HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 107 (CS/SB 192)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Economic Affairs Committee; Finance & Tax Committee; Community & Military Affairs Subcommittee; Caldwell; and others (Budget Subcommittee on Finance and Tax; Bennett)	**118 Y's**	**0 N's**
COMPANION BILLS:	CS/SB 192	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 107 passed the House on February 16, 2012, and subsequently passed the Senate on February 29, 2012. The bill amends the Uniform Special District Accountability Act of 1989 and allows two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge under specified circumstances.

The bill allows merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by 40 percent or more of the qualified electors in each district. The bill requires independent special districts to adopt a merger plan that outlines the specific components for the proposed merger, which shall be subject to a public hearing and voter referendum. The effective date of the proposed voluntary merger is not contingent upon the future act of the Legislature; however, the merged district's powers are limited until the Legislature approves the unified charter by special act. The bill includes an exemption clause stating that the voluntary merger provisions do not apply to independent special districts whose governing bodies are elected by district landowners voting based upon acreage owned within the district, such as water control or drainage districts governed by chapter 298, F.S. The provisions addressing voluntary independent special district mergers will preempt any special act to the contrary.

The bill repeals current statutory provisions addressing the merger of independent special fire control districts. The merger of independent special fire control districts will be governed pursuant to the provisions established under this act.

The bill requires dissolutions that are not voluntary and involuntary mergers of independent special districts to be subject to a special act of the Legislature and approved by a majority of the district's resident electors or landowners. The bill also provides for the payment of associated referendum expenses and the distribution of assets and indebtedness.

The bill allows a special district that meets the criteria for being declared inactive or that has already been declared inactive to be dissolved or merged without a referendum. The bill further allows the governing body of a special district to unanimously adopt a resolution to declare a special district inactive.

The bill does not have a direct fiscal impact on state or local government revenues and expenditures. However, the merger and consolidation provisions within this bill may result in increased government efficiency through volume purchasing, standardized operating procedures, pooled investments, joint training, efficient personnel allocation, and cost avoidance. Improved efficiencies may result in lower taxes levied by merged districts.

The bill was approved by the Governor on March 23, 2012, ch. 2012-16, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Overview

The Uniform Special District Accountability Act of 1989[1] (Act) sets forth the general provisions for the definition, creation, and operation of all special districts.[2] Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[3] The term does not include:[4]

- A school district;
- A community college district;
- A Seminole and Miccosukee Tribe special improvement district;[5]
- A municipal service taxing or benefit unit; or
- A board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

As of October 20, 2011, there were approximately 1,618 active special districts.[6]

The Act establishes criteria for determining whether a special district is a "dependent special district" or an "independent special district." A "dependent special district" is a special district that meets at least one of the following criteria:[7]

- The membership of its governing body is identical to that of the governing body of a single county or single municipality.
- All members of its governing body are appointed by the governing body of a single county or single municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or 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 single municipality.

As of October 20, 2011, there were 625 active dependent special districts.[8]

An "independent special district" is a special district that is not a dependent special district as defined in state law. A district that includes more than one county is an independent special district unless the

[1] Chapter 89-169, L.O.F.
[2] Section 189.402(1), F.S.
[3] Section 189.403(1), F.S.
[4] *Id*.
[5] Florida law establishes a special improvement district for each of the areas contained within the reservation set aside for the Seminole and Miccosukee Tribes, respectively. Section 285.17, F.S.
[6] Florida Department of Economic Opportunity, Division of Community Planning and Development, Special District Information Program, Official List of Special Districts Online, *Special District Statewide Totals*, http://www.floridajobs.org/community-planning-and-development (last visited January 12, 2012).
[7] Section 189.403(2), F.S.
[8] *See supra* note 6.

district lies wholly within the boundaries of a single municipality.[9] As of October 20, 2011, there were 993 active independent special districts.[10]

Merger and Dissolution Procedures for Special Districts

Article VIII, section 4 of the Florida Constitution governs the transfer of powers between governing bodies and states:

> "by law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferee, or as otherwise provided by law."

