

STORAGE NAME: h1383.tr.doc
DATE: February 11, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
ANALYSIS**

BILL #: HB 1383
RELATING TO: the Florida Airport Authority Act
SPONSOR(S): Representative(s) Diaz de la Portilla

TIED BILL(S):

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

- (1) TRANSPORTATION
 - (2) LOCAL GOVERNMENT & VETERANS AFFAIRS
 - (3) FISCAL POLICY & RESOURCES
 - (4) COUNCIL FOR READY INFRASTRUCTURE
 - (5)
-

I. SUMMARY:

Currently, counties can either create an airport authority as a unit of local government, or seek a special act from the Legislature.

HB 1383 creates the "Florida Airport Authority Act." The bill requires any county with more than 2.1 million residents, and no existing airport authority, to schedule a referendum for local voters to decide whether to create an airport authority. The airport authority would be comprised of seven members: two would be appointed by the Governor, two by the County Ethics Commission, one by the county mayor, and two by the county commission.

The bill contains provisions governing the activities of such an authority, such as allowing it to acquire property, borrow money, and enter into agreements with individuals and other governmental entities. The bill is based on the same conceptual framework as the Florida Expressway Authority Act (Part I of Chapter 348, F.S.).

HB 1383 is applicable only to Miami-Dade County, based on the population threshold and because it does not have an airport authority.

The bill has an indeterminate, but probably insignificant, fiscal impact on state and local governments.

HB 1383 would take effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background on airport authorities

legislatively created authorities Individual airport authorities have been created by enactment of local bills in a number of counties. At last count, there are 29 airport authorities in Florida, but not all of them are active. The authorizing language for these authorities appears as various chapters of the Laws of Florida, and are not codified in the Florida Statutes. In addition, many airports are operated by units of local government, generally as a department or office within the local government structure.

Prior to 1990, individual expressway, bridge and transportation authorities were created by specific legislative enactment in several counties. These authorities are set forth in Parts II through IX, of Chapter 348, F.S. Jacksonville has its transportation authority codified in Chapter 349, F.S. In 1990, the Legislature enacted Part I of Chapter 348, F.S., which allows any county, or two or more contiguous counties, to form their own expressway authority by resolution of the board or boards of county commissioners. This part provides for membership of the governing body and sets out provisions that would govern the activities of such an authority.

Impact of Miami-Dade County's home-rule status

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County has the authority "to adopt, revise, and amend from time to time a home rule charter government for Dade County." (Art. VIII, Section 11 of the Constitution of 1885, as amended). The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home-rule status, as it is the only county with its full charter included in the State Constitution.

Because Miami-Dade electors adopted the charter, the charter may only be amended by the electors of Dade County, (Article VIII, Section 11(3) of the 1885 Constitution). Article VIII, Section 11(5) of the 1885 Constitution prohibits any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County and any other one or more counties. Dade County v. Wilson, 386 So. 2d 556 (Fla. 1980). Article VIII, Section 11(5) of the Florida Constitution further provides that this charter and any subsequent ordinances enacted pursuant to this charter may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Metropolitan Dade

County Home Rule Charter may implicitly, as well as expressly, amend or repeal a special act, when it conflicts with a Miami-Dade County ordinance.

In Chase v. Cowart, 102 So. 2d 147 (Fla.1958), the Florida Supreme Court concluded that:

When the Legislature enacted Chapter 31420, Laws of 1956, creating the metropolitan charter and providing the method of presenting the home rule charter to the voters of Dade County, and more specifically when the electors of Dade County adopted the home rule charter on May 21, 1957, the authority of the Legislature in affairs of local government in Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise this power only through passage of general acts applicable to Dade County and any other one or more counties, or a municipality in Dade County and any other one or more municipalities in the State.

