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HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS

BILL #: HB 2001 (PCB LGVA 02-03)

RELATING TO: Educational Facilities Benefit Districts

SPONSOR(S): Local Government & Veterans Affairs; Representatives Attkisson and Bennett

TIED BILL(S): None

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

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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill authorizes counties and municipalities to create educational facilities benefit districts (benefit districts) by entering into an interlocal agreement with the school board and any local general purpose government within whose jurisdiction a portion of the benefit district is located, and adoption of an ordinance. Creation of a benefit district is conditioned upon the consent of the school board, all affected local general purpose governments, and all landowners within the benefit district. The governing board of any benefit district must include representation of the school board, each cooperating local general purpose government, and the landowners within the benefit district. In the case of the benefit district's decision to create a charter school, the board of directors of the charter school will constitute the members of the governing board for the benefit district. The bill authorizes community development districts (CDDs) to receive the financial enhancements available to benefit districts.

Upon confirmation by a school board of commitment of revenues by a benefit district or CDD necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the following funds must be provided to the district annually beginning with the next fiscal year after confirmation and until the district's financial obligations are completed: an annual amount equal to one mill of taxation for all taxable property within the benefit district or the community development district, contributed by the school board; all educational facilities impact fee revenue collected for new development within the benefit district or the CDD.

The bill provides that all facilities funded pursuant to this act must reflect the racial balance of the school district pursuant to state and federal law. However, to the extent allowable pursuant to such law, the bill provides that the interlocal agreement providing for the establishment of a benefit district or the interlocal agreement between a CDD and the school board and affected local general purpose governments may provide for the school board to establish school attendance zones that allow students residing within a reasonable distance of facilities financed through the interlocal agreement to attend such facilities.

The bill has no direct fiscal impact on state government. The fiscal impact on school districts depends on the willingness of school districts, as well as property owners, to participate in the program.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [X]	N/A []
2.	Lower Taxes	Yes []	No [X]	N/A []
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes [X]	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A [X]

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

Less Government: As discussed in the "Effects of Proposed Changes" section of the analysis, this bill authorizes the creation of educational facilities benefit districts to finance the construction and maintenance of educational facilities.

Lower Taxes: As discussed in the "Effects of Proposed Changes" section of the analysis, this bill authorizes the creation of educational facilities benefit districts, and grants these districts the authority to impose special assessments on property owners.

B. PRESENT SITUATION:

Introduction

Without appropriate planning and investment, new development places demands on public infrastructure and services that reduce the quality and level of services provided to a community. As with other public services, educational facilities and services are affected by the demands of new development.

In July 2000, Governor Bush appointed a Growth Management Study Commission. The Commission's charge was to review Florida's growth management system in order to "assure that the system meets the needs of a diverse and growing State and to make adjustments as necessary based on the experience of implementing the current system." The Commission identified school overcrowding as a major issue facing the state, and concluded that the lack of integration of land use planning and school planning contributes to the problem. The Commission concluded that Florida can ill afford to continue making land use and school siting decisions without regard to the effect these decisions have on one another. In its most extreme form, this lack of integration results in the approval of new development in areas with overcrowded schools, with no plans to address the existing overcrowding or the resulting growth in student population. Such actions only exacerbate the problem of school overcrowding.

Educational Facility Planning

The Coordination of School Facility Planning and Local Government Comprehensive Planning

When the Local Government Comprehensive Planning Act was originally enacted in 1985, the provision of school facilities was identified as a type of infrastructure for which concurrency was required pursuant to s. 163.3180, F.S. However, over the years, amendments were made to the

act to require a minimum level of coordination between school boards and local governments, particularly in the area of school facility siting. For example, local governments are required to identify on their future land use map, land use categories where public schools are an allowable use, including land proximate to residential development to meet the projected needs for schools. (s. 163.3177(6)(a), F.S.) In addition, the future land use element must include criteria that encourages the location of schools proximate to residential development as well as encouraging the collocation of public facilities, parks, libraries and community centers with schools.

In addition, the interlocal coordination element, required by s. 163.3177(6)(h), F.S., requires a local government to establish principles and guidelines to be used in the coordination of the adopted comprehensive plan with the plans of school boards. Finally, s. 163.3191, F.S., requiring local governments to prepare evaluation and appraisal reports, requires the coordination of the comprehensive plans and school facilities. Section 163.3191(2)(k), F.S., requires an evaluation of the coordination of the comprehensive plan with existing public schools and those identified in the 5-year school district facilities work program. The evaluation must address the success or failure of the coordination of the future land use map and associated planned residential development with public schools and joint decision making processes engaged in by the local government and the school board.

In 1998, the Legislature gave local governments the option to implement school concurrency. Section 163.3180(13), F.S., includes the minimum requirements for school concurrency. First, in order to implement concurrency on a district wide basis, all local governments within the county must adopt a public school facilities element and enter into an interlocal agreement. The public facilities element must include data including the 5-year school district facilities work plan; the educational plant survey; information on projected long-term development; and a discussion of how level-of-service standards will be established and maintained. Next, local governments implementing concurrency must adopt a financially feasible public school capital facilities program, in conjunction with the school board that shows that the adopted level of service standards will be maintained. Finally, a local government may not deny a development permit authorizing residential development for failure to achieve the level-of-service standard for school capacity where adequate school facilities will be in place or under construction within 3 years of permit issuance.