The Act also establishes the method for the merger and dissolution of dependent and independent special districts.[11]

- Any dependent or independent district created and operating by special act may only be **merged or dissolved** by the Legislature unless otherwise provided by general law.
- If an inactive independent district was created by a county or municipality by referendum, the county or municipality that created the district may **dissolve** the district after public notice as required by law.
- If an independent district was created by a county or municipality by referendum or any other procedure, then the county or municipality that created the district has the authority to **merge or dissolve** the district using the same procedure used to create the independent district. However, "for any independent district that has ad valorem taxation powers, the same procedure required to grant such independent district ad valorem taxation powers shall also be required to **dissolve or merge** the district."

Under certain circumstances, the Department of Economic Opportunity (DEO) may declare a special district inactive by documenting that:[12]

- The special district meets one of the following criteria:[13]
    - The registered agent or chair of the governing body of the district; or the governing body of the appropriate local government notifies DEO in writing that the district has taken no action for two or more years.
    - Following an inquiry from DEO, the registered agent or chair of the governing body of the district; or the governing body of the appropriate local government notifies DEO in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for two or more years; or the registered agent or chair of the governing body of the district; or the governing body of the local government fails to respond to DEO's inquiry within 21 days.
    - DEO determines that the district has failed to file the appropriate reports,[14] such as:
        - Retirement related reports with the Department of Management Services;
        - Annual Financial Report with the Department of Financial Services;
        - Annual Financial Audit Report with the Auditor General;

[9] Section 189.403(3), F.S.
[10] *See supra* note 6.
[11] Section 189.4042(2), F.S.
[12] Section 189.4044, F.S.
[13] Section 189.4044(1)(a), F.S.
[14] Section 189.419, F.S.

- Bond related reports with the State Board of Administration, Division of Bond Finance; or
- The district has not had a registered office and agent on file with DEO for 1 year or more.

- DEO, special district, or local government published a notice of proposed declaration of inactive status in a newspaper of general circulation in the county or municipality in which the special district is located and a copy of the notice is sent to the registered agent or chair of the special district's governing board, if any.[15]
- Twenty-one days have elapsed from the date the notice was published and no administrative appeals are filed.[16]

A special district declared inactive must be **dissolved** by the entity that created the special district by repealing its enabling laws or other appropriate means.[17]

Oversight Review Process

Although current law does not provide statutory guidelines to facilitate the merger of independent special districts prior to a legislative act, the Uniform Special District Accountability Act does offer an oversight review process[18] that allows counties and municipalities to evaluate the degree of special district services and determine the need for adjustments, transitions or dissolution.[19] The oversight review process is performed in conjunction with the special district's public facilities report[20] and the local governmental evaluation and appraisal report.[21] Depending upon whether the independent special district is a single- or multi-county district, the oversight review may be conducted by the county or municipality where the special district is located, or by the government that created the special district.[22]

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to: [23]

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the districts' existing contracts.

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, **dissolution or merger** of the district.[24] If a legislative **dissolution or merger** is proposed in the final report, the law requires the reviewing

[15] Section 189.4044(1)(b), F.S.
[16] Section 189.4044(1)(c), F.S.
[17] Section 189.4044(4), F.S.
[18] Section 189.428(2), F.S.
[19] *See* s. 189.428, F.S.
[20] *See* s. 189.415(2), F.S.
[21] *See* s. 163.3191, F.S.
[22] Section 189.428(3), F.S. Note: dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.
[23] *See* s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.
[24] Section 189.428(7), F.S.

government to also propose a plan for the merger or dissolution. The plan must address the following factors in evaluating the proposed merger or dissolution: [25]

- Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
- Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
- Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
- Whether the proposed merger adequately provides for the assumption of all indebtedness.

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.[26] These oversight review provisions do not apply to deepwater ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements.[27]

Financial Allocations of Merged or Dissolved Special Districts

The Act requires the government formed by the **merger** of existing special districts to assume all indebtedness of, and receive title to all property owned by, the preexisting special districts. The proposed charter must provide for the determination of the proper allocation of the indebtedness assumed and the manner in which the debt must be retired.[28]

Unless otherwise provided by law or ordinance, a **dissolved** special district must transfer the title to all property owned by the preexisting special district to the local general-purpose government, which must also assume all indebtedness of the preexisting special district.[29] These provisions do not apply to community development districts or water management districts.[30]

Senate Committee on Community Affairs Interim Project, Interim Report 2010-2011

In 2010, the Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts.[31] The purpose of this interim report was to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report reviewed current merger and consolidation laws in Florida and three other states. The report further discussed previous merger attempts that have failed in Florida.