In a 1989 opinion, the Attorney General cited Dade County v. Dade County League of Municipalities, 104 So. 2d 512, 517 (Fla. 1958), for the proposition that, following adoption of the Dade County Home Rule Charter, the **Legislature is limited to enacting only general laws relating to Miami-Dade County** and may not amend a special act relating to a municipality within Miami-Dade County that was enacted prior to the adoption of the Dade County Home Rule Charter. (AGO 1989-9) See Dickenson v. Board of Public Instruction of Dade County, 217 So.2d 553, 555 (Fla. 1969).

Recent legislative history

During the 2000 legislative session, CS/HB 315, 2nd engrossed, proposed the creation of the "Florida Airport Authority Act," modeled on Part I of Chapter 348, F.S. The bill passed the House 115-2, but died in the Senate when the Legislature adjourned. Nearly identical language was filed for consideration in the 2001 session, as HB 1099. That bill passed the House but stalled in the Senate. The text of last year's bill also was incorporated into CS/CS/HB 1053, 3rd ENG., the transportation package, which passed the Legislature, but was vetoed by the Governor.

HB 1383 is identical to the final version of the 2001 legislation.

C. EFFECT OF PROPOSED CHANGES:

- ❑ Any county which has a population of more than 2.1 million people is required to schedule a countywide referendum giving voters the opportunity to approve the creation of an airport authority. Based on 2000 U.S. Census figures, only Dade County meets the population requirements.
- ❑ Such an authority would have seven members, who must be permanent residents of the county they are representing. Two members would be appointed by the Governor (subject to confirmation by the state Senate); two would be appointed by the County Ethics Commission; one by the County Mayor; and two by the County Commission. The authority members would elect from among their number the chairperson, and select a secretary and a treasurer who do not need to be authority members.
- ❑ The Governor's appointees would have four-year terms; no terms of office were specified for the other appointees. (See "C. Other Comments" in "V. COMMENTS" section below.) The Governor's appointments may not hold any elective office during their terms on the authority.
- ❑ Members of the authority and their spouses would be prohibited from owning certain stocks and bonds. The authority members must file full and public financial disclosure, pursuant to s. 112.3144, F.S.

- ❑ A member of the authority would be prohibited from contributing to the campaign account of any elected official and from soliciting any campaign contributions for any elected official. *(See "A. Constitutional Issues" in "V. COMMENTS" section below.)*
- ❑ The authority would have the discretion to employ staff members and set the salaries for the following positions: executive director; executive secretary; counsel and legal staff; technical experts, consultants, and advisors; engineers and employees as it may require. It also may employ a fiscal agent, from among at least three persons or companies that submit sealed proposals.
- ❑ The authority must submit facility reports, audits and other reports required of special districts under Chapter 189, F.S., and it must notice its meetings and keep records, available to the public, of what transpired.
- ❑ An authority would have discretion to acquire, hold, construct, improve, maintain, operate, own, and lease an airport system. Additional airports may be constructed only if the additional airport is financially feasible and compatible with the authority's existing plans. Each new airport must have the written consent of the board of county commissioners.
- ❑ The authority would be empowered to sue and be sued, adopt a corporate seal, acquire and use any real or personal property in carrying out its purposes, make leases or lease-purchase agreements, establish and collect fees, rentals and charges for its services and facilities, borrow money, and issue bonds **only** under the State Bond Act, Chapter 215, F.S.
- ❑ It also could accept grants from and enter into contracts with a federal, state, or county agency, and would have the power of eminent domain.
- ❑ The authority also would have been able to consider unsolicited proposals from private entities for planning, constructing, maintaining or operating its airport system. An airport constructed under this provision must have state and federal approval, and the prior express written consent of the board of county commissioners.
- ❑ The authority would be prohibited from undertaking any construction that is not consistent with federal aviation requirements, the statewide aviation system plan, and the county's comprehensive plan.
- ❑ The authority would be able to appoint the county as its agent for construction projects, and may enter into contracts, leases or other agreements with other governmental entities or individuals.
- ❑ The authority would be exempt from all state and local taxes except for the corporate tax pursuant to Chapter 220, F.S.

