

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 1632

INTRODUCER: Ethics and Elections Committee and Senator Stargel

SUBJECT: Special Districts

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1632 is an omnibus special district bill that reorganizes, renumbers and makes numerous technical and conforming changes to the provisions in Chapter 189 of the Florida Statutes. Additionally, the bill:

- Amends the definition of agency in the Code of Ethics to specifically include special districts;
- Expands the authority of the Governor to suspend special district officers and provides procedures related to suspended officers;
- Redefines the term special district in s. 189.403, F.S.;
- Removes provisions concerning a special district's application to amend its charter;
- Amends the circumstances under which the Department of Economic Opportunity may declare a special district inactive;
- Requires the Department of Economic Opportunity to notify the chair of the county legislative delegation and the Legislative Auditing Committee;
- Prohibits inactive districts from collecting taxes, fees, and assessments;
- Changes the required education for new special district members;
- Revises the provisions concerning the failure to file certain reports;
- Requires administrative fees to be placed into the Operating Trust Fund;
- Requires public hearings concerning certain noncompliance; and
- Requires special districts to maintain a website and give the website address to the Department of Economic Opportunity for publication on its website.

The committee substitute has an effective date of July 1, 2014.

II. Present Situation:

SPECIAL DISTRICTS

Chapter 189, F.S.

Special districts are local units of special purpose government, within limited geographical areas, which are utilized to manage, own, operate, maintain, and finance basic capital infrastructure, facilities, and services. According to the Official List of Special Districts maintained by the Department of Economic Opportunity (DEO), there are a total of 1,634 special districts (18 are inactive). There are 1,008 independent special districts and 644 dependent special districts.

Special districts have been around in Florida since 1845 when the Legislature authorized five commissioners to drain the “Alachua Savannah” also known as Paynes Prairie. The project was financed by special assessments made on landowners based on the number of acres owned and the benefit derived. Since that time, special districts have been useful to local governments in providing a broad range of government services. Special districts serve a limited purpose, function as an administrative unit separate and apart from the county or city in which they may be located, and are often referred to as a local unit of special purpose. Special districts may be created by general law (an act of the Legislature), by special act (a law enacted by the Legislature at the request of a local government and affecting only that local government), by local ordinance, or by rule of the Governor and Cabinet. There are two types of special districts – dependent and independent.

Dependent Special District

A dependent district meets at least one of the following criteria:

- The special district governing body members are the same as the governing body members of the county or city that created the district,
- The special district governing board members are appointed by the governing body of the county or city that created the district,
- During the terms of membership, the governing board members of the special district are subject to removal at will by the governing body of the county or city that created the district,
- The special district budget must be approved by an affirmative vote of the governing body of the county or city that created the district, or
- The special district budget can be vetoed by the governing body of the county or city that created the district.

The ordinance creating a dependent special district must provide the following:

- A statement referencing the district’s dependent status, including a statement that explains why the special district is the best way to provide the service being provided,
- The purpose, powers, functions, authority, and duties of the district,
- District boundaries,

- The membership, organization, compensation, and administrative duties of the special district governing board,
- Applicable financial disclosure, noticing, and reporting requirements,
- The method by which the special district will be financed, and
- A declaration that the creation of the special district is consistent with the approved local government comprehensive plan.

Independent Special Districts

An independent special district does not have any of the characteristics of a dependent district, may encompass more than one county unless the district lies wholly within the boundaries of one city, and generally is created by an act of the Legislature. However, counties and cities may create community development districts of less than 1,000 acres,¹ public hospital districts,² county children's services districts,³ and county health and mental health care districts.⁴ Two or more counties may create regional jail districts,⁵ and any combination of counties or cities, or both, may create regional water supply authorities.⁶ Regional transportation authorities may be created by any combination of contiguous counties, cities, or other political subdivisions.⁷ Finally, the Governor and the Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, have the authority to create community development districts.⁸

With the exception of a community development district, the charter creating an independent special district must contain the following information:

- The purpose of the special district;
- The powers, functions and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- Method for establishing the district and amending the district charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- Method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.

¹ Chapter 190.005(2), F.S.

² Chapter 155.04 and 155.05, F.S.

³ Section 125.901, F.S.

⁴Section 154.331, F.S.

⁵ Section 950.001, F.S.

⁶ Section 373.1962, F.S.

⁷ Section 163.567, F.S.