Only two counties have attempted to implement school concurrency, Broward and Palm Beach Counties. The Broward County concurrency plan was found to be out of compliance with chapter 163, F.S., in the case of Economic Development Council of Broward Inc. v. Department of Community Affairs, DOAH Case No. 96-6138GM. Palm Beach County has recently transmitted proposed comprehensive plan amendments to adopt school concurrency to the Department of Community Affairs for review. School concurrency has proven to be difficult to accomplish because of the requirement that a financially feasible capital improvements plan must basically ensure that school construction will keep pace with development. In a fast growing county, the financial resources may not be available to fund such a plan.

As an alternative to school concurrency, Orange County adopted a policy, originally advanced by former County Commission Chairman Mel Martinez in a memorandum of March 29, 2000 to the Orange County Board of County Commissioners, whereby proposed developments which require rezonings or comprehensive plan amendments that increase the density or intensity of development are denied where inadequate school capacity is available to serve the new development. Applying the policy, the Orange County Commission has denied several rezoning or comprehensive plans amendment requests. Two of the applicants sued the commission and one of these cases resulted in a circuit court decision that is presently on appeal.

Chapter 235, F.S., Educational Facilities

Chapter 235, F.S., contains planning and design requirements for educational facilities. Administrative rules adopted under the authority of the chapter are currently undergoing review as part of the reorganization of educational governance for K-20. For example, under current law, s. 235.193, F.S., requires some degree of coordination between school boards and local governments. Section s. 235.193(1), F.S., requires the integration of the educational plant survey with the local comprehensive plan and land development regulations. School boards are required to share information regarding existing and planned facilities, and infrastructure required to support the educational facilities. The location of public educational facilities must be consistent with the comprehensive plan and the land development regulations of the local governing body.

Local governments are prohibited from denying site plan approval for an educational facility based on the adequacy of the site plan as it relates to the needs of the school. Further, existing schools are considered consistent with the applicable local government's comprehensive plan. If a school board submits an application to expand an existing school site, the local government "may impose reasonable development standards and conditions on the expansion only." (s. 235.193(8), F.S.)

Section 235.194, F.S., requires each school board to annually submit a school facilities report to each local government within the school board's jurisdiction. The report must include information detailing existing facilities, projected needs and the board's capital improvement plan, including planned facility funding over the next 3 years, as well as the district's unmet need. The district must also provide the local government with a copy of its educational plan survey.

Ad Valorem Taxes/School Districts

The Florida Constitution expressly authorizes counties, school districts, and municipalities to levy ad valorem taxes. Article VII, section 9(a), of the Florida Constitution provides:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

The Florida Constitution limits the millage of ad valorem taxes. Article VII, section 9(b), of the Florida Constitution, provides in part:

> Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills;

The statutory guidelines for the determination of millage are specified in s. 200.001, F.S. Two exceptions are provided to the ten-mill cap. The exceptions include a voted debt service millage and a voted millage not to exceed a period of two years.

School district millages must be composed of five categories:

- Nonvoted required operating millage is that rate set by the school board for current operating purposes and imposed pursuant to s. 236.02(6), F.S.

- Nonvoted discretionary operating millage is that rate set by the school board for those operating purposes other than the required local millage rate authorized in s. 236.02(6), F.S., and the nonvoted capital improvement millage authorized in s. 236.25(2), F.S. The maximum rate allowed is capped by general law.

- Nonvoted capital improvement millage is the rate set by the school board for capital improvements as authorized in s. 236.25(2), F.S. The maximum rate allowed is capped by general law.

- Voted operating millage is the rate set by the school board for current operating purposes as authorized by a vote of the electors pursuant to s. 9(b), Article VII of the state constitution.

- Voted debt service millage is the rate set by the school board as authorized by vote of the electors pursuant to s. 12, Art. VII of the state constitution.

Educational Facilities Resources/K-12

Traditionally, the construction of new public school facilities or the expansion of existing facilities has been a local school board responsibility, with the state contributing approximately 20 percent of the funds for school construction. However, beginning with the 1997 Special Session on School Construction, the Florida Legislature increased the state's contribution through the provision of almost $3 billion in additional funds.

School districts derive capital outlay funds from several sources, including the following sources.

Public Education Capital Outlay and Debt Service Trust Fund (PECO): PECO is a state program that provides funds to school districts from revenue derived from the gross receipts tax – a tax collected from the sale of utility services. PECO funds are appropriated for the maintenance, repair, and renovation of existing public school facilities and for the construction of new public school facilities. In the 2001-2002 General Appropriations Act, school districts received $145.9 million as PECO maintenance funds and $203.5 million as PECO new construction funds.