Staff determined that mergers and consolidations provide a mechanism for independent special districts to increase government efficiency while saving taxpayers money. The report further states that independent special district mergers and consolidations can generate cost-savings through volume

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[25] Section 189.428(8), F.S.

[26] *Id.*

[27] Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).

[28] Section 189.4045(1), F.S.

[29] Section 189.4045(2), F.S.

[30] Section 189.4045(3), F.S.

[31] The Florida Senate, Committee on Community Affairs, *Merger of Independent Special Districts*, Interim Report 2011-110, Oct. 2010, *available at* http://www.flsenate.gov/Committees/InterimReports/2011/2011-110ca.pdf.

purchasing, standardized operating procedures, pooled investments, joint training, efficient personnel allocation, and cost avoidance.

Based on this information, staff provided criteria for the Legislature to consider, should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge prior to a legislative act. The recommended statutory criteria, included:[32]

- The fiscal, legal, and administrative components that should be evaluated in pre-merger or consolidation feasibility studies.
- How mergers and consolidation proceedings can be initiated, i.e. by resolution, voters, etc.
- The necessary statutory thresholds to approve or petition an independent special district merger or consolidation.
- Requiring special districts to adopt a merger plan that evaluates how personnel and governing board changes will be made, how assets and liabilities will be apportioned, and how to standardize varying pay levels and benefits.
- Only applying to voluntary special district mergers.
- Precluding special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.

Notice of Proposed Property Taxes

Chapter 200, F.S., provides the statutory provisions of the "Truth in Millage"(TRIM) act passed by the Legislature in 1980.[33] This law informs taxpayers which governmental entity is responsible for the ad valorem taxes levied and the amount of tax liability owed to each taxing entity. Chapter 200, F.S., further establishes the statutory requirements that all taxing authorities levying a millage must follow, including all notices and budget hearing requirements. The Notice of Proposed Property Taxes, also known as the TRIM notice, enables the taxpayer to compare the prior year assessed value and taxes with the present year assessed value and proposed taxes for the upcoming year. The TRIM notice lists the date, time, and location of all budget hearings at which the taxing authorities will hear from the public. The notice also shows the deadline for filing a petition to protest the assessment. Taxing authorities establish the millage to be levied against a parcel of land shown on the TRIM notice at budget hearings. These procedures are monitored by the Department of Revenue to ensure compliance with the law.[34]

Effect of Changes

The bill makes the following changes to The Uniform Special District Accountability Act of 1989 (Act):

- Provides definitions for the following terms:
  - "Component independent special district" means an independent special district that proposes to be merged into a merged independent district, or an independent special district as it existed before its merger into the merged independent district of which it is now a part.
  - "Elector-initiated merger plan" means the merger plan of two or more independent special districts, a majority of whose qualified electors have elected to merge, which outlines the terms and agreements for the official merger of the districts, and is finalized and approved by the governing bodies of the districts.

[32] *Id* at 15-16.
[33] Ch. 80-274, Laws of Florida, and as amended by Ch. 80-261, Laws of Florida.
[34] Department of Revenue. http://dor.myflorida.com/dor/property/trim/abouttrim.html

- “Joint merger plan” means the merger plan that is adopted by resolution of the governing bodies of two or more independent special districts, that outlines the terms and agreements for the official merger of the districts, and that is finalized and approved by the governing bodies.
- “Merged independent district” means a single independent special district that results from a successful merger of two or more independent special districts.
- “Merger” means the combination of two or more contiguous independent special districts that combine to become a newly created merged independent district that assumes jurisdiction over all of the component independent special districts.
- “Merger plan” means a written document that contains the terms, agreements, and information regarding the merger of two or more independent special districts.
- “Proposed elector-initiated merger plan” means a written document that contains the terms and information regarding the merger of two or more independent special districts and that accompanies the petition initiated by the qualified electors of the districts, but that is not yet finalized and approved by the governing bodies of each component independent special district.
- “Proposed joint merger plan” means a written document that contains the terms and information regarding the merger of two or more independent special districts and that has been prepared pursuant to a resolution of the governing bodies of the districts, but that is not yet finalized and approved by the governing bodies of each component independent special district.
- “Qualified elector” means an individual at least 18 years of age who is a citizen of the United States, a permanent resident of this state, and a resident of the district who registers with the supervisor of elections of a county within which the district lands are located when the registration books are open.