HB 1383 is not applicable to a county in which an airport authority has been created by a general or special act of the Legislature, nor did its provisions apply to any county that has created its own airport authority.

The bill takes effect July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates ss. 332.201-332.211, F.S., the Florida Airport Authority Act. Specifies membership, powers and duties of an authority created under this act. Creates definitions. Specifies that such an authority is exempt from paying all state and local taxes, except for the corporate tax. Exempts counties who have airport authorities created by general or special act of the Legislature from the provisions of this act.

Section 2: Specifies that the provisions of this act do not apply to any county that has created its own airport authority.

Section 3: Requires members of airport authorities created pursuant to this act to file full and public disclosure of financial interests, pursuant to s. 112.3144, F.S.

Section 4: Specifies this act shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Presumably an existing airport that came under the jurisdiction of an airport authority created pursuant to this act already would have been receiving state funds for projects, and that likely would have continued.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See "D. Fiscal Comments."

2. Expenditures:

Indeterminate. See "D. Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. See "D. Fiscal Comments."

D. FISCAL COMMENTS:

Currently, airports are operated generally either as an office or department of a county or municipality, or as an authority created for that purpose. The private sector plays a significant role in operating and financing commercial airports, with private companies C airlines, concessionaires, and contractors C delivering most airport services. Airport funding comes from state and federal aviation programs, local funds, and revenues generated by the airport. A substantial portion of airport development is financed through long-term debt financed with airport-generated revenues.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1383 does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1383 does not reduce the revenue-raising authority of counties or municipalities.

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

HB 1383 does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 1383 may raise a First Amendment issue related to its prohibition against airport authority members contributing to political campaigns.

Subsection (5) of s. 332.203, F.S., as created in HB 1383, provides, in part:

"A member of the authority shall not contribute to the campaign account of any elected official, nor solicit any campaign contributions for any elected official."

This provision may be subject to judicial scrutiny as possibly violating First Amendment rights. It is well established that making campaign contributions is a form of speech and is protected under the First Amendment to the United States Constitution. Both the United States Supreme Court and the Florida Supreme Court have held that although campaign contributions are a form of protected speech, the states may still prohibit some contributions under certain circumstances. In order to impose a prohibition on contributions, the state must prove two things: (1) that it has a compelling interest; and (2) that the prohibition is narrowly tailored to meet that interest. see *Federal Elections Commission v. National Conservative Political Action Committee*, 470 U.S. 480 (1985).

B. RULE-MAKING AUTHORITY:

Section 1 of the bill directs the airport authorities created under this act to adopt rules or policies in compliance with s. 334.30, F.S., that deal with accepting, reviewing, considering "unsolicited proposals" from the private sector for airport projects. Section 334.30, F.S., regulates how the Department of Transportation handles private-sector proposals for private transportation projects.

C. OTHER COMMENTS:

HB 1383 is unclear as to when an airport authority referendum would occur. Subsection (1) of s. 332.203, F.S., states, "Any county which has a population of more than 2.1 million people shall at *the countywide election* hold a referendum in which the electors shall decide whether to form an airport authority, which shall be an agency of the state, pursuant to this act." It is unclear whether the sponsor's intent is for the referendum to occur at the next countywide election following the July 1, 2002, effective date of HB 1387, or at any countywide election, which gives the county commissions of the two affected counties some discretion on when to bring the issue to a referendum.

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Also, no length of term is established for the five locally appointed Airport Authority members, although the Governor's two appointees shall serve 4-year terms. The sponsor's intent is unclear, although it is possible that the Miami-Dade County Commission intends to set the terms, much as they hope to do for the Miami-Dade County Expressway Authority (MDX). Provisions in HB 757 and HB 1387 allow county commissioners to set term lengths, eligibility, compensation and other requirements for the members of MDX.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Not applicable.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

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Phillip B. Miller