

STORAGE NAME: h1683s1.ca

DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1683

RELATING TO: Local Governments (Special Districts)

SPONSOR(S): Committee on Community Affairs and Representative K. Pruitt

STATUTE(S) AFFECTED: Chapters 11, 125, 165, 189, 196, 200 and 373, Florida Statutes

COMPANION BILL(S): HB 1219(s), CS/SB 1288(s), SB 1640(s), HB 675(c), SB 1186(c), and SB 1692(c)

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

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill revises statutory provisions relating to local government financial audits. The bill also revises many sections of the Special District Accountability Act of 1989 and conforms related statutes to those revisions. The bill revises:

- the definition of a special district;
- the requirements relating to the official list of special districts;
- the creation, merger and dissolution of special districts;
- special district elections; and
- special district public facility reports.

The bill creates a special district oversight process and revises various administrative and enforcement procedures. The bill provides that non-ad valorem assessment information, if requested, by the local governing body assessing the non-ad valorem assessment, be included on TRIM notices. The bill also limits water management district employees' salary and benefits to those of other state employees and local government employees in the same jurisdiction as the water management district.

The bill also addresses the ad valorem tax exempt status for airport and deepwater port authorities' leaseholds for public purposes or functions of a nongovernmental lessee.

The fiscal impacts of this bill are primarily increased costs to the Division of Elections, Department of State. The Department of Community Affairs (DCA) reports no fiscal impact on that department. See Section II.C.2.d. of the Bill Research and Economic Impact Statement for the fiscal impacts on local governments.

The provision of the bill addressing the ad valorem tax exempt status for airport and deep water port authorities' leaseholds for public purposes or functions of a nongovernmental lessee may minimize or eliminate the constitutional mandate provisions.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Local Government Financial Reporting System

The Local Government Financial Reporting System, as described by s. 11.45 (3) (d), Florida Statutes, 1996 Supplement, consists of the local government reporting requirements contained in:

- ✓ section 11.45 (3), Florida Statutes, 1996 Supplement;
- ✓ sections 189.416-422, Florida Statutes;
- ✓ chapter 112, part VII, Florida Statutes; and
- ✓ chapter 218, part III, Florida Statutes.

The Local Government Financial Reporting System deals with the financial management and reporting by counties, municipalities, and special districts.

Section 11.45, Florida Statutes, 1996 Supplement, requires counties, certain municipalities, and certain special districts to submit audit reports to the Auditor General. Counties must be audited on an annual basis. At a minimum, the audit report must include the board of county commissioners, and each of the constitutional officers. Municipalities with revenues or expenditures of more than \$100,000 must be audited annually. Special districts must also be audited annually if their revenues or expenditures exceed \$50,000.

There are two deadlines attached to the audit reports: (1) the audit reports must be completed within one year after the end of the fiscal year; and (2) the audit reports must be submitted to the Auditor General within thirty days after completion but no later than one year after the end of the fiscal year.

The Auditor General, in association with the State Board of Accountancy, reviews all local government audit reports performed by independent certified public accountants. The review is to determine whether the audit reports appear to meet the criteria established in section 11.45, Florida Statutes, 1996 Supplement, and chapter 10.550, Rules of the Auditor General.

Chapter 218, part V, Florida Statutes, is known as the Local Government Financial Emergencies Act. The purpose of this Act is to preserve and protect the fiscal solvency of local governments; to assist local governments in meeting their financial obligations and providing their essential services without interruption; and to assist local governments through the improvements of local financial management procedures.

218.503 Determination of financial emergency. --

(1) A local governmental entity is in a state of financial emergency when any of the following conditions occur:

- (a) Failure, within the same fiscal year when due, to pay short-term loans from banks or failure to make bond debt service payments when due.

- (b) Failure to transfer at the appropriate time, due to lack of funds:
 - 1. Taxes withheld on the income of employees; or
 - 2. Employer and employee contributions for:
 - a. Federal Social Security; or
 - b. Any pension, retirement, or benefit plan of an employee.
- (c) Failure for one pay period to pay, due to lack of funds:
 - 1. Wages and salaries owed to employees; or
 - 2. Retirement benefits owed to former employees.
- (d) An unreserved or total fund balance or retained earnings deficit for which sufficient resources of the local governmental entity are not available to cover the deficit for two successive years.
- (e) Noncompliance of the local government retirement system with actuarial conditions provided by law.