Capital Outlay and Debt Service Fund (CO&DS): The CO&DS is another major state source of capital outlay revenues available to local school districts. This revenue source is derived from the first sale of motor vehicle license tags. CO&DS funds are provided to school districts in two ways: (1) as net bond proceeds, or (2) as direct cash payments. School districts may choose to receive their CO&DS funds by either method; however, they must bond their CO&DS funds if they wish to receive revenue from the Classrooms First Program. In the 2001-2002 fiscal year, the Legislature appropriated approximately $81.5 million to school districts as net bond proceeds and $12.2 million as direct cash payments.

Special Facility Construction Account: The Special Facility Construction Account is funded with PECO dollars and provides construction funds to school districts that have urgent construction needs but lack sufficient resources and cannot reasonably anticipate sufficient resources within three years in order to fund these construction needs.

Classrooms First Lottery Bond Program: As part of the SMART Schools Act of 1997, the Legislature established a 20-year lottery-bonding program (Classrooms First) designed to provide more than $2 billion in bonded lottery funds to school districts for the construction of classrooms. All 67 school districts receive a portion of these funds based upon a modified PECO distribution formula.

Effort Index Grant Program (EIG): The EIG Program is a $300 million program designed to provide select school districts with funding for new construction only after a certain level of local effort is met. School districts may use these EIG funds for construction, renovation, repair, maintenance, or payment of debt service for such activities. As of March 2001, $184.9 million in EIG has been encumbered for school projects.

School Infrastructure Thrift (SIT) Program: The SIT Program is an incentive fund created to encourage functional, frugal school construction. A school district can receive a SIT award for savings realized through functional, frugal construction. These awards are 50 percent of the savings on the statutorily defined cost-per student station. As of June 2001, SIT awards totaling $109.4 million have been distributed to school districts for functional, frugal school construction.

Two Mill Money (nonvoted): Section 236.25(2), F.S., authorizes each school board to levy not more than 2 mills against the taxable value for school purposes to fund:

- New construction and remodeling projects, as set forth in s. 235.435(3)(b) and (6)(b), F.S., and included in the district's educational plant survey pursuant to s. 235.15, F.S., without regard to prioritization, sites and site improvement or expansion to new sites, existing sites, auxiliary facilities, athletic facilities, or ancillary facilities.

- Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies pursuant to s. 235.056(2), F.S

- The purchase, lease-purchase, or lease of school buses; drivers' education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.

- The purchase, lease-purchase, or lease of new and replacement equipment.

- Payments for educational facilities and sites due under a lease-purchase agreement entered into by a school board pursuant to s. 230.23(9)(b)5. or s. 235.056(2), F.S., not exceeding, in the aggregate, an amount equal to three-fourths of the proceeds from the millage levied by a school board pursuant to this subsection.

- Payment of loans approved pursuant to ss. 237.161 and 237.162, F.S.

- Payment of costs directly related to complying with state and federal environmental statutes and regulations governing school facilities.

- Payment of costs of leasing relocatable educational facilities, of renting or leasing educational facilities and sites pursuant to s. 235.056(2), F.S., or of renting or leasing buildings or space within existing buildings pursuant to s. 235.056(3), F.S.

Fifty-six of 67 school districts levied two mills of ad valorem property taxes in order to raise capital outlay revenues during the 2000-2001 fiscal year. The remaining 11 school districts levied anywhere between 0 mills and 1.78 mills of ad valorem property taxes for this purpose. In the 2000-2001 fiscal year, the statewide levy of two mill money provided $1.36 billion in local capital outlay revenues to school districts.

Voted Millage: Section 236.31, F.S., provides for school district millage elections. Voted millage is voter-approved millage levied on taxable property by school boards above and beyond the non-

voted two-mill money. The millage must only be levied for a maximum of two years. According to the SMART School Clearinghouse, no school districts are currently levying voted millage.

School Capital Outlay Surtax (voted): District school boards may levy the School Capital Outlay Surtax, authorized under s. 212.055(6), F.S. by referendum, at a rate not to exceed 0.5 percent. A school board levying the surtax must establish a freeze on non-capital local school property taxes, at the millage rate imposed in the year prior to the initiation of the surtax for a period of at least 3 years. The surtax proceeds may be used to fund:

- Fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 years or more years, as well as related land acquisition, land improvement, design, and engineering costs;

- Costs of retrofitting and providing for technology improvements, including hardware and software; and

- Servicing of bond indebtedness used to finance authorized projects.

In the 2000-2001 fiscal year, seven districts (Bay, Escambia, Gulf, Hernando, Jackson, Monroe, and Santa Rosa) levied the surtax that generated $71.5 million in revenue.

Local Government Infrastructure Surtax (voted): Section 212.055(2), F.S., provides for the Local Government Infrastructure Surtax. The governing authority in each county may levy this 0.5 percent or 1 percent tax after a favorable vote of the electorate through a local referendum. Section 212.055(2)(c), F.S., provides that school districts, with the consent of the county governing authority may participate in the tax. In 2000-2001 fiscal year, five counties (Hillsborough, Pinellas, Clay, Osceola, and Sarasota) levied a local government infrastructure surtax that provided $36.9 million in revenue to local school districts.