⁸ Section 190.005(1), F.S.

All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 which was enacted by the Legislature to reform and consolidate laws relating to special districts. The Act provides for the definitions, creation, operation, financial report, taxation and non-ad valorem assessments, elections and dissolution of most special districts.

The Special District Information Program (SDIP) within the Department of Economic Opportunity serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function which can include community development districts (575), community redevelopment districts (213), downtown development districts (14), drainage and water control districts (86), economic development districts (11), fire control and rescue districts (65), mosquito control districts (18), and soil and water conservation districts (62). Each special district must file with the SDIP the ordinance or document creating the district, amendments to the creation document, a written statement referencing the basis for the district's dependent or independent status. The SDIP enforces compliance with financial reporting requirements and collects the Annual Special District Fee of \$175 to pay the costs of administering the SDIP. Information relating to special districts and their functions can be found in the SDIP online publication "Florida Special District Handbook Online" which can be found at <http://www.floridaspecialdistricts.org/handbook/>.

For purposes of this analysis, specific current law affected by the committee substitute will be discussed in the Effects of Proposed Changes Section below.

III. Effect of Proposed Changes:

Numerous sections of the committee substitute do not need to be specifically addressed because they make only technical, conforming, or renumbering changes to the statutes. Those sections of the committee substitute are:

7, 12, 15, 16, 17, 26, 27, 30-33, 35-41, 43, 45-47, 50, and 57-90.

Additionally, Section 51 of the committee substitute repeals the following: ss. 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444, Florida Statutes.

Those sections compose the "Community Improvement Authority Act," the purpose of which is to prescribe a uniform procedure for establishing independent authorities for the purpose of planning, financing, constructing, renovating, developing, operating, and maintaining facilities and other attractions, including professional sports facilities and other related amenities and infrastructure within highly populated counties of the state and within counties contiguous therewith.⁹

⁹ Section 189.431(2), F.S.

The following addresses the remaining sections of the committee substitute wherein substantive changes are made:

GENERAL STATUTORY STRUCTURE (Sections 1 and 2)

The committee substitute takes current Chapter 189 of the Florida Statutes, renames it as “Special Districts,” and divides it into the following named parts:

- Part I - “General Provisions”
- Part II - “Dependent Special Districts”
- Part III - “Independent Special Districts”
- Part IV - “Elections”
- Part V - “Finance”
- Part VI - “Oversight and Accountability”
- Part VII - “Merger and Dissolution”
- Part VIII - “Comprehensive Planning”

Legislative Auditing Committee (Section 3)

Current Situation

The Joint Legislative Auditing Committee (Committee) has the authority to enforce provisions against local governmental entities when they fail to submit financial reports required by law. All counties, municipalities, and special districts are required to complete an annual financial report (AFR) for each fiscal year. Counties, municipalities and independent special districts are required to submit the AFR to the Department of Financial Services (DFS). Any dependent special district that is a component unit (as defined by generally accepted accounting principles (Governmental Accounting Standards Board Statement No. 14, The Financial Reporting Entity)) of the county or the municipality to which it is dependent is required to provide that entity the financial information necessary to comply with the AFR reporting requirements. It is then the county's or the municipality's responsibility to include the financial information of the dependent special district in its AFR. A dependent special district that is not determined to be a component unit of the county or the municipality to which it is dependent is required to file the AFR with the DFS.

In addition, all counties, and municipalities and special districts that meet a certain threshold for revenues or expenditures/expenses are also required to have an annual financial audit (audit) of their accounts and records conducted by an independent certified public accountant (CPA). Audits are required to be submitted to both the DFS and the Auditor General. Each year, these offices provide the Committee with a list of all entities that have failed to comply with these financial reporting requirements. The Committee may choose to take action pursuant to s. 11.40(2), F.S., against noncompliant entities. For counties and municipalities, the Committee may direct the DFS and the Department of Revenue (DOR) to withhold any funds due to the entity that are not pledged for bond debt service satisfaction until they have complied with the law. For special districts, the Committee may direct the Department of Economic Opportunity (DEO) to begin legal proceedings against the special district to compel compliance or declare the special district inactive pursuant to the provisions of s. 189.4044, F.S., if applicable.