It is important to note that paragraph (d) was amended by chapter 96-318, Laws of Florida. Prior to the amendment, this paragraph read, "There has been a budget deficit for more than two successive years." The 1996 legislative change did not become effective until October 1, 1996.

The primary responsibility for reporting under the act rests with officials of the local governmental entity experiencing or about to experience one of the conditions above, if action is not taken. This notification is required to be made to the Governor and the Legislative Auditing Committee. The next level of responsibility is placed with the independent auditors who must state in their management letter whether or not the local government meets any of the conditions above. The Auditor General, after reviewing the audited financial statements of local governmental entities, is required to notify the Governor and Legislative Auditing Committee of any entity whose report contains a statement by the independent auditor that the governmental entity is in a state of financial emergency.

In practice, the Auditor General has included in that notification any entity whose report does not contain sufficient information to fully resolve the matters reported. That situation may indicate that the local governmental entity may be in a state of financial emergency.

The Miami Emergency and the Local Government Financial Emergency Task Force

In late 1996, the City of Miami drew widespread attention, declaring itself in a state of financial emergency pursuant to section 218.503, Florida Statutes, 1996 Supplement. Soon thereafter media attention was focused on other Florida local governments who may have been in a state of financial emergency. See "Officials Battle Over State List of Ailing Cities," *The Wall Street Journal*, November 13, 1996.

The Auditor General notified the Governor's Office and the Legislative Auditing Committee that 17 audit reports reviewed indicated that the local governmental entity was in a state of financial emergency. Another 25 audit reports indicated that the local

governmental entity may be in a state of financial emergency. After reviewing the list, the Governor's Office indicated that 31 of the governments reported did not, in their opinion, meet the criteria for notification.

In November 1996, at the request of the Governor's Office, the Florida Government Finance Officers Association initiated a multi-disciplinary task force to address the issues involving the determination of financial emergencies for units of local government in Florida. The Local Government Financial Emergency Task Force held three meetings in Tallahassee, and included participants from the following organizations:

- Florida Government Finance Officers Association
- Executive Office of the Governor
- Office of the Auditor General
- Florida Association of Court Clerks & Comptrollers
- Florida Institute of Certified Public Accountants
- Florida Association of Special Districts
- Florida League of Cities
- Florida Association of Counties
- Individual Finance Officers

The Task Force addressed a number of issues, including:

- the definition of a local governmental financial emergency;
- the details of appropriate notification procedures to the local government officers;
- whether an early warning system was needed; and who would be responsible; and
- the roles and responsibilities of the Governor's Office, Auditor General, local government officials, and independent auditor.

The final report of the Local Government Financial Emergency Task Force was issued after its last meeting on January 30, 1997, and contains the following recommendations relative to this bill:

- ▶ Amend section 11.45, Florida Statutes, 1996 Supplement, to authorize the Auditor General to request appropriate clarification from a local governmental entity when an audit report indicates that the entity may be in a state of financial emergency. Require the local governmental entity to provide the clarification within 45 days of the request. If, after obtaining the requested clarification, the Auditor General determines that the entity is in a state of financial emergency, he or she shall notify the Governor and the Legislative Auditing Committee. The amendment to this section would provide an opportunity for the governmental entity to explain its position before a determination has been made that the entity is definitely in a state of financial emergency.
- ▶ Amend section 11.45, Florida Statutes, 1996 Supplement, to increase communication between the independent financial auditor and the local governmental entity he or she is auditing. If the independent auditor observes deteriorating financial conditions, he or she should communicate this information directly to each member of the governing body so that corrective action can be taken before the entity experiences a financial emergency.

Special Districts and the Uniform Special District Accountability Act

Special districts are limited-purpose governmental units which provide services and infrastructure, within defined boundaries, financed by taxes, assessments, fees and bond issues. With over 900 dependent and independent special districts in existence in Florida, they are the most numerous form of local government in the state. Special districts collect a significant portion of total local government revenues, including 13.2 percent of ad valorem taxes and 31.8 percent of special assessments which contribute to total, annual district revenues of \$3.86 billion. (Percentages based on total reported combined county, municipal and special district revenues. Data provided by Florida Legislative Council on Intergovernmental Relations, 1994-95 fiscal year, latest available).

