

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2346

SPONSOR: Governmental Oversight and Productivity Committee and Senator Silver

SUBJECT: Port Area Improvement

DATE: April 27, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/3 amendments</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FR</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates the "Port Area Improvement Authority Act," the purpose of which is to create a nine-member public authority with the power to issue debt for the financing of public purpose facilities. Professional sports facilities are a permitted purpose. A single highly populated county or a county contiguous to another such county are authorized to create such authorities.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Presently, Miami-Dade County operates the Port of Miami as a department of county government. The Port of Miami reports that it generates more cruise passengers than any other port in the world. The number of aggregate multi-day cruise passengers embarking on a cruise from the Port of Miami and returning to the port, during fiscal year 1999, was 3,049,274.

Broward County operates Port Everglades, which also docks a number of cruise ships. In fiscal year 1999, the number of aggregate multi-day cruise passengers embarking on a cruise from Port Everglades and returning to the port was 1,200,000. According to information provided by Broward County, the Port Everglades Department estimates cruise passenger traffic to reach 1.8 million aggregate multi-day cruise passengers within the next 24-36 months.

Local Option Tourist Development, Convention Development and Tourist Impact Taxes

Presently, Dade County levies a number of tourist development type local option taxes. According to the Local Government Financial Handbook, September 1999, published by the Legislative Committee on Intergovernmental Relations, the county levies a tourist development tax, at the rate of 2 percent on persons renting or leasing hotel rooms or similar lodging. The tax is charged by the person receiving the consideration for rent or lease at the time of payment of the lease or rental. In addition, the county levies an additional 1 percent Professional Sports Franchise

Facility Tax, and a 3 percent Charter County Convention Tax on the total consideration charged for transient rental transactions.

Broward County levies 5 percent of Tourist Development type taxes on transient rental transactions: a 2 percent original tourist development tax, a 1 percent additional tourist development tax, a 1 percent professional sports franchise facility tax and a 1 percent additional professional sports franchise facility tax.

The latest population estimates issued by the United States Census Bureau are calculated for July 1, 1999 and estimate the population of Dade County as 2,175,634 persons and the population of Broward County as 1,535,468.¹

III. Effect of Proposed Changes:

Section 1 of the bill provides a short title of the “Port Area Improvement Act.”

Section 2 provides legislative findings that:

- Certain counties have a need for the improvement of existing facilities and the development facilities and other attractions, including professional sports facilities, and other related amenities and infrastructure.
- These projects serve a paramount public purpose and that there is a need to provide a comprehensive method and funding sources for providing for the development and operation of these facilities.
- It is the intent of the Legislature to prescribe a uniform procedure for establishing independent authorities for the purpose of planning, financing, constructing, renovating, developing, operating and maintaining facilities and attractions, including professional sport facilities and other related amenities and infrastructure within highly populated counties of the state and within counties contiguous to them.
- It is the intent of the Legislature that each authority shall take all steps reasonable, necessary, or advisable to generate local support for the development of projects, including professional sports facilities and related amenities and infrastructure, to serve as an intermediary and facilitate negotiations with and among private interests, community organizations, and governmental authorities in connection with the construction or development of such projects, to explore, research, and analyze financing and related alternatives for the construction or development of such projects, and to present findings and recommendations to the appropriate governmental entities with respect to the construction or development of such projects.
- Because the independent authorities so created shall be empowered to exercise certain substantial powers and authority in more than one county, it is declared to be the intent of the Legislature that the Community Improvement Authority Act be construed for all purposes as a general law that relates to more than one county and that the independent authorities so created not be deemed to have jurisdiction lying wholly within any one county within the meaning of any constitutional, statutory, or charter provision.

¹These figures were posted on March 9, 2000, on the U.S. Census Bureau website: www.census.gov/pop/www/estimate/countypop.HTML

Section 3 provides for definitions used in the bill including: “eligible county,” “professional sports facility” and “project.” An “eligible county” is defined as a county that simultaneously has at least two professional sports facilities in the county and has a population of not less than 1.5 million according to the most recent annual publication of County Population Estimates of the U.S. Bureaus of the Census. Once a governing body has been appointed for an authority in an eligible county, that county is considered an eligible county for all purposes of this act, notwithstanding subsequent reductions in population.

Section 4 establishes a community improvement authority within each eligible county. The act constitutes the charter of each such authority. Notwithstanding the foregoing, in any eligible county in which an independent port district was abolished with support of the majority of electors of that county voting in a referendum held within 10 years immediately preceding the effective date of the act, an authority is not established and no authority has jurisdiction or can exercise any powers within the county without an approving ordinance adopted by such county’s governing body. Each authority is a body politic and corporate, a public instrumentality, and an independent special district within the meaning of chapter 189, F.S., the jurisdiction of which encompasses the applicable eligible county and each county contiguous therewith, except as expressly provided in the committee substitute.