Effects of Proposed Changes

Section 3 amends s. 11.40, F.S., to provide additional notification responsibilities for the Joint Legislative Auditing Committee when a special district fails to comply with the financial reporting requirements. If a district was created by special act, the Committee must notify the chair of the county legislative delegation and DEO. If the district was created by local ordinance, the Committee must notify the local general-purpose government and DEO. Upon receipt, DEO must proceed pursuant to s. 189.062, F.S., (special procedures for inactive districts) or 189.067 F.S., (failure of district to disclose financial reports).

Code of Ethics for Public Officers and Public Employees (Section 4)***Current Situation***

The term “agency” means: any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.¹⁰

This definition of “agency” would encompass a special district.

Effects of Proposed Changes

The committee substitute specifically adds to that definition “any special district as defined in s.189.012, F.S.”

Governor’s Suspension Power (Sections 5 and 6)***Current Situation***

Pursuant to Article IV, s. 7, of the State Constitution, the Governor may suspend any state officer not subject to impeachment, any officer of the militia not in active service of the United States, or any county officer for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, or commission of a felony. If the Governor suspends one of these officers, the decision to remove or reinstate the officer is made by the Senate.¹¹

Pursuant to Article IV, s. 7(c), of the State Constitution, the Governor may suspend any elected municipal officer indicted for a crime. Additionally, the Legislature provided the Governor the authority to suspend any elected or appointed municipal official for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.¹² This jurisdiction is concurrent in the Governor and in the statutory or charter

¹⁰ Section 112.312(2), F.S.

¹¹ Article IV, s. 7(b), Fla. Const.

¹² Section 112.51, F.S.

authority.¹³ In the event that a municipal officer is convicted, the Governor is required to remove him or her from office.¹⁴

Currently, the law contemplates the following types of special districts: an independent special district that is created by special act, an independent special district created by county/municipal charter or ordinance, an independent special district created by agreement between counties, an independent special district created by agreement between a county and a municipality, a county/municipal dependent district created by charter, or a county/municipal dependent special district created by ordinance. Some members of special districts would be considered to be county officers. Some members of special districts would be considered to be municipal officers. Some members of special districts would not be either county or municipal officers. If a Governor were to suspend a member of a special district board that exercises powers and duties that are county-related, the Senate would likely have jurisdiction over the executive order of suspension pursuant to Art. IV, s. 7, Fla. Const. If the Governor were to suspend a member of a special district that exercises powers and duties that are municipal in nature, then the Senate would not have jurisdiction. The Governor could take any action consistent with ss. 112.50-112.52, Florida Statutes. It is unclear what would happen in the event that a special district board member whose board is created by interlocal agreement between multiple counties or municipal-county agreement were one to be suspended.

Effects of Proposed Changes

CS/SB 1632 provides that the Governor may suspend board members of special districts exercising state or county jurisdiction subject to removal or reinstatement by the Senate as provided in Art. IV, s. 7(a), of the State Constitution. Alternatively, the committee substitute provides that the Governor may suspend and remove board members of special districts exercising powers other than state or county powers as provided in s. 112.51, F.S.

Statement of Legislative Intent (Sections 8, 9 and 10)

Current Situation

Section 189.402, F.S., contains the statements of legislative intent concerning creation and purpose of special districts. In its current form, it contains statements of legislative intent relating to both dependent and independent special districts.

Effects of Proposed Changes

The general statement of legislative intent applicable to both types of districts in ss. 189.402(1), 189.402(6), and 189.402(7), F.S., are transferred to s. 189.011, F.S., which is located in "Part I-General Provisions." The Legislative findings that special districts serve a necessary and useful public purpose and the intent that the public trust be secured by registering and certain financial reports in s. 189.402(6), F.S., are relocated to new s. 189.011(2), F.S.

¹³ Section 112.50, F.S.

¹⁴ Section 112.51(5), F.S.

Additionally, the current statements of legislative intent concerning improvement of communication and uniformity in s. 189.402(2), F.S., are moved and renumbered to s. 189.06, F.S., located in “Part VI-Oversight and Accountability.”

The statements of legislative intent concerning independent special districts in s. 189.402(3), (4), (5), and (8) are moved to s. 189.03, F.S., in “Part III-Independent Special Districts.” Those sections contain substantive revisions to the statements of legislative intent contained therein.