Services range from activities relating to roads, drainage and water systems to fire control, housing and urban development, health facilities, juvenile welfare, libraries, jails, ports and airports, mosquito control, and beach preservation. On a statewide basis, special districts *dominate* in the provision of:

- flood control,
- hospitals,
- conservation management, and
- water transportation/ports.

Special districts were initially created individually over a span of many decades, either by local ordinances or special acts, with few provisions for uniformity and accountability. During the 1970s, concerns surfaced regarding the lack of special district accountability, including illegal tax levies and misuse of bond proceeds. In response to these concerns, the Special Districts Disclosure Act was enacted in 1979 to establish minimum requirements for creation, elections, accounting, bond issuance, and other aspects of special district operations.

In 1987, the Advisory Council on Intergovernmental Relations published a report on special district accountability and recommended a series of legislative actions. These recommendations formed the basis for the Uniform Special District Accountability Act of 1989, which consolidated provisions of law into a single statutory chapter (chapter 189), established uniform methods for election of district officials and for collection of taxes and assessments, and expanded auditing and reporting requirements. In addition, the act established the Special District Information Program (SDIP) within the Department of Community Affairs (DCA). The SDIP compiles a list of Florida's special districts, receives and retains district reports, and provides assistance to special districts across the state.

Chapter 189, Florida Statutes, defines a "special district" as 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. Section 189.403, Florida Statutes, provides the criteria for designating a special district as either dependent or independent. The law provides requirements for creation, merger and dissolution of special districts.

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The Department of Community Affairs is required to compile and maintain an official list of special districts. The legislation contains procedures for electing governing board members of special districts and provides for submittal of board meeting notices to the department and other state agencies. This chapter also governs special district financing and provides for independent audits of special district finances in certain circumstances and submittal of audit reports to various agencies.

Taxable Status of Leasehold Interests in Government-Owned Property

Section 196.001, Florida Statutes, provides that the following property is taxable, unless specifically exempted:

- ▶ All real and personal property in the state belonging to persons residing in this state; and
- ▶ All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Section 196.199, Florida Statutes, 1996 Supplement, provides the conditions under which property owned and used by governmental units is *exempt from taxation*. Paragraphs (a), (b) and (c) of subsection (1) exempt from ad valorem taxation property owned by the United States, with certain exceptions, property of the state used for governmental purposes, and *all property of the political subdivisions and municipalities of the state or of entities created by general or special law and composed entirely of governmental agencies*, or property conveyed to a nonprofit corporation which would revert to the governmental agency, *which is used for governmental, municipal, or public purposes*, except as otherwise provided by law.

Subsection (2) of section 196.199, Florida Statutes, 1996 Supplement, provides the conditions under which property owned by governmental entities, *but leased to nongovernmental entities*, is exempt from taxation. Paragraph (a) specifies that such property is only exempt from taxation *when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(6)*. This paragraph excludes from the exemption, property leased for use as a multipurpose hazardous waste treatment facility.

Paragraph (b) deals with use of such property for residential or commercial rentals, and paragraph (c) includes in the exemption any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Section 196.012, Florida Statutes, lists the conditions under which the use of governmental property by a lessee is deemed to be serving or performing a governmental, municipal or public purpose or function. Such purpose is demonstrated when the use could properly be performed or served by an appropriate governmental unit, or would otherwise be a valid subject for the allocation of public funds. This section specifically includes use as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration when the real property is used for the administration, operation, business offices, and activities related and connected with the conduct of an aircraft full service fixed based operation, and provides goods and services to the general aviation public in the promotion of air commerce.

Other uses specifically included are a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach, when open to the general public with or without an admission charge.

Finally, chapter 315, Florida Statutes, known as the "1959 Port Facilities Financing Law," regulates the financing of port authorities. Section 315.11, Florida Statutes, provides that port authorities are exempt from state, county, municipal or other taxes or assessments thereon, because they are essential to the welfare of the residents and the industrial and commercial development of the area within or served by the unit, and "as the exercise of the powers conferred by this law to effect such purposes *constitutes the performance of proper public and governmental functions.*"

In *Canaveral Port Authority v. Dept. of Revenue*, 21 Fla. L. Weekly S529 (Fla., December 5, 1996), the Florida Supreme Court, in a 4 to 3 decision, upheld the Fifth District Court of Appeal's decision affirming Brevard County's authority to assess ad valorem taxes on the fee interest of real property owned by the Authority and leased to private entities engaged in nongovernmental activities. The leased properties were being used for warehouses, gas stations, deli restaurants, fish markets, charter boat sites, and docks. *Id.* The County had assessed ad valorem taxes on buildings and improvements constructed on the property, but not on the land. *Id.* at fn. 1.