Section 5 provides for the governance of the authority by a 9-member board. The Governor appoints two members; the county commission of the eligible county appoints 3 members; the mayor of the eligible county appoints one member; the city commission within which the projects are proposed to be constructed appoint two members; and the mayor of the city appoints one member to the board. Board members hold terms of office of 4 years, except two of the initial members appointed by the Governor are appointed for a 3-year term and one of the initial members appointed by the commission of the eligible county are appointed to terms of 3 years. The board, at the time of organizing, and each year thereafter, elect a chair for a term of one year. Members of the board receive no compensation but are entitled to reimbursement for travel and per diem expenses.

Section 6 provides for the appointment of an executive director by the board.

Section 7 provides for the appointment of a chief financial officer who is responsible for the funds and finances of the authority and sets the fiscal year for the authority as beginning October 1 of each year and continuing to September 30 of the following year.

Section 8 requires the executive director of the authority to prepare a proposed budget which must be adopted before October 1 of each year.

Section 9 sets forth broad powers and duties for the authority. Each authority has power to take all steps reasonable, necessary, or advisable to generate local support for the development of projects to serve as an intermediary and facilitate negotiations with private interests, community organizations, and governmental authorities in connection with the construction or development of such projects, and to explore, research, and analyze financing and related alternatives for the construction or development of such projects. In the event an appropriate governmental authority, acting upon the recommendations of the authority, has approved a source or sources of funding to

finance the construction or development of a project, the board may finance, refinance, acquire, plan, design, develop, construct, own, lease, operate, maintain, manage, renovate, improve, and promote any project or amenity located in the eligible county or any county contiguous therewith consisting of one or more facilities.

In addition, the board may:

- provide for the protection of persons using the facility by contracting to provide police protection, emergency medical services, and fire protection with prior consent of the county or municipality that provides these services;
- sue or be sued in the name of the authority
- adopt and use a seal
- make and execute contracts and other instruments;
- employ staff, contract for professional services;
- maintain offices;
- adopt procedures;
- accept gifts;
- apply for grants or loans;
- hold real and personal property;
- lease facilities or property;
- borrow money and issue bonds or other evidence of indebtedness;
- fix, collect, and enforce fees, rates, or other use charges for any service, program, or facility;
- cooperate and contract with other governmental entities;
- invest moneys;
- procure insurance;
- establish independent entities or affiliated entities to support the authority;
- make grants of funds;
- exercise any other powers necessary and convenient in connections with the act.

Section 10 authorizes the authority to issue and sell bonds for any purpose for which the authority has the power to expend money. Bonds may be authorized by resolution of the board. Bonds may be sold by public or negotiated sale after advertisement, if any, as the board considers advisable. Further, bonds may reflect and evidence any form of financing structure that may become marketable from time to time, including, but not limited to, taxable or tax-exempt bonds; bonds that bear current interest, whether fixed or variable; bonds issued at an original issue discount or premium; capital appreciation bonds; bonds that are convertible; bonds that allow the holder to tender the bonds to the authority or its agency; bonds that are issued with separate call-option rights that may be sold by the authority at the time of issuance of the bonds or thereafter; and bonds of any type issued in connection with interest-rate swaps or other derivative products.

The committee substitute permits the board, by resolution, to fix the aggregate maximum amount of bonds to be issued; the purpose or purposes for which the moneys derived may be expended; the rates of interest; the denominations of the bonds; whether or not the bonds are to be issued in one or more series; the dates of maturity; the medium of payment; the places within or outside the state where payment must be made; registration privileges; redemption terms and privileges; the manner of execution; the form of the bonds; the manner of execution; and any other terms, covenants, and conditions.

The committee substitute provides that any issue of bonds may be secured by a trust agreement by and between the authority and corporate trustees. The resolution authorizing the issuance of the bonds or the trust agreement may pledge any legally available revenues of the authority, including, without limitation, the proceeds of rental payments received by the authority.

All bonds issued on behalf of the authority must state on the face thereof that they are payable both as to principal and interest, solely from assets of the authority pledged therefor and do not constitute an obligation, either general or special, of the state or of any local government.

The committee substitute provides that, notwithstanding any other law to the contrary, bonds issued under the act constitute legal investments for saving banks, banks, trust companies, and others.

The act constitutes full authority for the issuance of bonds and the exercise of the powers of the authority.

The committee substitute states that the state pledges not to limit or alter the rights of the authority to own, acquire, construct, or reconstruct, improve, maintain, operate, or furnish the projects provided for in the act and to fulfill the terms of any agreement made with the holders of the bonds.