Bond Referendum (voted): A bond referendum is a school district election that allows the voters to decide whether or not the school district should issue bonds for the purpose of generating school capital outlay funds. Since the 1985-1986 fiscal year, 19 school districts have approved local bond referendums in order to fund school district capital outlay needs. Statewide, the bonds issued by school boards for school construction have generated or will generate over the life of the bonds $2.68 billion.

Impact Fees: Under the Home Rule Power given to counties in Article VIII, Section 6 of the Florida Constitution, and s. 125.01, F. S., counties may levy impact fees on new construction. The fees are used to pay for the increased demand on infrastructure created by new construction. The fees are levied in proportion to the demand created by the new construction and used to build the new infrastructure needed. Impact fees are used to construct new infrastructure including water and sewer facilities, roads, fire departments, and schools.

In order to withstand legal challenge, impact fees must possess the following characteristics:

- The fee is levied on new development or new expansion of existing development;

- The fee is a one-time charge, although its collection may be spread out over time;

- The fee is earmarked for capital outlay only;

- The fee represents a proportional share of the cost of the facilities needed to serve the new development.

Currently, fifteen counties levy school impact fees on new construction to finance the construction of new schools. School districts benefiting from impact fee collections include Broward, Citrus, Dade, Hernando, Hillsborough, Lake, Martin, Orange, Osceola, Palm Beach, Seminole, St. Johns, St. Lucie, and Volusia Counties. During the 1999-2000 fiscal year, the collection of impact fees generated an aggregate amount of $81.9 million for the purpose of school construction.

Charter Schools

Charter schools are public schools that operate under a performance contract, or a charter which frees them from most rules and state statutes created for traditional public schools. As part of the contract, charter schools are held accountable for academic and financial results. According to section 228.056, F.S., charter schools are part of the state's program of public education and are fully recognized as public schools. Current law specifies that the purpose of charter schools must be to:

- Improve student learning;
- Increase learning opportunities for all students,
- Encourage the use of different and innovative learning methods;
- Increase learning opportunity choices for students;
- Establish a new form of accountability for schools;
- Require the measurement of learning outcomes and create innovative measurement tools;
- Establish the school as the unit for improvement;
- Create new professional opportunities for teachers;
- Provide rigorous competition within the public school district in order to stimulate improvement in all public schools;
- Provide additional academic choices for parents and students;
- Expand capacity of the public school system.

Statutory provisions specify that creating a new school or converting an existing school to a charter school are methods that may be used to form a charter school. An individual, a group of parents or teachers, a business, a municipality, or a legal entity may submit an application to the school district in order to form a new charter school. Section 228.056(4), F.S., authorizes a school board to sponsor a charter school in the county over which the school board has jurisdiction. Specifically, a school board must receive and review all applications for a charter school. Within 60 days after receiving a charter school application, a school board must approve or deny a charter school application through a majority vote. If a school board denies a charter school application, it must express in writing the specific reasons for which the charter school application was denied within 10 calendar days after rendering its decision. According to s. 228.056(4)(b), F.S., a charter school applicant may appeal a school board's denial of a charter school application or its failure to render a decision on a charter school application to the State Board of Education within 30 calendar days after the school board's denial of the application or failure to render a decision on the application. Within 60 calendar days after a charter school applicant files an appeal, the State Board of Education must accept or reject the school board's initial decision through a majority vote. Subsequently, the State Board of Education must remand the charter school application to the school board with its written recommendation specifying whether or not the school board should approve or deny the charter school application. Section 228.056(4)(c), F.S., requires the school board to act upon the recommendation of the State Board of Education within 30 calendar days after receiving the recommendation. The school board may fail to act in accordance with the recommendation of the State Board of Education if it determines that the recommendation is

contrary to law or contrary to the best interest of the students or the community. The school board's action on the State Board of Education's recommendation is a final action subject to judicial review.

According to s. 228.056(6)(b), F.S., a charter school must enroll an eligible student that submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such a situation, applicants are admitted through a random selection process. A charter school is only authorized to limit the enrollment process in order to target specific student populations. Such populations include students within specific age groups or grade levels; students considered to be at risk of dropping out of school or academic failure; students who wish to enroll in a charter school-in-the-workplace; and students residing within a reasonable distance of the charter school.

Charter Schools-In-The-Workplace

Section 228.056(22), F.S., establishes charter schools-in-the-workplace in order to increase business partnerships in education, reduce school and classroom overcrowding throughout the state, and offset the high costs associated with the construction of educational facilities. Charter schools-in-the-workplace may be established when a business partner provides the school facility to be used; enrolls students based upon a random lottery that involves all of the children of the employees of the business; and enrolls students according to the racial/ethnic balance reflective of the community or other public schools in the same school district. Any portion of a facility used for a charter school must be exempt from ad valorem taxes.

Charter School Capital Outlay Funding

Section 228.0561, F.S., provides for charter school capital outlay funding and specifies that unless otherwise provided in the General Appropriations Act, the capital outlay allocation for each charter school must be determined by multiplying the charter school's projected student enrollment by one-fifteenth of the cost-per-student station for an elementary, middle, or high school. If the appropriated funds are not sufficient, the Commissioner of Education must prorate the funds among the charter schools.