- Clarifies the provisions for the merger or dissolution of dependent special districts.
- Establishes provisions for the voluntary dissolution of an independent special district.
- Provides procedures for the involuntary dissolution or merger of an independent special district.
- Establishes a process to allow two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to special act.

Merger or Dissolution of Dependent Special Districts

The bill clarifies that the merger or dissolution of a dependent special district created and operating pursuant to a special act may be effectuated only by further act of the Legislature unless otherwise provided by general law.

The bill provides that any dependent special districts that meet the criteria for being declared inactive or that have already been declared inactive pursuant to the Act[35] may be dissolved by a special act without a referendum.

Dissolution of Independent Special Districts

Voluntary Dissolution

If the governing board of an independent special district created and operating pursuant to a special act elects, by a majority vote plus one, to dissolve the district, the voluntary dissolution of an independent special district may only occur by an act of the Legislature, unless otherwise provided by general law.

Other Dissolutions

With respect to dissolutions that are not voluntary, in order for the Legislature to dissolve an active independent special district created and operating pursuant to a special act, the special act dissolving

[35] Section 189.4044, F.S.

the independent special district must be approved by a majority of the district's resident electors or, for districts in which a majority of the governing board members are elected by landowners, a majority of the district's landowners voting in the same manner the governing board is elected. If a local general-purpose government passes an ordinance or resolution in support of the dissolution, the local general-purpose government is responsible for the payment of any expenses associated with the required referendum.

If an independent special district was created by a county or municipality by referendum or any other procedure, the county or municipality that created the independent special district may dissolve the district pursuant to a referendum or any other procedure by which the independent special district was created. If the independent special district has ad valorem taxation powers, then the same procedure required to grant such powers is required to dissolve the district.

Inactive Independent Special Districts

The bill provides that any independent special districts that meet the criteria for being declared inactive or that have already been declared inactive pursuant to the Act[36] may be dissolved by a special act without a referendum.

Merger of Independent Special Districts

Legislative Merger

The bill includes a provision stating that the Legislature, by special act, may merge independent special districts created and operating pursuant to a special act.

Voluntary Merger

The bill authorizes two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act.

The merger may be initiated by either a joint resolution of the governing bodies of each district, which endorses a proposed joint merger plan; or by qualified elector initiative. A qualified elector-initiated merger plan requires each independent special district to file a petition with the governing bodies of each district proposing to be merged. The petition must contain the signatures of at least 40 percent of the qualified electors of each component independent special district.

The bill lists the components of the proposed joint merger plan and the proposed qualified elector-initiated merger plan, which must include, but are not limited to:

- The territorial boundaries of the proposed merged independent district.
- The governmental organization of the proposed merged independent district as it relates to elected and appointed officials and public employees as well as a transitional plan and schedule for elections and appointments of officials.
- A fiscal estimate of the potential cost or savings as a result of the merger.
- Each component independent special district's assets, liabilities and indebtedness.
- The effective date of the proposed merger.

The voluntary merger provisions also:

- Require the proposed merger plan to be subject to a public hearing and voter referendum, consistent with certain notice requirements under Florida Statutes.
- Provide election procedures and require a proposed merger to be approved by the majority of votes cast in each independent special district in order for merger to take effect. If the referendum fails,

[36] *Id*.

then the merger process may not be initiated for the same purpose within two years after the date of the referendum.

- Treat each component independent special district of the merger as a subunit of the merged independent special district until such time as the Legislature formally approves the unified charter of the new merged district pursuant to special act. The unified charter must make the powers of the district consistent within the merged independent district and repeal the special acts of the districts which existed before the merger.
- Provide that during the transition period, the individual subunits are limited to the powers and financing capabilities of each subunit as previously existed prior to merger.
- Provide for the transfer of assets, debts and liabilities of each component independent special district to the merged independent special district.
- Provide that in any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent special district shall be substituted in its place.
- Provide that the Municipal Annexation or Contraction Act continues to apply to all annexations by a city within the component independent special districts' boundaries after merger occurs.
- Outline the effect of merger on current employees and governing bodies of each component independent special district participating in the merger proposal.