Section 11 provides that the bonds and other obligations issued under the act, including any profit made on the sale, and all notes, mortgages, security agreements, letters of credit, or other instruments given to secure the repayment of bonds or other obligations issued under the act, are at all times free from taxation by the state or any unit of local government, political subdivision, or other instrumentality of the state. The exemption does not apply to any tax imposed by ch. 220, F.S., on interest, income, or profits on debt obligations owned by corporations.

Section 12 provides that contracts for the construction of projects may be awarded by the authority in a manner that will best promote free and open competition; however, if the authority determines that the purposes of the act will be more effectively served, it may award contracts for the construction of any project, including design-build contracts, or any part thereof, or for any other purpose upon a negotiated basis as determined by the authority.

Section 13 permits the authority to sell or lease property of the authority or grant operating agreements for any project of the authority in a manner that will best promote free and open competition, including advertisement for competitive bids. It may, however, sell or lease property of the authority upon a negotiated basis or for no or nominal consideration. Further, the authority is authorized to sell or lease property of the authority in a transaction in which the authority leases the property back from its purchaser or lessee.

Section 14 provides that any suit or action brought or maintained against the authority for damages arising out of tort are subject to the limitations provided in s. 768.28, F.S., and any claim must be presented in writing to the board.

Section 15 provides that once an authority has been established its existence is not affected by any subsequent reduction in population in the eligible county. The committee substitute provides for

the authority to be dissolved by unanimous resolution of the board and approval of the resolution by the Governor or the manner provided in ch. 189, F.S.

Section 16 contains a severability provision.

Section 17 provides that the bill be liberally construed to carry out its purposes.

Section 18 states that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The authority is nominally a public agency and the provisions attendant to chs. 119 and 286, F.S., apply. Nonetheless, the authority is exempted from the provisions of s. 287.055, F.S., the Consultants' Competitive Negotiation Act. That act requires the competitive, open procurement of specialized design and contracting services. CS/SB 2346 permits a negotiated agreement outside of a competitive bid process and directs a professional sports franchise to act as an agent of the authority for the performance of these specified functions.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill as applied to Dade County appears to violate s. 6(e), Art. VIII, of the Florida Constitution, because it would compel Miami-Dade County to establish an independent special district. Under s. 6(e), the authority of Dade County to establish home rule pursuant to Art. VIII, ss. 9, 10, 11 and 24, of the Constitution of 1885, as amended, is preserved and all provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted are valid, and any amendments to the charter are valid as long as the charter provisions and amendments are authorized under Art. VIII, s. 11, of the Constitution of 1885, as amended.

Pursuant to s. 11(1)(c), of Art. VIII, of the Constitution of 1885, as amended, the Dade County Charter provides that the electors of Dade County are granted the authority to adopt, revise and amend a home rule charter for Dade County that:

May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, **special taxing**

districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Dade County Board of County Commissioners as it may be provided for from time-to-time by this home rule charter and the Board of Public Instruction of Dade County.

The Dade County Home Rule Charter addresses within its terms the establishment and abolishment of municipalities and the establishment, merger and abolishment of special purpose districts. With respect to special districts, Art. I, s. 1.01(11), provides that the Board of County Commissioners shall:

By ordinance, establish, merge and abolish special purpose districts within which may be provided police and fire protection, beach erosion control, recreation facilities, water, streets, sidewalks, street lighting, waste and sewage collection and disposal, drainage, and other essential facilities and services. All county funds for such districts shall be provided by service charges, special assessments, or general tax levies within such districts only. The Board of County Commissioners shall be the governing body of all such districts and when acting as such governing body shall have the same jurisdiction and powers as when acting as the Board. . . .

Several exceptions are listed in the charter where the governing board is other than the county commission--an elected board for the Metro-Dade Fire and Rescue Service and the governing board of the Juvenile Welfare Board, which shall consist of a board where five members are appointed by the Governor and the remaining members are specified in the subsection. The description of the functions and financing of the special districts described above is consistent with the definition of special district set forth in s. 189.403(1), F.S., of “. . . local unit of special purpose, as opposed to general purpose, government within a limited boundary, created by general law, special act or local ordinance.”

In *Chase v. Cowart*, 102 So.2d 147 (Fla. 1958), the court decided whether the Dade County Budget Commission, a commission established by the Florida Legislature with authority over the fiscal affairs of county boards and county officers of Dade County and whose jurisdiction fell entirely within Dade County, had been abolished by the electors of Dade County through the enactment of its home rule charter. In deciding the issue, the court weighed the meaning of subsections (5), (6), (7), and (9), s. 11, Art. VIII, Constitution of 1885, as amended, which preserve to the Legislature the authority to enact general laws that apply to Dade County and any one or more counties, and the provision of subsection (1)(c) which is an express grant of power which authorizes the voters of Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly within Dade County, whether created by the Constitution or by the Legislature or otherwise.