Public/Private Partnerships

Section 235.2199, F.S., provides that any school district that plans to build three or more new public schools within a 5-year period is encouraged to build at least one of every three new schools through public-private partnerships if such partnerships are projected to result in cost savings compared to the most frugal method of public school construction currently used in the district.

Community Development Districts

Chapter 190, F.S., is the Uniform Community Development District Act of 1980. In adopting the act the Legislature expressed its concern that there was a need for uniform procedures in state law to authorize the establishment of community development districts (CDDs) to provide for the planning, management, and financing of capital infrastructure.

Specifically, the Uniform Community Development District Act allows developers to create independent special districts with a broad range of governmental powers as a means of financing various types of infrastructure and delivering urban community services for planned developments. The districts are intended to benefit the taxpayers of counties and municipalities in which the districts are located by shifting the burden of paying for infrastructure to those buying land in the districts. However, CDDs do not have the power of a local government to adopt a comprehensive plan, building code, or land development code.

Pursuant to ch. 190, F.S., establishment of a CDD can proceed in one of two ways.

- Pursuant to subsection 190.005(1), F.S., CDDs larger than 1,000 acres must be established by rule, adopted pursuant to chapter 120, F.S., of the Florida Land and Water Adjudicatory Commission (FLAWAC).

- Pursuant to subsection 190.005(2), F.S., a county or municipality can establish a CDD by passage of a local ordinance adopted by the county commission, if it encompasses less than 1,000 acres.

Powers of the CDD

CDDs have limited authority and may only exercise those powers that are expressly granted to them by law or those that are necessarily implied because they are essential to carry into effect those powers granted. Thus, CDDs are authorized to accomplish special, limited purposes and do not possess the broader home rule powers that municipalities and counties have in Florida.

Section 190.011. F.S., grants the general corporate powers that CDDs may exercise. The section provides districts shall have and boards may exercise the following powers:

- Sue and be sued in the name of the district;
- Make and execute contracts;
- Apply for coverage of its employees under the state retirement system;
- Borrow money and accept gifts;
- Maintain an office within the county in which the district is located;
- Acquire, purchase, or dispose of easements, dedications, or reservations;
- Assess and impose ad valorem taxes;
- Adopt administrative rules for the district;
- Levy special assessments; and
- Exercise all of the powers necessary, convenient, incidental, or proper in connection with any powers, duties, or purposes authorized by the act.

Section 190.012, F.S., makes provision for special powers of CDDs. The section provides that the district shall have and the board may exercise any or all of the following special powers relating to public improvements and community facilities:

- Finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for the following infrastructures:

    - water management;
    - water supply, sewer, and wastewater management;
    - bridges or culverts;
    - district roads; and
    - any project when required by the local government pursuant to s. 380.06, FS., or s. 380.61, F.S.

- After the board has obtained consent of the local government(s) within the jurisdiction, the district may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for:
    - parks and facilities for indoor and outdoor recreation, cultural, and educational uses;
    - fire prevention and control;

- school buildings and related structures;
- control and elimination of mosquitoes and the like;
- security such as guardhouses, fences, electronic intrusion systems, and patrol cars;
- waste collection and disposal.

Special Assessments

Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. The greatest challenge to a valid special assessment is its classification as a tax by the courts.

The courts have defined the differences between a special assessment and a tax. Taxes are levied for the general benefit of residents and property rather than for a specific benefit to property. As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax. [See City of Boca Rotan v. State, 595 So. 2d 25 (FLA. 1992)

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use and physical characteristics of the parcel.

Another important distinction in relevant descriptions of local government revenues is between special assessments and user or service charges. While special assessments and service charges are similar in many respects, a key difference is that a special assessment is an enforceable levy while a service charge or fee is voluntary.

A special assessment may provide funding for capital expenditures or the operational costs of services provided that the property, which is subject to the assessment, derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, stormwater management services, and water and sewer line extensions.

Eligibility Requirements

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments; for counties, Section 125.01, Florida Statutes, and for municipalities, Chapter 170, Florida Statutes. Special districts must derive their authority to levy special assessments through general law or special act.

County governments are authorized, pursuant to s. 125.01(1), F.S., to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county for the purpose of providing a number of municipal-type services. Such services can be funded, in whole or in part, from special assessments. The boundaries of the taxing or benefit unit may include all or part of the boundaries of a municipality subject to the consent by ordinance of the governing body of the affected municipality. Counties may also levy special assessments for county purposes. Pursuant to s. 125.01(5), F.S., county governments may create special districts to include both the incorporated and unincorporated areas, subject to the approval of the governing bodies of the affected municipalities. Such districts are authorized to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.

Municipalities also have the authority, pursuant to Chapter 170, Florida Statutes, to make local municipal improvements and provide for the payment of all or any part of the costs of such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. Such decision by the governing body to make any authorized public improvement and to defray all or part of the associated expenses of such improvement must be so declared by resolution.

