financial institutions; no authority to issue bonds is granted; and
7. employ, pay, and provide benefits for required district personnel.

District Duties

The district council is also charged with a number of duties:

1. elect a chair and a vice chair from among its members, and elect other officers as deemed necessary by the council;
2. identify and assess the needs of the county's seniors and adults with developmental disabilities and submit to the county governing body a written description of:
 - the activities, services, and opportunities that will be provided to seniors and adults with developmental disabilities;
 - the anticipated schedule for providing those activities, services, and opportunities;
 - the manner in which seniors and adults with developmental disabilities will be served, including a description of arrangements and agreements which will be made with community organizations, state and local educational agencies, federal agencies, public assistance agencies, the court system, guardianship groups, and other applicable public and private agencies and organizations;
 - the special outreach efforts that will be undertaken to provide services to at-risk, abused, or neglected and ailing seniors or profoundly afflicted adults with developmental disabilities;
 - the manner in which the council will seek and provide funding for unmet needs; and
 - the strategy that will be used for interagency coordination to maximize existing human and fiscal resources;
3. provide training and orientation to all new council members;
4. make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the council's operation; and
5. provide an annual written report, due January 1 of each year, to the county's governing body, which includes:
 - information on the effectiveness of activities, services, and programs offered by the council, including cost-effectiveness;
 - a detailed anticipated continuation budget and a list of all sources of requested funding, both public and private;
 - procedures used for early identification of at-risk seniors and adults with developmental disabilities who need additional or continued services and methods for ensuring receipt of those services;
 - a description of the degree to which the council's objectives and activities are consistent with the goals of this section;
 - detailed information on the various programs, services, and activities available to, and the degree to which they have been successfully used by, seniors and adults with developmental disabilities; and
 - information on those programs, services, and activities that should be eliminated, those which should be continued, and those that should be added to the basic format of the council.

The council must also maintain minutes of each meeting, including a record of all votes cast, and make them available to any interested person.

District Financing and Budgeting

The CS also provides a number of financial and budgeting parameters for the districts:

- The fiscal year of the district is the same as that of the county.
- The council of the seniors' services district must prepare a tentative annual written budget of the district's expected income and expenditures, including a contingency fund.
- The council must also compute a proposed millage rate necessary to fund the tentative budget and comply with the provisions of s. 200.065, F.S., relating to the method of fixing millage, and fix the final millage rate by resolution of the council prior to adopting a final budget.

- The adopted budget and final millage rate are then certified and delivered to the governing body of the county as soon as possible following the adoption by the council of the final budget and millage rate pursuant to Chapter 200, F.S.¹⁶ The millage rate, adopted by resolution of the council, necessary to be applied to raise the funds budgeted for district operations and expenditures must be included in each certified budget.
- The millage rate may not exceed 0.5 mills of assessed valuation of all properties subject to ad valorem county taxes within the county.
- After the district budget is certified and delivered to the county's governing body, it may not be changed or modified by the county's governing body or any other authority.
- All taxes collected under this section shall be paid directly to the council by the county tax collector or clerk of the circuit court, as appropriate.
- All moneys received by the council must be deposited in qualified public depositories, as defined in section 280.02, F.S., with separate and distinguishable accounts established specifically for the council, and may only be withdrawn by checks signed by the council chair and countersigned by one other member of the council or by a chief executive officer authorized by the council.
- The chair and the other member of the council or chief executive officer who signs its checks must each give a surety bond in the sum of at least \$1,000 for each \$1 million or portion thereof of the council's annual budget, which bond shall be conditioned that each shall faithfully discharge the duties of his or her office. The premium on such bond may be paid by the district as part of the expense of the council. No other council members have to give bond or other security.
- District funds may only be expended by check, except expenditures from a petty cash account not exceeding \$100. All expenditures from petty cash must be recorded. Council funds other than petty cash may not be spent unless first budgeted for and approved by the council.
- The district must timely prepare and file a quarterly financial report which includes: for the quarter --- total council expenditures and receipts; a statement of the funds on hand, invested, or deposited; and total council administrative costs.
- After or during the first year of operation of the council, the governing body of the county, at its option, may fund in whole or in part the council budget from its own funds.

Dependent Special Districts

This CS does not prevent a county from creating a dependent special district within the boundaries of the county for the purpose of providing preventive, developmental, treatment, and rehabilitative services for seniors and adults with developmental disabilities. This dependent district may seek grants from state, federal, and local agencies and accept donations from public and private sources if the district has the same type duties as a seniors' services district and has a budget that requires approval through an affirmative vote of the governing body of the county or may be vetoed by the governing body of the county.

Exercise of County Powers

The CS does not prohibit a county from exercising its powers authorized by general or special law to provide services for seniors or for adults with developmental disabilities.