Special District Definition (Section 11)

Current Situation

Under s. 189.403, F.S., “special district” means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts shall be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

Effects of Proposed Changes

Section 11 transfers, renumbers, and amends s. 189.403, F.S., to redefine the term “special district” as:

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, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

Creation, Dissolution, and Reporting Requirements of Special Districts (Sections 12 and 13)

Current Situation

Section 189.4031, F.S., requires all special districts to follow creation, dissolution, and reporting requirements set forth in Chapter 189 of the Florida Statutes. It also requires certain information concerning powers and duties of the district, methods for establishing and amending the charter, certain information concerning ad valorem taxing and fees, planning requirements, and geographical boundaries to be contained in the charter of an independent special district. Because the only charter available for a community development district is that provided in ss. 190.006-190.041, F.S., an exception is created for community development districts.

Effects of Proposed Changes

The committee substitute moves the provision that all special districts must follow creation, dissolution and reporting requirements to s. 189.013, F.S., which is located in “Part I-General Provisions.” The remaining provisions are moved to s. 189.0311, F.S., which is located in “Part III-Independent Special Districts.”

The Official List of Special Districts (Section 14)

Current Situation

Section 189.4035, F.S., requires the Department of Economic Opportunity to compile and maintain an official list of special districts which must be posted on the Department’s website. That provision also states that if a special district was created by a local general-purpose government or a state agency, any proposed charter amendments must be approved as a matter of right. If the special district was created by the Legislature, the district must seek legislative amendment to its charter during the next session or it will become a dependent special district.

Effects of Proposed Changes

In addition to moving s. 189.4035, F.S., to s. 189.061, F.S., located in “Part VI-Oversight and Accountability,” the committee substitute makes the following changes:

- Requires the Department of Economic Opportunity to post a link to the special district’s website. That website is required to contain certain information pursuant to newly created s. 189.069, F.S.;
- Deletes the requirement that charter amendment requests made by a local general-purpose government or state agency be approved as a matter of right; and
- Deletes the requirements that special districts created by the Legislature seek an amendment at the next session and that failure to do so will result in conversion to a dependent special district.

Merger and Dissolution of Special Districts (Sections 18-24)

Current Situation

Section 189.4042, F.S., governs the merger and dissolution of special districts. That section provides definitions, procedures for merger or dissolution of a dependent special district, dissolution of an independent special district, legislative dissolution of special districts created by special acts of the Legislature, dissolution of inactive independent special districts, legislative or voluntary merger of independent special districts, the merger by referendum process, and involuntary merger of independent special districts.

Effects of Proposed Changes

The following provisions of s. 189.4042, F.S. are relocated to “Part VII-Merger and Dissolution:”

- Definitions in s. 189.4042(1), F.S., are moved to s. 189.07, F.S.;
- Merger or Dissolution of Dependent Special Districts provisions in s. 189.4042(2), F.S., are moved to s. 189.071, F.S.;

- Dissolution of Independent Special Districts provisions in s. 189.4042(3), F.S., are moved to s. 189.072, F.S.;
- Legislative Merger of independent special districts provisions are moved from s. 189.4042(4), F.S., to s. 189.073, F.S.;
- The provisions for voluntary merger of independent special districts in s. 189.4042(5), F.S., are moved to s. 189.074, F.S.;
- The provisions relating to involuntary merger of independent special districts in s. 189.4042(6), F.S., are moved to s. 189.075, F.S.; and
- The exemption for community development districts is moved from s. 189.4042(7), F.S., to s. 189.0761, F.S.

Special Procedures for Inactive Districts (Section 25)

Current Situation

Section 189.4044, F.S., requires the DEO to declare a special district inactive and provides the circumstances under which it must do so. That section provides for repayment of an inactive district's debt and that the remainder of any assets or property escheat to the county or municipality wherein the district is located. If the Department declares a district inactive, that statute specifies who the Department must notify.

Effects of Proposed Changes

The committee substitute moves s. 189.4044, F.S., to s. 189.062, F.S., located in "Part VI-Oversight and Accountability." Currently, the law authorizes the Department to declare a district inactive when "following an inquiry from the Department, the registered agent of the district or the chair of the governing body of the appropriate unit of local general-purpose government notifies the Department in writing that the district has not had a governing body or a sufficient number of governing body members to constitute a quorum for 2 or more years." The committee substitute removes the condition precedent that the Department must ask whether there has been a board or a quorum for the past two years. The committee substitute also allows a special district that declares itself inactive by unanimously adopted resolution to be dissolved without a referendum. The committee substitute also contains a "catch-all" that allows the Department to declare a district inactive if it "independently determines that the district is no longer active." In the case of a special district created by a special act being declared inactive, the Department would no longer be required to notify the Speaker of the House of Representatives and the President of the Senate. Instead, the Department would be required to notify the chair of the county legislative delegation and the Legislative Auditing Committee.