Authorized Uses

Section 125.01(1)(q), F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by county governments, via the municipal service taxing or benefit units. These may include fire protection, law enforcement, beach erosion control, recreation service and facilities, water, alternative water supplies, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services and other essential facilities and municipal services.

Section 170.01, F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by municipal governments. The authorized uses are too numerous to list here. In addition, s. 171.201, F.S., authorizes the governing body of a municipality to levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities.

Administrative Procedures

Three methods are generally enlisted for the collection of special assessments. The first method is termed the uniform collection method and uses the ad valorem tax bill. The second method is the traditional collection method that uses a separate bill. The third method is the monthly utility bill. The method chosen by a local government depends on the type of program to be funded, service or capital, and the funding source.

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as only those assessments that are not based on millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution. Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon. . ."

Section 197.3631, F.S., authorizes local governments to collect non-ad valorem assessments by one of two methods -- either the uniform method set forth in ss. 197.3632 and 197.3635, F.S., or "any alternative method which is authorized by law."

Chapter 189, F.S., Minimum Requirements for Dependent Special Districts

Section 189.4041, F.S., provides that the charter for the creation of a dependent special district created after September 30, 1989, shall be adopted only by ordinance of a county or municipal governing body having jurisdiction over the area affected. The section authorizes a county to create dependent special districts within the boundary lines of the county, subject to the approval of the governing body of the incorporated area affected. The section also authorizes a municipality to create dependent special districts within the boundary lines of the municipality. Dependent special districts created by a county or municipality must be created by adoption of an ordinance that includes:

- The purpose, powers, functions, and duties of the district.
- The geographic boundary limitations of the district.
- The authority of the district.
- An explanation of why the district is the best alternative.
- The membership, organization, compensation, and administrative duties of the governing board.
- The applicable financial disclosure, noticing, and reporting requirements.
- The methods for financing the district.
- A declaration that the creation of the district is consistent with the approved local government comprehensive plans.

C. EFFECT OF PROPOSED CHANGES:

This bill provides for the creation of educational facilities benefit districts (benefit districts) to finance the construction and maintenance of educational facilities. The stated intent of the act is to provide efficient alternative mechanisms and incentives to allow for sharing of costs of educational facilities necessary to accommodate new growth and development between public agencies and benefited private interests. The stated purpose of benefit districts is to assist in the financing the construction and maintenance of educational facilities.

The bill authorizes the creation of benefit districts by a county or municipality by entering into an interlocal agreement with the school board and any local general purpose government within whose jurisdiction a portion of the district is located, and adoption of an ordinance. The bill requires the creating entity to be the local general purpose government within whose boundaries a majority of the educational facilities benefit district's lands is located. Creation of any benefit district is conditioned upon the consent of the school board, all local general purpose governments within whose jurisdiction any portion of the benefit district is located, and all landowners within the district. The membership of the governing board of any benefit district must include representation of the school board, each cooperating local general purpose government, and the landowners within the district. In the case of the benefit district's decision to create a charter school, the board of directors of the charter school will constitute the members of the governing board for the benefit district.

The bill provides for the powers of benefit districts, including the power to finance and construct educational facilities within the boundaries of the district, levy special assessments, issue bonds, and the power of eminent domain.

As an alternative to the creation of benefit districts, the bill authorizes community development districts to receive the financial enhancements available to benefit districts providing for financing the construction and maintenance of educational facilities contained in the act. In order to receive such financial enhancements, the subsection requires community development districts to enter into an interlocal agreement with the school board and affected local general purpose governments that specifies the obligations of all parties to the agreement.

The bill provides for school district funding for benefit districts and community development districts meeting specified conditions. Upon confirmation by a school board of the commitment of revenues by a benefit district or community development district necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the following funds must be provided to the benefit district annually beginning with the next fiscal year after confirmation and until the district's financial obligations are completed:

- An annual amount equal to one mill of taxation for all taxable property within the benefit district or the community development district, contributed by the school board.

- All educational facilities impact fee revenue collected for new development within the benefit district or the community development district.

The bill provides that all facilities funded pursuant to this act must reflect the racial balance of the school district pursuant to state and federal law. However, to the extent allowable pursuant to such law, the section provides that the interlocal agreement providing for the establishment of an educational facilities benefit district or the interlocal agreement between a community development district and the school board and affected local general purpose governments may provide for the school board to establish school attendance zones that allow students residing within a reasonable distance of facilities financed through the interlocal agreement to attend such facilities.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 235.1851, F.S., is created to provide legislative intent and to authorize the creation of educational facilities benefit districts (benefit districts) pursuant to an interlocal cooperation agreement between a local school board and all local general purpose governments within whose jurisdiction a district is located. Subsection (2) provides that the purpose of a benefit district is to assist in financing the construction and maintenance of educational facilities.