The Court reviewed section 315.11, Florida Statutes, in conjunction with the provisions of section 196.199, Florida Statutes, 1996 Supplement, and concluded that in the exemption in section 315.11, Florida Statutes, had been limited by the legislature in adopting section 196.199, Florida Statutes, 1996 Supplement; therefore, an ad valorem tax exemption for fee interests in port authority property would only be granted when such property is being used for a purpose which is specifically set forth in paragraphs (2) and (4). *Id.* at S530.

In holding that the property at issue was not exempt from ad valorem taxation, the Court cited previous opinions holding that the operation of commercial establishments on governmental property is purely proprietary and for profit. *Id.* The Court reasoned that

no rational basis exists for exempting from ad valorem taxation a commercial establishment operated for profit on CPA property while a similar establishment located near, but not on, CPA property is not exempt. *Id.*

LOCAL COMPREHENSIVE PLANNING AND THE ACTIVITIES OF SPECIAL DISTRICTS

The activities of special districts must be consistent with applicable local government comprehensive plans. There are certain things and conditions which the local government may not impose or require of special districts in meeting the consistency requirement. Deep water ports must prepare and have incorporated into the local government comprehensive plan, a port master plan. The plan must meet the criteria of the coastal management element.

TRIM NOTICE PROVISIONS

The provisions of section 200.069, Florida Statutes, provide that the property appraiser prepare and deliver to taxpayers of the county a notice detailing certain information relative to the ad valorem taxes assessed for parcels of land(s) owned by the taxpayer. This is commonly referred to as the Truth-In-Millage (TRIM) notice. The law provides for the form and content of the notice and for timely mailing to the taxpayer. Current law does not require inclusion on the TRIM notice non-ad valorem assessments levied or the

local governing body levying those non-ad valorem assessments. However section 200.069(11) and (12), Florida Statutes, does provide that if the local governing body of the county, with the written consent of the property appraiser, authorizes by resolution, independent special taxing districts in the jurisdiction of the property, then those non-ad valorem assessments may be identified by name. The bottom portion of the notice must be printed in bold conspicuous print showing information relative to non-ad valorem assessments.

WATER MANAGEMENT DISTRICTS

Section 373.083, Florida Statutes, provides for the general powers and duties of governing boards of water management districts. Among those powers and duties, the governing board is authorized to contract with public agencies, private corporations, or other persons; sue and be sued; and appoint and remove agents and employees, including specialists and consultants. Currently, there is no statutory provision relating to employees' salaries and benefits.

LICENSURE OF HOSPITALS AND OTHER HEALTH RELATED FACILITIES

Chapters 395 and 400, Florida Statutes, provide licensing and regulations for hospitals, nursing homes and other health related facilities. These facilities are subject to extensive oversight and review processes and subject to certain national and state standards for continued accreditation.

CODIFICATION OF SPECIAL ACTS

Current law does not provide for codification of the Legislature's special acts as it does for general statutes. There does not exist a complete body of law compiled as the most recent iteration of charters of special districts.

B. EFFECT OF PROPOSED CHANGES:

This bill revises statutory provisions relating to local government financial audits, many sections of the Special District Accountability Act of 1989 and conforms related statutes to those revisions. The bill revises:

- ✓ the definition of a special district;
- ✓ the requirements relating to the official list of special districts;
- ✓ the creation, merger and dissolution of special districts;
- ✓ special district elections; and
- ✓ special district public facility reports.

The bill creates a special district oversight process and revises various administrative and enforcement procedures.

The bill provides clarity that deep water ports in compliance with a port master plan (must be incorporated into an appropriate local comprehensive plan) are deemed to be in compliance with section 16 of the bill (consistency with local government comprehensive plans).

The bill also provides that non-ad valorem assessment information, if requested by the local governing body assessing the non-ad valorem assessment, be included on TRIM notices. The bill also limits water management district employees' salary and benefits to those of other state employees and local government employees in the same jurisdiction as the water management district.