The committee substitute provides that a special district that is declared inactive by the Department may not collect taxes, fees, or assessments unless the declaration is withdrawn or invalidated by an administrative law judge, or appropriate circuit court. The committee substitute gives the Department the authority to enforce the prohibition against collecting taxes, fees, and assessments by filing a lawsuit in the Second Judicial Circuit Court in and for Leon County, Florida.

Governing Body Elections (Sections 28 and 29)

Current Situation

Section 189.405, F.S., provides that elections of board members of dependent special districts shall be conducted by the supervisor of elections of the county where the district is located. That section also provides that elections of board members of independent special districts located entirely within one county may be conducted by the supervisor of elections of that county. Alternatively, if such district conducts its own elections it must report the results to the supervisor of elections. The statute also provides an election process for multicounty special district. It also allows the Department to provide or conducting education for newly elected or appointed board members concerning the Code of Ethics, public records and open meetings laws, public finance, and parliamentary procedure. Education may be provided by means of videotapes, live seminars, workshops, conferences, teleconferences, computer-based training, multimedia presentations, or other available instructional methods. Finally, the law does not apply to community development districts or water management districts.

Effects of Proposed Changes

The committee substitute moves these provisions, with the exception of the education of newly elected or appointed officials, to newly created s. 189.04, F.S., located in “Part IV-Elections.” The education programs provisions are moved to newly created s. 189.063, F.S., located in “Part VI-Oversight and Accountability.” However, the committee substitute deletes the references to the specific means of providing training.

Special District Information Program (Section 34)

Current Situation

The Special District Information Program is created in s. 189.412, F.S., to:

- Maintain a database of special district non-compliance reports;
- Maintain a master list of special districts for the Department of Economic Opportunity website;
- Publish and update the “Florida Special District Handbook;”
- When feasible, secure and maintain access to special district information collected by all state agencies;
- Facilitation coordination and communication among state agencies regarding special districts;
- Conduct studies relevant to special districts;
- Providing assistance in compliance with the requirements of law, including assistance with an annual conference presented by the Florida Association of Special Districts; and
- Providing assistance to local general-purpose governments and certain state agencies in collecting delinquent reports or information, helping special districts comply with reporting requirements, declaring special districts inactive when appropriate, and initiating enforcement actions when directed to by the Joint Legislative Auditing Committee.

Effects of Proposed Changes

The committee substitute renames the Special District information Program as the “Special District Accountability Program” and moves the program to s. 189.064, F.S., in “Part VI-Oversight and Accountability.” It also requires electronic publication of special district noncompliance status reports. The committee substitute removes the responsibility to secure or maintain access to special district information collected by all state agencies. It removes the requirement that it conduct studies relevant to special districts. Finally, the committee substitute deletes the provision for assistance to the Florida Association of Special Districts.

Failure to File Reports or Information (Section 42 and 44)

Current Situation

Section 189.419, F.S., requires the person authorized to receive and read the reports or information or the local general-purpose government to notify the district’s registered agent. The district can request, and be granted, a 30 day extension of time in which to file the required report or information. If the governing body of the local general-purpose government or governments determines that the failure was unjustified, it may notify the Department. The Department must then provide the district 60 days to get in compliance and follow subsequent remedial procedures in s. 189.421, F.S., if warranted.

If a dependent special district fails to file required reports or information, the local governing authority on which the district is dependent may take whatever steps it deems necessary to enforce the district’s accountability, including withholding funds, removing governing board members at will, vetoing the special district’s budget, conducting the oversight review process set forth in s. 189.428, F.S., or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.

If a special district fails to file a notice of bond issuance with the appropriate state agency, the agency is required to notify the Department of Economic Opportunity. The Department shall notify the district of the requirements and encourage the special district to take steps to assure that noncompliance will not recur.

If a special district fails to file actuarial reports or statements of actuarial impact, the agency shall notify the Department and the Department may begin the remedial measures in s. 189.421(1), F.S.

Finally, if a special district fails to file annual financial reports or annual financial audits, the appropriate state agency or office, the state agency or office shall, and the Legislative Auditing Committee may, notify the department and the department shall proceed pursuant to s. 189.421, F.S.