Subsection (3)(a) authorizes the creation of a benefit district pursuant to this act and ch.s 163, 125, 166, and 189, F.S. Such district charters may be created by a county or municipality by entering into an interlocal agreement, as authorized by s. 163.01, F.S., with the school board and any local general purpose government within whose jurisdiction a portion of the district is located, and adoption of an ordinance that includes all provisions contained within s. 189.4041, F.S. The section requires the creating entity to be the local general purpose government within whose boundaries a majority of the benefit district's lands is located.

Subsection (3)(b) provides that the creation of any benefit district shall be conditioned upon the consent of the school board, all local general purpose governments within whose jurisdiction any portion of the benefit district is located, and all landowners within the district. The subsection provides that the membership of the governing board of any benefit district must include representation of the school board, each cooperating local general purpose government, and the landowners within the district. In the case of the benefit district's decision to create a charter school, the board of directors of the charter school shall constitute the members of the governing board for the benefit district.

Subsection (4) provides that a benefit district shall have, and its governing board may exercise, the following powers:

- To finance and construct educational facilities within the district's boundaries.

- To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire, by purchase, gift, devise or otherwise and dispose of real and personal property of any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

- To apply for coverage of its employees under the State Retirement System in the same manner as if such employees were state employees; subject to necessary action by the district to pay employer contributions into the State Retirement Fund.

- To contract for the services consultants to perform planning, engineering, legal or other appropriate services of a professional nature.

- To borrow money and accept gifts; to apply for unused grants or loans of money or other property for any district purposes and enter into agreements required in connection therewith; and to hold, use and dispose of such monies or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.

- To adopt resolutions and policies prescribing the powers, duties and functions of the officers of the district, the conduct of the business of the district, the maintenance of records and documents of the district.

- To maintain an office within the district or within the boundaries of the local general purpose government which created the district.

- To hold, control and acquire by donation, purchase, or condemnation pursuant to ch.s 73 or 74, F.S., if authorized by all governmental entities that are party to the interlocal agreement, or dispose of any public easements, dedication to public use, platted reservations for public purposes or any reservations for those purposes authorized by this act and to make use of such easements, dedications or reservations for any of the purposes authorized by this act.

- To borrow money and issue bonds, certificates, warrants, note or other evidence of indebtedness herein provided for periods not longer than 30 years; such debt may only be guaranteed by non ad valorem assessments legally imposed by the district and other available sources of funds provided by this act and may not be guaranteed by the full faith and credit of any local general purpose government or the school board.

- To cooperate with or contract with other governmental agencies and to accept funding from local agencies as provided in the act.

- To levy, impose, collect and enforce non-ad valorem assessments.

- To exercise all powers necessary, convenient, incidental or proper in connection with any of the powers, duties, or purposes authorized by this act.

Subsection (5) provides that as an alternative to the creation of benefit districts, the Legislature recognizes and encourages the consideration of community development district creation pursuant to ch. 190, F.S., as a viable alternative for financing the construction and maintenance of educational facilities as described in this act. The section provides that community development districts are therefore deemed eligible for the financial enhancements available to benefit districts providing for the financing of the construction and maintenance of educational facilities contained in s. 235.1852, F.S. In order to receive such financial enhancements, the subsection requires community development districts to enter into an interlocal agreement with the school board and

affected local general purpose governments that specifies the obligations of all parties to the agreement.

Section 2. Section 235.1852, F.S., is created to provide for school district funding for benefit districts and community development districts meeting specified conditions. Subsection (1) provides that upon confirmation by a school board of the commitment of revenues by a benefit district or community development district necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the following funds must be provided to the district annually beginning with the next fiscal year after confirmation and until the district's financial obligations are completed:

- An annual amount equal to one mill of taxation for all taxable property within the benefit district or the community development district, contributed by the school board.

- All educational facilities impact fee revenue collected for new development within the benefit district or the community development district.

Section 3. Section 235.1853, F.S., is created to address utilization of educational facilities funded pursuant to this act. The section provides that all facilities funded pursuant to this act must reflect the racial balance of the school district pursuant to state and federal law. However, to the extent allowable pursuant to such law, the section provides that the interlocal agreement providing for the establishment of a benefit district or the interlocal agreement between a community development district and the school board and affected local general purpose governments may provide for the school board to establish school attendance zones that allow students residing within a reasonable distance of facilities financed through the interlocal agreement to attend such facilities.

Section 4. An effective date of upon becoming a law is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill authorizes counties and municipalities to create educational facilities benefit districts (benefit districts), which are intended to assist in the financing and maintenance of educational facilities. Such districts are granted the authority to levy special assessments. In addition, the bill provides financial incentives for benefit districts, as well as community development districts, to share in the costs of educational facilities. To the extent the bill achieves its stated purpose, additional revenues will be available for the financing and maintenance of educational facilities.

2. Expenditures:

Upon confirmation by a school board of the commitment of revenues by a benefit district or CDD necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the following funds must be provided to the district annually beginning with the next fiscal year after confirmation and until the district's financial obligations are completed: an annual amount equal to one mill of taxation for all taxable property within the benefit district or the community development district, contributed by the school board; all educational facilities impact fee revenue collected for new development within the benefit district or the CDD.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As discussed in the "Effects of Proposed Changes" section of the analysis, this bill authorizes the creation of educational facilities benefit districts to finance the construction and maintenance of educational facilities. Such districts are granted the authority to impose special assessments on property owners. Creation of a benefit district is conditioned upon the approval of all landowners.

