

**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.)

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Prepared By: The Professional Staff of the Committee on Ethics and Elections

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BILL: SB 422

INTRODUCER: Senator Lee and others

SUBJECT: Municipal Conversion of Independent Special Districts

DATE: March 15, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	<b>Favorable</b>
2.	Carlton	Ulrich	EE	<b>Pre-meeting</b>
3.			RC	

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**I. Summary:**

SB 422 adds a minimum population standard for qualified electors of an independent special district to commence a certain municipal conversion proceeding. Specifically, it requires an independent special district wishing to convert to a municipality to have a minimum population of 1,500 people if the population of the county is less than 75,000 people or, if the county has more than 75,000 people, then the independent special district wishing to convert to a municipality must have a population of at least 5,000.

The bill is effective upon becoming law.

**II. Present Situation:**

**Establishment of Municipalities**

The Florida Constitution provides that “municipalities may be established or abolished and their charters amended pursuant to general or special law.”<sup>1</sup> Chapter 165 of the Florida Statutes lays out the local government formation process and provides standards, direction, and procedures for the formation of municipalities in the state.<sup>2</sup> The provisions of this act are the exclusive procedure for forming or dissolving municipalities in Florida, except in those counties operating under a home rule charter which provides for an exclusive method as authorized by Article VIII, section 6(e) of the Florida Constitution.<sup>3</sup> A charter for incorporation of a municipality shall be adopted only by a special act of the Legislature upon determination that the standards provided in ch. 165, F.S., are met.<sup>4</sup> To inform the Legislature on the feasibility of a proposed incorporation

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<sup>1</sup> FLA. CONST. art. VIII, s. 2.

<sup>2</sup> Section 165.021, F.S.

<sup>3</sup> Section 165.022, F.S.

<sup>4</sup> Section 165.041(1)(a), F.S. The procedure for a municipal incorporation by merger is also included in this section.

of a municipality, a feasibility study shall be completed and submitted to the Legislature.<sup>5</sup> The study shall contain the following:

- The location of territory subject to boundary change and a map of the area which identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
  - A list of the current land use designations applied to the subject area in the county comprehensive plan.
  - A list of the current county zoning designations applied to the subject area.
  - A general statement of present land use characteristics of the area.
  - A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
- A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization.
- A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.
- The names and addresses of three officers or persons submitting the proposal.
- Evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation that, at a minimum, includes:
  - Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.
  - A 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
  - Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.
  - Evaluation of the alternatives available to the area to address its policy concerns.
  - Evidence that the proposed municipality meets the requirements for incorporation pursuant to s. 165.061, F.S.<sup>6</sup>

Section 165.061, F.S., provides standards that must be met for incorporation of a new municipality. The conditions are as follows:

- It must be compact and contiguous and amenable to separate municipal government.
- It must have a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 persons in counties with a population of more than 75,000.

<sup>5</sup> Section 165.041(1)(b), F.S. The study must be submitted no later than the first Monday after September 1 of the year before the regular session of the Legislature during which the municipal charter would be enacted.

<sup>6</sup> *Id.*

- It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
- It must have a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least 2 miles or have an extraordinary natural boundary which requires separate municipal government.
- It must have a proposed municipal charter which:
  - Prescribes the form of government and clearly defines the responsibility for legislative and executive functions.
  - Does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.

In accordance with Article I, section 10 of the Florida Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation. However, the plan for incorporation may provide for existing contracts for solid-waste-collection services to be honored only for 5 years or the remainder of the contract term, whichever is less, and may require that a copy of the pertinent portion of the contract or other written evidence of the duration of the contract, excluding any automatic renewals or evergreen provisions, be provided to the municipality within a reasonable time after a written request to do so.

### **Special Districts**

The “Uniform Special District Accountability Act of 1989,” ch. 189 F.S., defines the term “special district” to mean:

a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17,<sup>7</sup> a municipal service taxing or benefit unit as specified in s. 125.01,<sup>8</sup> or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

A “dependent special district” means a special district that meets at least one of the following criteria:

- The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- All members of its governing body are appointed by the governing body of a single county or a single municipality.

<sup>7</sup> This section creates special improvement districts within the reservations set aside for the Seminole and Miccosukee Tribes.

<sup>8</sup> Section 125.01(q), F.S., provides that the governing body of a county has the authority to establish, and subsequently merge or abolish, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement...and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.