¹⁶ Chapter 200, F.S., governs the method of fixing property tax millage by local taxing authorities. The "Truth in Millage" (TRIM) guidelines set the method for establishing annual millage rates for local governments, set dates for the required public budget hearing, specify budget advertising requirements, and regulate other important components of the annual ad valorem tax cycle.

Cooperative Agreements among Councils

The CS provides that two or more councils may enter into two types of cooperative agreements:

1. A cooperative agreement to share administrative costs, including, but not limited to, staff and office space, if a more efficient or effective operation will result. The cooperative agreement must include provisions on apportioning costs between the councils, keeping separate and distinct financial records for each council, and resolving any conflicts that might arise under the cooperative agreement.
2. A cooperative agreement to seek grants, to accept donations, or to jointly fund programs serving multicounty areas. The cooperative agreement must include provisions for the adequate accounting of separate and joint funds.

District Dissolution

Any district created by the provisions of this CS may be dissolved by (1) a special act of the Legislature, (2) an ordinance of the county governing body, subject to the approval of the electorate, or (3) the procedures set forth in s. 189.4042, F.S.

Prior to being dissolved, the county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body for all county and municipal purposes as provided for under section 9, Article VII of the State Constitution.

District Compliance with Other Statutory Requirements

The CS requires that any district created pursuant to this section must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports required under part III of ch. 218, F.S., or any other report or documentation required by law, including the reporting requirements of ss. 189.415, 189.417, and 189.418, F.S.

Redesignation of Part V of Chapter 125

The CS changes the title of Part V of ch. 125 from "Children's Services" to "Human Services" to include within the Part the purposes of the newly-created section.

C. SECTION DIRECTORY:

Section 1: Creates s. 125.903, F.S.; provides for the creation, governing body, powers, duties, and functions of an independent special district to provide funding for services for seniors and services for adults with developmental disabilities throughout a county.

Section 2: Redesignates Part V of ch. 125, F.S.

Section 3: Amends s. 189.404(4), F.S.; adds a reference to newly-created s. 125.903, F.S.

Section 4: Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This CS does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This CS does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This CS permits the establishment of an independent special district to provide funding for services for seniors and services for adults with developmental disabilities throughout a county through the annual levy of an ad valorem tax as approved by the electors of the county. The Revenue Estimating Conference determined the bill has an indeterminate fiscal impact on local government revenues. If all counties created a district and imposed the maximum 0.5 millage in ad valorem taxes, the Conference estimated the impact to be \$621.8 to \$668.6 million in FY 2005-06.¹⁷

2. Expenditures:

This CS has a fiscal impact on local government expenditures in that it permits the establishment of an independent special district which may expend funds for services for seniors and services for adults with developmental disabilities throughout a county. The CS, however, provides the intent of the Legislature that the expenditure of funds by the district are not to be used as a substitute for existing resources or for resources that would otherwise be available for services for seniors or services for adults with developmental disabilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The collection of ad valorem taxes as well as the operation of these districts may have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

Should the districts determine to do so, the revenue raised by the independent special districts created by this CS may, under certain circumstances, be eligible for use as Medicaid matching funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The municipal/county mandates provision in section 18 of article VII of the Florida Constitution does not appear to be applicable since the CS does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This CS requires the district councils to make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the council's guidance, operation, governance, and maintenance.

¹⁷ Revenue Estimating Conference on February 22, 2005.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

The CS allows the creation of independent special districts to provide services for seniors and services for adults with developmental disabilities. The CS seems to preclude a district's provision of services only to seniors or only to adults with developmental disabilities.

Subsection (7)(a) permits counties to create dependent special districts for the purpose of providing preventive, developmental, treatment, and rehabilitative services for seniors and adults with disabilities, a power which counties seem to currently possess. Thus, it is not clear if this provision is intended to restrict the power of counties to create this type of special district. That is, a county could only create a special district to provide preventive, developmental, treatment, and rehabilitative services for seniors and adults with disabilities if it has the duties required of seniors and adults with disabilities services districts in this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Committee on Elder and Long-Term Care adopted a strike-all amendment on February 23, 2005. The strike-all amendment:

- creates a new section of statute, s. 125.903, F.S., for the unnumbered act;
- specifies the appropriate subsection references relating to the creation of independent special districts;
- provides a necessary reference to s. 189.404, F.S., relating to charter requirements for independent special districts;
- redesignates Part V of ch. 125, F.S., from "Children's Services" to "Human Services" to include the purposes of the newly-created district within the Part; and
- conforms s. 189.404, F.S., to include a reference to newly-created s. 125.903, F.S.

The amendment also specified that the referendum required to approve the ad valorem tax levy be held at the next general election, i.e., the general election immediately subsequent to the adoption of the county ordinance creating the independent special district.

The bill, as amended, was reported favorably with committee substitute.