The bill provides incentives for developers to participate in the creation of benefit districts, as well as community development districts, to assist in financing the construction and maintenance of educational facilities that will benefit their property.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Article IX, section 1, of the Florida Constitution provides:

> Public education.--The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

In School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977), the Florida Supreme Court noted that there is a dearth of authority construing the significance of the phrase "uniform system of free public schools," as appears in Article IX, Section 1 of the Florida Constitution. While this phrase was subsequently amended, there remains a dearth of authority construing the significance of the phrase. [Section 1 was subsequently amended by an amendment proposed by the Constitution Revision Commission, (Revision No. 6, 1998, filed with the Secretary of State May 5, 1998; adopted 1998). The amendment made education a "fundamental value," made it a "paramount duty of the state to make adequate provision for the education of all children residing within its borders," and defined "adequate provision" by requiring that the public school system be "efficient, safe, secure, and high quality."]

Florida courts have never settled upon a concrete definition of the phrase "uniform system of free public schools." In School Board of Escambia County v. State, 353 So.2d 834, 837 (Fla. 1977), the Florida Supreme Court stated that the constitution requires a school system where "the constituent parts . . . operate subject to a common plan or serve a common purpose." In St. John's County v. Northeast Florida Builders Association, Inc., 583 So.2d 635 (Fla. 1991), the Florida Supreme Court noted that the constitution does not require uniformity in school funding. The court concluded, "The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature." Id. at 641. In Florida Department of Education v. Glasser, 622 So.2d 944 (Fla. 1993), the court suggested that decisions concerning the uniformity of the state's school system should be left to the Legislature. In Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So.2d 400 (Fla. 1996), the court declined to assess the adequacy of legislative findings. The court concluded, "We hold that the legislature has been vested with enormous discretion by the Florida Constitution to determine what provision to make for an adequate and uniform system of free public schools." Id. At 7. Following this decision, voters adopted the amendment referenced above.

As with all legislation, this bill and its implementation must conform with constitutional requirements and must not contravene the constitutional requirement:

> Adequate provision shall be made by law for a **uniform**, efficient, safe, secure, and high quality system of **free** public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

This bill authorizes the creation of educational facilities benefit districts (benefit districts), which are intended to assist in the financing and maintenance of educational facilities. Such districts are granted the authority to levy non-ad valorem assessments, which must provide a special benefit to property. In this case, the benefit derived will be the availability of educational facilities. In addition, the bill provides financial incentives, in the form of contributions from the school board, for benefit districts, as well as community development districts, to share in the costs of educational facilities.

To the extent the bill achieves its stated purpose, additional revenues will be available for the financing and maintenance of educational facilities that benefit property owners in benefit districts and community development districts. However, the bill does not limit such benefits to property owners within the benefit district or the community development district.

As noted, Florida courts have never settled upon a concrete definition of the phrase "uniform system of free public schools," and there is no case law under the 1968 Florida Constitution, as amended, directly related to the creation of special districts to fund educational facilities. However, several past rulings are relevant. In State v. Board of Public Instruction of Pasco County for and on behalf of West Pasco County Special Tax School Dist. Of Pasco County, 176 So.2 337 (1965), the Florida Supreme Court considered the validity of school bonds issued by a special taxing district to pay the cost of construction and improvements for educational facilities within the district. The question raised in the case was whether the special act creating the district violated Section 1, Article XII of the Florida Constitution of 1885, which provided for a "uniform system of public free schools." While applying the Florida Constitution of 1885, as amended, the court found that the special act created a tax area to make improvements to the system of schools in a rapidly growing area, and concluded that the act could not be said to affect the uniformity of the system of schools.

In St. John's County v. Northeast Florida Builders Association, Inc., 583 So.2d 635 (Fla. 1991), the Florida Supreme Court considered a challenge to the imposition of school impact fees on the basis that the ordinance establishing the fees violated Article IX, section 1 of the Florida Constitution. While the facts of the case are quite different from those surrounding this bill, the court's findings are suggestive of several points.

The court found that:

> Insofar as the constitution provides for "free public schools," it is clear that no student may be required to pay tuition as a condition of being admitted into school. Of course, this does not mean that the students' parents are exempt from paying any of the costs of maintaining the school system. Obviously, property owners who have children pay ad valorem taxes, portions of which pay for schools. The mandate of free public schools insures that students' access to public schools is not dependent upon the payment of any fees or charges. Under the schedule of charges in the St. Johns County ordinance, the payment of the impact fees is unrelated to school attendance. Thus, to the extent that the impact fee is imposed upon each dwelling unit, we see no violation of the constitutional imperative of free schools.
>
> The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because of higher or lower property values or differences in millage assessments, will always favor or disfavor some districts. We hold that the ordinance does not violate the requirement of a uniform system of public schools.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:	Staff Director:
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