Section 189.421, F.S., provides that if the Department has been notified of a failure to file a required report or information, it must provide a letter to the district notifying the district that it has 60 days to comply and offering assistance to the district in complying. If unable to make the 60 day deadline, the district must notify the department why it cannot comply and the steps it is

taking to prevent a recurrence. The district must also notify the Department when it will file the report. The Department must forward the letter to the appropriate entity. The law provides a mechanism for filing a suit seeking a writ of certiorari.

Effects of Proposed Changes

The committee substitute moves s. 189.419, F.S., to s. 189.066, F.S., located in “Part VI-Oversight and Accountability.” It also provides that if a special district created by special act of the Legislature fails to file annual financial reports or annual financial audits, the Legislative Auditing Committee must notify the chair of the county legislative delegation in writing. If a special district created by ordinance fails to file annual financial reports or annual financial audits, the Joint Legislative Auditing Committee must notify in writing the Department and chair or equivalent of the local general-purpose government that created the district.

The committee substitute moves s. 189.421, F.S., to s. 189.067, F.S., located in “Part VI-Oversight and Accountability.” The committee substitute also removes the Department’s authority to seek a writ of certiorari.

Grants and Donations Trust Fund (Section 48)

Current Situation

Section 189.427, F.S., requires the Department of Economic Opportunity to establish a schedule of fees to pay one-half of the costs incurred by the Department in administering the special districts act. The fee may not exceed \$175 per district each year. The fees must be deposited in the Grants and Donations Trust Fund, which is administered by the Department. That section also authorizes a fine of \$25, not to exceed \$50, as penalties for failure to remit required fees.

Effects of Proposed Changes

The committee substitute moves s. 189.427, F.S., to s. 189.018, F.S., located in “Part I-General Provisions.” The committee substitute also renames the trust fund as the “Operating Trust Fund.”

Oversight Review Process (Sections 49, 52, 53)

Current Situation

Section 189.428, F.S., contains several statements of legislative intent. It specifies the order in which special districts may be subject to oversight review and criteria for evaluating the district’s performance. Special districts being reviewed may provide written questions, concerns, preliminary reports, draft reports, or final reports relating to the district. The final report shall form the basis of a charter modification or dissolution. That section provides the process for legislative dissolution. Deepwater ports, airport authorities, are exempt under certain circumstances. Finally, health systems and health facilities districts are exempt.

Effects of Proposed Changes

The committee substitute moves s. 189.428, F.S., to s. 189.068, F.S., located in “Part VI-Oversight and Accountability.” The committee substitute removes some legislative intent language. It also provides that all independent special districts created by special act may

be reviewed by any legislative delegation of a county in which the geographical jurisdiction of the special district exists. The committee substitute removes the authority for counties or municipalities to review a single county independent special district within its boundaries. The committee substitute repeals provisions concerning review of a multicounty independent special district by any general purpose local governments within its boundaries. The committee substitute repeals the provision authorizing a special district to prepare a preliminary review of the district for reference or inclusion in the full oversight review report. The committee substitute removes the provisions concerning a district's ability to provide the Legislature and the general purpose local government with written responses to questions, concerns, preliminary reports, draft reports, or final reports relating to the district. The committee substitute removes provisions concerning the role of the final report in modification of the district charter or dissolution or merger of the district; the factors that may be considered in evaluating the proposed merger or dissolution; and the exemptions for certain ports.

The committee substitute also creates s. 189.034, F.S., located in "Part III-Independent Special Districts." The newly created section provides that, if an independent special district created by special act fails to file certain reports or information, the Legislative Auditing Committee is required to provide written notice to the chair of the county or counties legislative delegation. The chair(s) would be required to convene a public hearing on the issue of noncompliance within 6 months after receipt of the notice of noncompliance. The chair(s) is authorized to request:

- The district's annual financial report for the previous fiscal year;
- The district's audit report for the previous fiscal year;
- An annual report containing:
 - the district's mission;
 - funding sources;
 - major activities, programs, and initiatives it undertook in the most recently completed fiscal year and the benchmarks or criteria used by the governing body to determine success or failure;
 - challenges or obstacles faced by the district in fulfilling its mission and responsibilities;
 - ways in which the district believes it could better fulfill its mission and related responsibilities and a description of the actions it intends to take during the ensuing fiscal year;
 - proposed changes to its special act and the justifications for such changes;
 - any reasons for the district's noncompliance;
 - whether the district is currently in compliance; and
 - efforts to promote transparency, including maintenance of the district's website in accordance with new s. 189.069, F.S.