- 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 a single 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 a single municipality.<sup>9</sup>

An “independent special district” means a special district that is not a dependent special district as defined, above. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.<sup>10</sup>

As of March 2017, there are 1,036 active independent special districts and 632 active dependent special districts in this state.<sup>11</sup>

### **Municipal Conversion of Independent Special Districts**

Section 165.0615, F.S., provides the process for converting an independent special district into a municipality. The qualified electors of an independent special district may commence a municipal conversion proceeding by filing a petition with the governing body of the independent special district proposed to be converted.<sup>12</sup> The independent special district must meet the following criteria to be proposed for conversion:

- It was created by special act of the Legislature.
- It is designated as an improvement district and created pursuant to ch. 298, F.S., or is designated as a stewardship district and created pursuant to s. 189.031, F.S.
- Its governing board is elected.
- Its governing board agrees to the conversion.
- It provides at least four of the following municipal services: water, sewer, solid waste, drainage, roads, transportation, public works, fire and rescue, street lighting, parks and recreation, or library or cultural facilities.
- No portion of the district is located within the jurisdictional limits of a municipality.<sup>13</sup>

Unlike the standards for incorporation of a new municipality, there is not currently a population requirement for the conversion of an independent special district.<sup>14</sup> The petition for conversion must include signatures of at least 40 percent of the qualified electors of the independent special district and must be submitted to the supervisor of elections of the county in which the district lands are located.<sup>15,16</sup> It also must be filed with the governing body of the independent special

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<sup>9</sup> Section 189.012(2), F.S.

<sup>10</sup> Section 189.012(3), F.S.

<sup>11</sup> Division of Community Development, Florida Department of Economic Opportunity, *Special District Accountability Program*, <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/criteria.cfm> (last visited March 2, 2017).

<sup>12</sup> Section 165.0615(1), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Following the framework of s. 165.0615, F.S., the Seminole Improvement District successfully converted into the City of Westlake with five registered voters in the district. Palm Beach County Supervisor of Elections, *Letter of Certification of Number of Registered Voters*, April 7, 2016 (on file with the Community Affairs Committee).

<sup>15</sup> Section 165.0615(2)(a), F.S. It must be filed no later than 1 year after the start of the qualified elector-initiated municipal conversion proceeding.

<sup>16</sup> Section 165.0615(3), F.S. Within 30 days of receiving the petition, the supervisor of elections shall certify to the governing body the number of signatures of qualified electors contained on the petition.

district.<sup>17</sup> The petition must be in a specific form as provided by statute,<sup>18</sup> and must be validated by a notary, a witness who is a duly qualified elector of the independent special district, or another person authorized to take acknowledgements.<sup>19</sup> Depending on who signs the statement, specific forms must be used as provided by statute.<sup>20</sup> Once the supervisor of elections has verified that 40 percent of the qualified electors have petitioned for conversion, and that all petitions have been executed within 1 year after the date of the initiation of the conversion process, the governing body of the independent special district shall meet within 30 business days to prepare and approve by resolution a proposed elector-initiated combined conversion and incorporation plan.<sup>21</sup> The proposed plan must include:

- The name of the independent special district to be converted to a municipality.
- The name of the municipality to be created.
- The conversion schedule.
- Notwithstanding s. 165.061(1)(d), F.S., certification by a licensed surveyor that the boundaries of the proposed municipality do not overlap with any other municipal boundary and are contained within a single county.
- The rights, duties, and obligations of the municipality, and a feasibility study that contains the requirements under s. 165.041(1)(b), F.S., except that the provisions of s. 165.061(1)(b)-(d), F.S., do not apply if the buildout of the land use allowed under the current county-approved comprehensive plan and zoning designations will meet the population and density requirements of s. 165.061(1)(b) and (c), F.S.
- The territorial boundaries of the proposed municipality.
- The governmental organization of the proposed municipality and independent special district as the organization concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials.
- An accounting of the independent special district's assets, including, but not limited to, real and personal property, and the current value of the property.
- An accounting of the independent special district's liabilities and indebtedness, bonded and otherwise, and the current value of the liabilities and indebtedness.
- Terms for addressing the ownership and obligations related to existing assets, liabilities, and indebtedness of the independent special district, jointly, separately, or in defined proportions.
- Terms for the common administration and uniform enforcement of existing laws within the proposed municipality.
- An estimated date for final payment of any bonded indebtedness of the independent special district, and if maintained by the district after incorporation, the estimated date of automatic dissolution of the independent special district.
- The time and place for a public hearing on the proposed incorporation.
- The effective date of the proposed incorporation.<sup>22</sup>

The resolution endorsing the plan must be approved by a majority vote of the governing body of the independent special district and must be adopted at least 60 business days before any general

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

<sup>18</sup> Section 165.0615(2)(b), F.S.