The bill addresses the ad valorem tax exempt status for airport and deep water port authorities' leaseholds for public purposes or functions of a nongovernmental lessee.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

(3) any entitlement to a government service or benefit?

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

See d. and e. below.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

Not directly. However, the provisions of Section 25 of the bill might affect the ad valorem tax revenues of counties by overruling a recent Supreme Court decision. The decision affirmed Brevard County's authority to assess ad valorem taxes on the fee interest of real property owned by the Authority and leased to private entities engaged in nongovernmental activities.

- e. Does the bill authorize any fee or tax increase by any local government?

No. However, if the language in section 25 is legislatively approved, counties might find it necessary to make up the lost revenues from other sources. Conceivably, one source might include ad valorem tax.

3. Personal Responsibility:

Not applicable.

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom:

Not applicable.

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment:

Not applicable.

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION RESEARCH:

Section 1 Amends paragraph (a) of subsection (3) of section 11.45, Florida Statutes, 1996 Supplement, to implement the recommendations of the Local Government Financial Emergencies Task Force. The bill amends subparagraph 7. of paragraph (3)(a) to require the independent auditor to notify each member of the governing body of the local governmental entity for which he or she is conducting a financial audit, when he or she observes deteriorating financial conditions which may cause a financial emergency to occur if corrective actions are not taken. The bill also amends subparagraph

11.b. to require that the Auditor General, when reviewing an audit report and identifying additional information that indicate the local governmental entity may be in a state of financial emergency, to request clarification from the local governmental entity. The bill requires the local governmental entity to provide the clarification within 45 days of the request, and requires the Auditor General to notify the Joint Legislative Auditing Committee if clarification is not received. Finally, the Auditor General shall notify the Governor and Joint Legislative Auditing Committee if, after receipt of the requested clarification, the Auditor General determines that the local governmental entity is in a state of financial emergency.

Section 2 Amends section 125.901, Florida Statutes, to correct the cross-reference to the section of chapter 189, F.S., governing dissolution of special districts.

Section 3 Amends section 165.041, Florida Statutes, 1996 Supplement, to conform with changes to chapter 189, F.S.; deletes the paragraph regarding merger of special districts and merger of municipalities or counties with special districts.

Section 4 Amends subsections (1) and (2) of section 189.403, Florida Statutes, and adds subsection (7) of section 189.403, Florida Statutes; amends the definition of "special district;" creates a definition of "public facilities." "Special district" is revised to clarify that special districts are treated like municipalities for purposes of exempting government-owned property from taxation. "Public facilities" are defined as major capital improvements such as transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and, with certain exceptions, spoil disposal sites for maintenance dredging in intercoastal waterways.

The effective date amending the definition of "special district" is upon becoming law and applies to the 1995 tax rolls and thereafter.

Section 5 Amends section 189.4031, Florida Statutes, requirements of special districts, deleting the statement that nothing in this section is intended to confer new power upon a general purpose local government, or reduce the power of a dependent special district, relating to budget development or approval for dependent districts created by special act prior to October 1, 1989; adds a new subsection to section 189.4031, Florida Statutes, to require that any independent special district charter enacted after October 1, 1989, include the information required by section 189.404(3), Florida Statutes (The minimum requirements for general laws or special acts creating independent special districts and enacted after September 30, 1989.)

Section 6 Amends section 189.404, Florida Statutes, eliminating the requirement that charters of independent special districts contain a method for dissolving the district; clarifying that only the Legislature can create independent special districts, unless otherwise authorized by general law; requiring that newly created special district charters, and as practical, preexisting district

charters, contain a status statement -- a reference to whether they are dependent or independent -- and that such statements conform with the department's determination or declaratory statement regarding that status. This section also makes a technical correction.