The committee substitute also creates a new provision concerning oversight of special districts created by local ordinance in s. 189.035, F.S., located in "Part III-Independent Special Districts." This new provision requires the Legislative Auditing Committee or its designee to provide written notice of failure to file annual financial reports or annual financial audits to the chair or equivalent of the local general-purpose government. The chair is required to convene a public hearing on the non-compliance within 6 months after receipt of such notice. The chair or equivalent is authorized to request:

- The district's annual financial report for the previous fiscal year;
- The district's audit report for the previous fiscal year;

- An annual report containing:
 - the district’s mission;
 - funding sources;
 - major activities, programs, and initiatives it undertook in the most recently completed fiscal year and the benchmarks or criteria used by the governing body to determine success or failure;
 - challenges or obstacles faced by the district in fulfilling its mission and responsibilities;
 - ways in which the district believes it could better fulfill its mission and related responsibilities and a description of the actions it intends to take during the ensuing fiscal year;
 - proposed changes to its special act and the justifications for such changes;
 - any reasons for the district’s noncompliance;
 - whether the district is currently in compliance; and
 - efforts to promote transparency, including maintenance of the district’s website in accordance with new s. 189.069, F.S.

Property Tax Exemption (Section 54)

Current Situation

The definition of special district in s. 189.403(1), F.S., in pertinent part, provides, “For the purpose of s. 196.199(1), special districts shall be treated as municipalities.” Section 196.99(1), F.S., provides that municipalities are exempt from ad valorem taxes in the same manner that municipalities are exempt from taxes.

Effects of Proposed Changes

The committee substitute creates new s. 189.055, F.S., located in “Part V-Finance.” The new statute incorporates the language quoted above to maintain property tax exempt status.

Required Reporting of Information by Special Districts (Section 55)

Current Situation

None.

Effects of Proposed Changes

The committee substitute creates new s. 189.069, F.S., in “Part VI-Oversight and Accountability.” Beginning July 1, 2015, the committee substitute requires all special districts to annually update and maintain their official websites and submit their official website address to the Department of Economic Opportunity. The following information must be posted on the district’s website:

- The full legal name of the special district;
- The public purpose of the special district;
- The name, address, email address, and, if applicable the term and appointing authority for each member of the governing body of the special district;
- The fiscal year of the special district;

- The full text of the special district's charter, the date the special district was established, the entity that established the special district, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established;
- The mailing address, e-mail address, telephone number, and Internet website uniform resource locator of the special district;
- A description of the boundaries or service area of, and the services provided by, the special district;
- A listing of all taxes, fees, or charges imposed and collected by the special district, including the rates or amounts charged for the fiscal year and the statutory authority for the levy of the tax, fee, or charge;
- The primary contact information for the special district for the purpose of communication from the Department of Economic Opportunity;
- The code of ethics that applies to the special district, and whether the special district has adopted additional ethics provisions;
- A listing of all federal, state, and local entities that have oversight authority over the special district or to which the special district submits reports, data, or information;
- The most recent adopted budget of the special district;
- After the end of each fiscal year, a comparison of the budget to actual revenues and expenditures for each fiscal year;
- Any completed audit reports for the most recent completed fiscal year, and audit reports required by law or authorized by the governing body of the special district; and,
- Any other financial and administrative information required by the department.

Suspension of Special District Governing Body Members

Current Situation

Pursuant to Article IV, s. 7, of the State Constitution, the Governor may suspend any state officer not subject to impeachment, any officer of the militia not in active service of the United States, or any county officer for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, or commission of a felony. If the Governor suspends one of these officers, the decision to remove or reinstate the officer is made by the Senate.¹⁵

Pursuant to Article IV, s. 7(c), of the State Constitution, the Governor may suspend any elected municipal officer indicted for crime. Additionally, the Legislature provided the Governor the authority to suspend any elected or appointed municipal official for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.¹⁶ This jurisdiction is concurrent in the Governor and in the statutory or charter

¹⁵ Article IV, s. 7(b), Fla. Const.