The court held that the electors of Dade County, through the enactment of its home rule charter, abolished the budget commission. The court reasoned that the limitations of subsections (5) and (9) do not prohibit the abolishment of the Budget Board because the charter provision allowing abolishment of the board comes within the exception to the limitations of subsections (5) and (9) that states “except as expressly authorized herein.”

Section 11(1) (c) is clearly an express grant of power which authorizes the voters of Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly in Dade County, whether created by the Constitution or by the Legislature or otherwise. We think it crystal clear that the words ‘except as expressly authorized or provided’ as found in subsections (5) and (9) relates directly to the specific grants of power contained in the various sub-subsections of subsection (1).

Finally, the court further stated that it did not matter to its analysis whether the law creating the Budget Board was a general law, general law of local application, or a special act.

In the case of *City of Sweetwater v. Dade County*, 343 So.2d 953 (3rd DCA 1977), the court held that general law provisions governing the annexation of land into municipalities did not apply within Dade County because the changing of boundaries of municipalities is an area of autonomy conferred on Dade County by its Home Rule Charter. In reaching this holding the court characterized the autonomy granted Dade County by s. 11(1), Art. VII of the Constitution of 1885, as amended:

Subsections 1(a) through (i) of the Home Rule Charter Amendment constitute those organic areas of autonomy and authority in local affairs conferred upon Dade County by the Florida Constitution and may not be diminished and curtailed by general laws of the State enacted after 1956. *Id* at p. 954.

Hence, the matter of changing boundaries of municipalities was found by the court to be “one of the areas of autonomy conferred on Dade County by the Home Rule Amendment, with the result that the method provided therefor by the Home Rule Charter, . . . is effective and exclusive, notwithstanding the existence from time to time of a general state law which makes provision for some other method.” *Id*.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

There will be costs associated with establishing and operating the authorities which cannot be estimated more precisely at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 189 imposes a number of requirements on special districts. Several of these requirements are not appropriately addressed in the bill. Section 189.404(3), F.S., requires general or special acts that create or authorize the creation of independent special districts and are enacted after September 30, 1989, to address and include certain items in their charters. Several of these items are missing from the charter contained in the bill. First, the bill does not provide for the method of amending the charter of the district. And second, the bill is not as detailed as required by ss. 189.404(3)(j), and 189.405, F.S., regarding the procedures for conducting district elections. The bill should state either that the elections will be conducted pursuant to s. 189.405, F.S., or that election procedures shall conform to the Florida Election Code.

In addition, it should be noted that the County Commissions of both Dade and Broward Counties indicated their opposition to the bill in its original form. Section 189.404(2)(e), F.S., enacted pursuant to s. 11(a)(21), Art. III, of the State Constitution, prohibits special acts or general acts of local application which create an independent special district for which a statement has not been submitted to the Legislature documenting the following:

1. the purpose of the proposed district;
2. the authority of the proposed district;
3. an explanation of why the district is the best alternative; and
4. a resolution or official statement of the governing body of the local jurisdiction where the proposed district is located that the creation of the proposed district is consistent with the local comprehensive plans and that the local government does not object to it.

While the bill as drafted is intended to be a general bill, if the bill is ever construed by a court to be a general act of local application, the enactment of this bill would violate this requirement as the county where the district will immediately be created if the bill passes, Dade County, does not consent to the creation of the district.

The revised, fourth edition of the *Manual for Drafting General Bills* published on September 22, 1997 by the Florida Senate discusses the circumstances surrounding the 1971 Legislature's repeal of most population acts². For a general law of local application to be valid it must have an open classification *and* bear a reasonable relationship to the subject and public purpose to be served.³ These cumulative criteria do not appear to be realized in SB 2346 relative to the constitutional proscription.⁴

²Chapter 71-29, Laws of Florida.

³See also *Lewis v. Mathis*, 345 So.2d 1066 (Fla. 1977) and *Vance v. Ruppel*, 215 So.2d 309 (Fla. 1968).

⁴The implications for subsequent policy-making do not end with these cases. Footnote 50 in that Manual discusses alternative theories on the scope of the Legislature's prerogatives in such matters following the issuance of Attorney General Opinion 83-27. Nonetheless, SB 2346 does not contain any specific provision calling for a three-fifths vote or invoking the discussed provision in Article III of the State Constitution.

Currently, the Port of Miami is the only port in Florida that meets the definition of “major cruise ship port” and Miami-Dade County is the only county that meets the definition of “eligible county.” While Broward County has recently reached the population threshold of 1.5 million stated in this section, Port Everglades does not today meet the cruise passenger traffic volume necessary to render Broward County an eligible county for purposes of the bill.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