- Section 7** Amends section 189.4041, Florida Statutes, to authorize counties and municipalities to create, merge or abolish dependent special districts within their boundary lines and provide requirements for local ordinances creating the districts; requires counties to secure the approval of the governing body of an affected incorporated area.
- Section 8** Amends section 189.4042, Florida Statutes, to require local governments to merge or dissolve dependent special districts by ordinance and to file a copy of any ordinance which affects the status or boundaries of a special district or districts with the Special District Information Program within a specified time; clarifies that only the Legislature has the authority to dissolve an independent special district or dependent special district which was created by special act; provides that a county or city which created an independent special district may merge or dissolve the district.
- Section 9** Repeals section 189.4043, Florida Statutes, relating to dissolution procedures for special districts. Dissolution procedures are incorporated into ss. 189.4041 through 189.4044, F.S.
- Section 10** Amends section 189.4044, Florida Statutes, by revising the responsibility and procedures for declaring a special district inactive and subsequently dissolving such districts; provides responsibility shifted from the Secretary of State to the department, which must file a report with both houses of the Legislature showing that the district is inactive based on a finding that the district meets one of the following criteria: The district has taken no action for two calendar years; has had no governing board, or an insufficient number of board members to constitute a quorum, for 18 or more months; has failed to file specified reports; or has failed to pay specified fees for two consecutive fiscal years. The department is required to notify both houses of the Legislature of each special act creating or amending the charter of any district declared inactive; provides that any special district declared inactive must be dissolved by repeal of its enabling laws.
- Section 11** Amends section 189.4045, Florida Statutes, deleting the phrase "or merger agreement" in reference to the formation of new districts by merger; deletes a reference to a dissolution plan for dissolution of special districts. These are conforming changes.
- Section 12** Creates section 189.4047, Florida Statutes, to provide that special assessment refunds may be issued under certain circumstances, along with any interest collected on the funds as long as the costs of distributing the refunds do not exceed the amount available for refunds; this provision is retroactive to January 1, 1987.
- Section 13** Amends section 189.405, Florida Statutes, deleting references to specific sections of the Florida Election Code but retaining the requirement for

general consistency with the entire code; providing specific qualifications for candidates for the governing board of a single-county special district; and transferring the responsibility to the Department of State from the individual county supervisors of elections for coordinating the qualifications for multi county governing board positions. Per existing law, this provision would not apply to elections of governing board members conducted on a one-acre/one-vote basis. Elections provisions are not effective until January 1, 1998.

- Section 14** Amends section 189.4051, Florida Statutes, to delete obsolete language regarding the election requirements and procedures for governing boards elected on a one-acre/one-vote basis; provides procedures for elections, designation of urban areas.
- Section 15** Amends section 189.412, Florida Statutes, 1996 Supplement, deleting the duty of the Special District Information Program to organize and sponsor a biennial conference for specified purposes.
- Section 16** Amends section 189.415, Florida Statutes, to require that special districts include in their public facilities reports, public facilities which are operated by other entities, (except a local general purpose government), by lease or other agreement; and facilities the district is assisting another entity, (except a general purpose local government), in building, improving, or expanding through lease or other agreement.
- Section 17** Amends section 189.4155, Florida Statutes, to require compliance with the local comprehensive plan even when construction or expansion of a facility in the district is undertaken through or initiated by an entity other than the special district; amends by expanding exemption from this section to spoil disposal sites owned or used by the Federal Government or specified ports; exemption from compliance with this section is also granted to deep water ports which operate in compliance with a port master plan incorporated into the appropriate local government comprehensive plan.
- Section 18** Amends s. 189.416, F.S., to change the time for registration of a district's agent and office to occur within 30 days of the first meeting of the governing board; existing deadline is within one year after creation of the District.
- Section 19** Amends section 189.417, Florida Statutes, to clarify requirements for publication of special district meeting notices. This section authorizes publication and filing of meeting notices quarterly and semiannually in addition to the annual requirement in current law.
- Section 20** Amends section 189.421, Florida Statutes, 1996 Supplement, to modify the department's authority to petition for an administrative hearing on the inactivity of a district related to failure to disclose financial reports to those instances when the department determines that a reasonable time has passed since notice of the failure was delivered to the district and the reports have not been forthcoming.

Section 21 Amends section 189.422, Florida Statutes, 1996 Supplement, to change the actions the department is authorized to take after receipt of the report, or after the report has not been filed; upon determination by the department that the district is inactive, it shall notify the Speaker of the House and President of the Senate, rather than filing that determination with the Secretary of State; the department is authorized to seek a money judgement against the district for willful refusal to file the report; however, the department's authority to seek an injunction or writ of mandamus is limited to "when appropriate."

Section 22 Amends section 189.425, Florida Statutes, by deleting an obsolete effective date for the department's rulemaking authority; changes rulemaking authority to implement these statutory provisions from mandatory to permissive.