¹⁶ Section 112.51, F.S.

authority.¹⁷ In the event that a municipal officer is convicted, the Governor is required to remove him or her from office.¹⁸

Currently, the law contemplates the following types of special districts: an independent special district that is created by special act, an independent special district created by county/municipal charter or ordinance, an independent special district created by agreement between counties, an independent special district created by agreement between a county and a municipality, a county/municipal dependent district created by charter, or a county/municipal dependent special district created by ordinance. Some members of special districts would be considered to be county officers. Some members of special districts would be considered to be municipal officers. Some members of special districts would not be either county or municipal officers. If a Governor were to suspend a member of a special district board that exercises powers and duties that are county-related, the Senate would likely have jurisdiction over the executive order of suspension pursuant to Art. IV, s. 7, Fla. Const. If the Governor were to suspend a member of a special district that exercises powers and duties that are municipal in nature, then the Senate would not have jurisdiction. The Governor could take any action consistent with ss. 112.50-112.52, Florida Statutes. It is unclear what would happen in the event that a special district board member whose board is created by interlocal agreement between multiple counties or municipal-county agreement were to be suspended.

Effects of Proposed Changes

The committee substitute creates new s. 189.061, F.S., located in “Part VI-Oversight and Accountability.” This new section provides that if a special district violates the requirements of the chapter, the Department shall report such violations, and provide all appropriate proof of the violations to the Governor. The committee substitute provides that the Governor and appointing authority must ensure that the governing body of the district maintains enough members to constitute a quorum.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Section 112.50, F.S.

¹⁸ Section 112.51(5), F.S.

D. Other Constitutional Issues:

For purposes of the gubernatorial suspension power, the committee substitute treats all special district board members as municipal officers. However, special districts vary from performing municipal, county, regional, or, potentially, statewide function. As such, special district board members could be considered to be considered county, regional, or statewide officers depending on the jurisdiction of their district. Pursuant to Article IV, s. 7, of the State Constitution, state and county officers are entitled to a hearing by the Senate to determine whether to remove or reinstate the officer.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This committee substitute substantially amends the following sections of the Florida Statutes: 11.40, 112.312, 112.50, 112.51, 189.401, 189.01, 189.402, 189.011, 189.06, 189.03, 189.403, 189.012, 189.4031, 189.013, 189.0311, 189.4035, 189.061, 189.404, 189.031, 189.40401, 189.033, 189.4041, 189.02, 189.4042, 189.07, 189.071, 189.072, 189.073, 189.074, 189.075, 189.0761, 189.4044, 189.062, 189.4045, 189.076, 189.4047, 189.021, 189.405, 189.04, 189.063, 189.4051, 189.041, 189.4065, 189.05, 189.408, 189.042, 189.4085, 189.051, 189.412, 189.064, 189.413, 189.065, 189.415, 189.08, 189.4155, 189.081, 189.4156, 189.082, 189.416, 189.014, 189.417, 189.015, 189.418, 189.016, 189.419, 189.066, 189.420, 189.052, 189.421, 189.067, 189.4221, 189.053, 189.423, 189.054, 189.425, 189.017, 189.427, 189.018, 189.428, 189.068, 189.429, 189.019, 11.45, 100.011, 101.657, 112.061, 112.63, 112.665, 121.021, 121.051, 125.901, 153.94, 163.08, 165.031, 165.0615, 171.202, 175.032, 190.011, 190.046, 190.049, 191.003, 191.005, 191.013, 191.014, 191.015, 200.001, 218.31, 218.32, 218.37, 255.20, 298.225, 343.922, 348.0004, 373.711, 403.0891, 582.32, and 1013.355.

This committee substitute creates the following sections of the Florida Statutes: 112.5111, 189.034, 189.035, 189.055, 189.069, and 189.0691.

This committee substitute repeals the following sections of the Florida Statutes: 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444.

IX. Additional Information:

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

CS by Ethics and Elections on March 17, 2014:

The committee substitute differs from the original bill in that it:

- Provides that the Governor may suspend board members of special districts exercising state or county jurisdiction subject to removal or reinstatement by the Senate;
- Provides that the Governor may suspend and remove board members of special districts exercising powers other than state or county powers; and
- Provides that the Governor may suspend special district officers for violations of the Special District Act in Chapter 189, F.S., but the Governor and appointing authority must ensure that the governing body of the district maintains enough members to constitute a quorum.

- B. **Amendments:**

None.