<sup>19</sup> Section 165.0615(2)(c), F.S.

<sup>20</sup> Sections 165.0615(2)(d-e), F.S.

<sup>21</sup> Section 165.0615(4), F.S.

<sup>22</sup> *Id.*

or special election on the proposed plan.<sup>23</sup> Within 5 business days after the independent special district approves the proposed plan, the governing body must have the plan available for the public.<sup>24</sup> This includes keeping copies displayed and accessible in at least three public places (or all public places if there are less than three in a district).<sup>25</sup> The plan must be available on a website maintained by the district.<sup>26</sup> A descriptive summary of the plan also must be published in a newspaper of general circulation within the district at least once a week for 4 successive weeks, and must indicate the public places where a copy of the plan may be examined.<sup>27</sup>

The governing body of the district shall set a time and place for one or more public hearings on the proposed plan, allowing for interested persons residing in the district to be heard on any aspect of the proposed merger.<sup>28</sup> Notice of the final hearing must be published pursuant to notice requirements in s. 189.015, F.S., and must provide a summary of the plan and where it can be examined.<sup>29</sup> After the final public hearing, the governing body may amend the proposed plan if the amended version complies with notice and public hearing requirements provided in the statute.<sup>30</sup> A final version of the plan shall be approved within 60 business days of the final hearing.<sup>31</sup> The governing body must then notify the supervisor of elections of the adoption of the resolution by the governing body, and the supervisor shall schedule a date for the referendum.<sup>32</sup> Notice of the referendum must be provided pursuant to the notice requirements in s. 100.342, F.S., and must include:

- A brief summary of the resolution and elector-initiated municipal incorporation plan;
- A statement as to where a copy of the resolution and petition for municipal incorporation may be examined;
- The name of the independent special district to be converted to a municipality and a description of the territory included in the plan;
- The time and place at which the referendum will be held; and
- Such other matters as may be necessary to call, provide for, and give notice of the referendum and to provide for the conduct of the referendum and the canvass of the returns.<sup>33</sup>

The referendum must be held in accordance with the Florida Election Code, with the costs borne by the independent special district.<sup>34</sup> The ballot for the referendum must appear in the form as provided by s. 165.0615(13), F.S. The ballots must be counted, returns made and canvassed, and results certified in the same manner as other elections or referenda for the independent special district.<sup>35</sup> The plan will not take effect unless a majority of the votes cast in the district are in

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<sup>23</sup> Section 165.0615(5), F.S.

<sup>24</sup> Section 165.0615(6), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Section 165.0615(7), F.S. The hearings shall be held on a weekday at least 7 business days after the first advertisement is published.

<sup>29</sup> Section 165.0615(8), F.S.

<sup>30</sup> Section 165.0615(9), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 165.0615(10), F.S.

<sup>33</sup> Section 165.0615(11), F.S.

<sup>34</sup> Section 165.0615(12), F.S.

<sup>35</sup> Section 165.0615(14), F.S.

favor of the plan;<sup>36</sup> and if the plan is approved by a majority of the votes cast the district shall notify the Special District Accountability Program<sup>37</sup> and the local general-purpose governments in which any part of the independent special district is situated.<sup>38</sup> If the referendum fails, the conversion process may not be initiated for the same purpose within 2 years after the date of the referendum.<sup>39</sup> An independent special district proposed for conversion under an elector-initiated municipal incorporation plan must continue to be governed as before the approved referendum until the effective date specified in the plan.<sup>40</sup> Finally, the effective date of the incorporation shall be as provided in the plan, and is not contingent upon a future act of the Legislature.<sup>41</sup>

### III. Effect of Proposed Changes:

The bill adds a minimum population standard to the existing criteria for converting an independent special district into a municipality. In order to qualify to commence a municipal conversion proceeding, the district must have a total population in the area proposed of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 persons in counties with a population of more than 75,000.

The bill is effective upon becoming law.

### 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.

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<sup>36</sup> Section 165.0615(15), F.S.

<sup>37</sup> The Special District Accountability Program is a centralized source of information about the special districts in the state, and is a function of the Florida Department of Economic Opportunity. Special District Accountability Program, Florida Department of Economic Opportunity, <http://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program> (last visited February 28, 2017).

<sup>38</sup> Section 165.0615(16), F.S.

<sup>39</sup> Section 165.0615(17), F.S.

<sup>40</sup> Section 165.0615(18), F.S.

<sup>41</sup> Section 165.0615(19), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 165.0615 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.