Section 23 Creates section 189.428, Florida Statutes, providing for a special district oversight review process wherein each special district may be reviewed by the general purpose government in which they exist; provides that the intent of the oversight review process is to contribute to informed decision making; dependent special districts may be reviewed by the general purpose local government to which they are dependent, and single-county independent special districts may be reviewed by a county or municipality in which they are located or by the government that created them; multicounty special districts may be reviewed by the government that created them; however, any general purpose local governments within the boundaries of a multicounty district may prepare a preliminary review for possible reference or inclusion in the full review report; lists minimum criteria for reviews of special districts, provides for responses by the special district, and requires that the reviewing government submit a plan for dissolution of the district if it recommends dissolution; requires that the report be considered at a public hearing held within the jurisdiction of the district; and exempts from these provisions, certain deep water ports, airport authorities and health systems and facilities licensed under chapters 395 or 400, Florida Statutes.

Section 24 Creates a codification requirement of all special acts relating to a special district into a unified act; requires that each district submit a draft codified charter to the Legislature by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever is earlier; provides no changes may be made to a district's charter as it exists on October 1, 1997 other than codifying changes; provides the codified act provide for repeal of all prior special acts relating to the district and must be filed with the department.

Section 25 Amends subsection (6) of section 196.012, Florida Statutes, to add the following to the definitions of entities and activities deemed to serve or perform a public purpose or function exempt from ad valorem taxation:

- ✓special district(s);
- ✓activities undertaken by lessees permitted under the terms of its lease of real property designated as:

⇒ a public airport as defined in s.332.004(14), F.S., permitted by municipalities, agencies, special districts, authorities or other public bodies, corporate and politic of the state; or

⇒ a deep water port identified in s.403.021(9)(b), Florida Statutes, and owned by a municipality, agency, special district, authority or other public body corporate and politic of the state,

subject to a leasehold or other possessory interest of a nongovernmental lessee deemed to perform an aviation or airport or maritime or port purpose or operation.

Section 26 Amends section 200.069, Florida Statutes, and adds new subsection (13), to allow, at the request of the governing board(s) of local governing bodies assessing non-ad valorem assessments, information relative to non-ad valorem assessments be placed on the truth-in-millage (TRIM) notice(s); provides for the content and form of the notice and provides that either the tax collector or the local governing board levying the assessment(s) be designated to answer taxpayer questions about the non-ad valorem assessment(s).

Section 27 Amends section 373.083, Florida Statutes, to provide limiting water management district employees to receiving the same salary and benefits, including, but not limited to, benefits such as sick and annual leave, retirement benefits, etc., as state employees and employees of the local governing bodies in the same jurisdiction as the water management district(s), are entitled to; provides no impairment of vested rights or obligations of contracts are intended by this subsection.

Section 28 Provides an effective date of October 1, 1997, unless otherwise provided.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See 2. below.

2. Recurring Effects:

A similar bill filed during the 1996 session, HB 877, contained the same language as in section 13 of HB 1683, which transfers the responsibility to the Department of State from the individual county supervisors of elections for coordinating the qualifications for multicounty governing board positions. According to the Department of State, Division of Elections, HB 877 would have cost the division \$83,007 in FY 1996-97, \$66,673 in FY 1997-98, and \$76,673 in FY 1998-99. These figures include two additional FTE positions, OPS support, other expenses and operating capital outlay.

The division explained that the bill creates the potential for an additional 19 multicounty special districts to qualify and file campaign reports with the division (eight multicounty special districts currently qualify and file campaign reports with the division). The division speculates that if each of the 19 districts has at least five total members, and half of those members are up for election every two years, there would be an additional 50 slots open for candidates to qualify with a potential for 100 to 200 additional candidates. Therefore, the division estimates the need for two FTE (Document Specialist) positions to assist with the additional workload, and \$10,000 in OPS funds during each election cycle.

The Florida Special Districts Association counters that these estimates are high. The Association reports that there is a maximum of 12 multicounty special districts whose governing boards are elected and not voting by one-acre/one-vote.

3. Long Run Effects Other Than Normal Growth:

See 2. above.

4. Total Revenues and Expenditures:

See 2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The provisions of Section 25 of the bill might affect the ad valorem tax revenues of counties by overruling a recent Supreme Court decision. The decision affirmed Brevard County's authority to assess ad valorem taxes on the fee interest of real property owned by the Authority and leased to private entities engaged in nongovernmental activities.