Effective Date of a Voluntary Merger

The effective date of the proposed voluntary merger is not contingent upon the future act of the Legislature; however, the merged district's powers are limited until the Legislature approves the unified charter by special act. The merged independent district must at its own expense, submit a unified charter for the merged district to the Legislature for approval.

During the transition period, and until the Legislature formally approves the unified charter by special act:

- The individual subunits are limited to the powers and financing capabilities of each subunit as previously existed prior to merger.
- The merged independent special district must exercise only the legislative authority to levy and collect revenues within the boundaries of each subunit which was previously granted to the component independent special district by its existing charter before the merger, including the authority to levy ad valorem taxes, non-ad valorem taxes, impact fees, and charges.
- The merged independent district may not, solely by reason of the merger or the legislatively approved unified charter, increase ad valorem taxes on property within the original limits of a subunit beyond the maximum millage rate previously approved by the electors of the component independent special district, unless an increase in the millage rate is approved at a subsequent referendum of the subunit's electors. Each subunit may be considered a separate taxing unit.
- Each component independent special district must continue to file all information and reports required under chapter 189, F.S., as subunits until the Legislature formally approves the unified charter pursuant to a special act.[37]
- The merged independent special district is authorized to administer millage procedures under chapter 200, F.S., on behalf of the component independent special districts. The merged independent special district will also make millage calculations required under chapter 200, F.S., for each component individual district separately.[38]

[37] Chapter 189, F.S., provides for the definition, creation, and operation of special districts.

[38] Chapter 200, F.S., provides the requirements for determination of millage rates by taxing jurisdictions.

The bill includes an exemption clause stating that the voluntary merger provisions do not apply to independent special districts whose governing bodies are elected by district landowners voting based upon acreage owned within the district, such as water control or drainage districts governed by chapter 298, F.S.

The provisions addressing voluntary independent special district mergers will preempt any special act to the contrary.

Involuntary Merger

In order for the Legislature to merge an active independent special district or districts created and operating pursuant to a special act, the special act merging the independent special district or districts must be approved at separate referenda of the impacted local governments by a majority of the resident electors or, for districts in which a majority of governing board members are elected by landowners, a majority of the landowners voting in the same manner by which each independent special district's governing body was elected.

The bill requires the special act to include a merger plan that addresses transition issues such as the effective date of the merger, governance, administration, powers, pensions, and assumption of all assets and liabilities. If a local general-purpose government passes an ordinance or resolution in support of the merger, the local general-purpose government is responsible for the payment of any expenses associated with the required referendum.

If an independent special district was created by a county or municipality by referendum or any other procedure, the county or municipality that created the independent special district may merge the district pursuant to a referendum or any other procedure by which the independent special district was created. If the independent special district has ad valorem taxation powers, then the same procedure required to grant such powers is required to merge the special district.

The political subdivisions proposing the involuntary merger are responsible for the payment of any expenses associated with the required referendum.

Inactive Independent Special Districts

The bill provides that any independent special districts that meet the criteria for being declared inactive or that have already been declared inactive pursuant to the Act[39] may be merged by a special act without a referendum.

Other Provisions Related to the Dissolution or Merger of Special Districts

The bill states that the financial allocations[40] of the assets and indebtedness of a dissolved independent special district is pursuant to the Act.

The specific merger procedures for independent special fire control districts[41] set forth in the Independent Special Fire Control District Act are deleted. The merger of independent special fire control districts will be governed pursuant to the provisions established under this act.

The bill amends the provisions relating to the special procedures for inactive special districts[42] to allow DEO to declare a special district inactive if the governing body of a special district provides documentation that it has unanimously adopted a resolution declaring the district (itself) to be inactive. The bill provides that any special district so declared to be inactive under this provision, may be

[39] *Id*.
[40] *See* s. 189.4045, F.S.
[41] *See* s. 191.014(3), F.S.
[42] *See* s. 189.4044, F.S.

dissolved without a referendum. This section also provides that the special district shall be responsible for payment of any expenses associated with its dissolution.

The effective date of the bill is July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

The merger and consolidation provisions within this bill may result in increased government efficiency through volume purchasing, standardized operating procedures, pooled investments, joint training, efficient personnel allocation, and cost avoidance. Improved efficiencies may result in lower taxes levied by merged districts.