2. Recurring Effects:

See discussion at B.1. above.

3. Long Run Effects Other Than Normal Growth:

See discussion at B.1. above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

See discussion at B.1. above.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend money or take action that requires expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill falls under this provision which requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate.

The Supreme Court, *Canaveral Port Authority v. Dept. Of Revenue, supra*, clarified that, under current law, leasehold interests in government-owned property are exempt from ad valorem taxation only when the property is used for the purposes specifically set forth in subsection 196.199(2) and (4), Florida Statutes. This bill overrules that case by creating an exemption from the authority of municipalities and counties to collect ad valorem taxes on leased properties, regardless of their use for a proprietary purpose. The bill reduces the base against which ad valorem taxes may be levied.

Subsection (d) of Article VII of the State Constitution provides an exemption for laws having an insignificant fiscal impact. It is difficult to estimate the fiscal impact of this measure without specific information from each local government indicating how much tax revenue has been collected on governmental leaseholds used for proprietary purposes within their respective jurisdictions.

In summary, the bill would result in an indeterminate reduction in revenue raising authority for counties and cities. The constitutional provisions apply, and the bill, as introduced, requires a two-thirds vote of both houses of the Legislature.

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

This bill does not reduce the total aggregate city or county percentage share of a state tax below 2/1/89 levels.

V. COMMENTS:

Committee Substitute for House Bill 877 (1996) by the Committee on Community Affairs and Representative K. Pruitt failed to pass the Legislature. This bill contains some of the same provisions as were in CS/HB 877. .

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A “strike everything” amendment, as well as three amendments to the “strike everything amendment” were adopted by the Committee on Community Affairs on April 15, 1997. The Committee voted a committee substitute on that date. The committee substitute differs from the bill as introduced in the following manner:

- ◇ Allows, at the request of the governing board(s) of entities assessing non-ad valorem assessments, information relative to non-ad valorem assessments to be placed on the truth-in-millage (TRIM) notice(s); provides for the content and form of the notice and provides that either the tax collector or the local governing board levying the assessment(s) be designated to answer taxpayer questions about the non-ad valorem assessment(s).
- ◇ Limits water management district employees to receiving the same salary and benefits, including, but not limited to, benefits such as sick and annual leave, retirement benefits, etc., as state employees and employees of the local governing bodies in the same jurisdiction as the water management district(s), are entitled to; provides no impairment of vested rights or obligations of contracts are intended by this subsection.
- ◇ Removes sections 24 and 25 of the bill as introduced and replaces those sections with new language. The new language amends s.196.012, Florida Statutes, to add the following to the subsection providing definitions of entities and activities deemed to serve or perform a public purpose or function exempt from ad valorem taxation:
 - ✓ special district(s);
 - ✓ activities undertaken by lessees permitted under the terms of its lease of real property designated as:
 - ⇒ a public airport as defined in s.332.004(14), F.S., permitted by municipalities, agencies, special districts, authorities or other public bodies, corporate and politic of the state; or
 - ⇒ a deep water port identified in s.403.021(9)(b), Florida Statutes, and owned by a municipality, agency, special district, authority or other public body corporate and politic of the state,subject to a leasehold or other possessory interest of a nongovernmental lessee deemed to perform an aviation or airport or maritime or port purpose or operation.

This provision may minimize or eliminate the degree or applicability to which the constitutional mandate provision applies.

- ◇ A provision which clarifies that deep water ports in compliance with a port master plan (must be incorporated into an appropriate local comprehensive plan) are deemed to be in compliance with section 16 of the bill (consistency with local government comprehensive plans).

The amendments to the “strike everything” amendment provide:

- ◇ An exclusion for hospitals, nursing homes and related health care facilities from the oversight review process (Section 23 of the bill). Chapters 395 and 400, Florida Statutes, currently provide extensive review, regulatory, and licensing processes for health systems and facilities. To submit them to this additional review process would be duplicative and overburdensome.
- ◇ No changes to a district’s charter as it exists on October 1, 1997, may be made in its legislation codifying its special acts. The intent is to eliminate substantive changes being made to a district’s charter in the codification process.
- ◇ Corrects citation.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

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