

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1677 Panama City-Bay County Airport District  
**SPONSOR(S):** Brown  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** None.

---

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Local Government &amp; Veterans' Affairs</u>	_____	<u>Smith</u>	<u>Cutchins</u>
2) <u>Finance &amp; Tax</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

This bill re-codifies chapter 98-527, Laws of Florida, relating to the Panama City-Bay County Airport and Industrial District, an independent special district, in Bay County.

Currently, the district is within certain legal boundaries in Bay County. This bill amends the district's boundaries by removing the current legal boundary description from the charter and provides for the boundaries to be coterminous with the legal boundaries of Bay County. The bill provides the district will not lease, own, or acquire any real estate except in Bay County without the permission of the county or city within whose jurisdiction such property is located.

The district does not have taxing authority, therefore expansion of the boundaries would not subject any property owner to ad valorem taxation. The district revenue source is to collect rates, fees, rentals and other charges for the use of or for the services of any district facilities.

The bill replaces "Airport authority" or "Authority" to "Airport district" or "district."

The bill amends the process by which the Board of Directors awards contracts for District purposes.

According the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2004-05 or 2005-06.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1677.lgv.doc  
**DATE:** March 15, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

This bill re-codifies chapter 98-527, Laws of Florida, relating to the Panama City-Bay County Airport and Industrial District, an independent special district, in Bay County.

Currently, the district is within certain legal boundaries in Bay County. This bill amends the district’s boundaries by removing the current legal boundary description from the charter and provides for the boundaries to be coterminous with the legal boundaries of Bay County. The bill provides the district will not lease, own, or acquire any real estate except in Bay County without the permission of the county or city within whose jurisdiction such property is located.

The district does not have taxing authority, therefore expansion of the boundaries would not subject any property owner to ad valorem taxation. The district revenue source is to collect rates, fees, rentals and other charges for the use of or for the services of any district facilities.

The bill replaces “Airport authority” or “Authority” to “Airport district” or “district.”

The district currently requires a bid process for contracts of \$15,000 or more and allows for bid rejections, prohibits the purchasing of goods in lots in order to avoid a required bid process and provides for personal liability. This bill amends the process by which the Board of Directors awards contracts for District purposes to set the minimum requirement for bids to the current minimum requirement of section 255.20, Florida Statutes.

The bill sets out that this act is not to be construed to prohibit the district from utilizing and complying with other laws governing the issuance of contracts for construction, goods, supplies, or services by a political subdivision, or with the rules and regulations of the Federal Government or state government assisting in the financing of district facilities on a negotiated basis utilizing provisions in section 159.32, Florida Statutes.

#### General Law

*Local bids and contracts for public construction works and specification of state-produced lumber, section 255.20, Florida Statutes:*

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. For electrical work, local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted

cost-accounting principles to have a cost of more than \$50,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, construction costs include the cost of all labor, except inmate labor, and include the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law to the contrary, a county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at costs in excess of \$250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. Any contractor may be considered ineligible to bid by the governmental entity if the contractor is behind on completing an approved progress schedule for the governmental entity by 10 percent or more at the time of advertisement of the work. Any contractor prequalified and considered eligible by the Department of Transportation to bid to perform the type of work described under the contract shall be presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) With respect to contractors not prequalified with the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications shall include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures shall provide for an appeal process within the authority for objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) The provisions of this subsection do not apply:

1. When the project is undertaken to replace, reconstruct, or repair an existing facility damaged or destroyed by a sudden unexpected turn of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:
  - a. An immediate danger to the public health or safety;
  - b. Other loss to public or private property which requires emergency government action; or
  - c. An interruption of an essential governmental service.
2. When, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or responses.
3. To construction, remodeling, repair, or improvement to a public electric or gas utility system when such work on the public utility system is performed by personnel of the system.
4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.
5. When the project is undertaken as repair or maintenance of an existing public facility.

6. When the project is undertaken exclusively as part of a public educational program.
7. When the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.
8. When the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project before completion or the local government has terminated the contract.
9. When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. In deciding whether it is in the public's best interest for local government to perform a project using its own services, employees, and equipment, the governing board may consider the cost of the project, whether the project requires an increase in the number of government employees, an increase in capital expenditures for public facilities, equipment or other capital assets, the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.
10. When the governing board of the local government determines upon consideration of specific substantive criteria and administrative procedures that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor according to procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted prior to July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid award of any project in an arbitrary or capricious manner. This exception shall apply when all of the following occur:
  - a. When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting ordinance.
  - b. In the event the project is to be awarded by any method other than a competitive selection process, the governing board must find evidence that:
    - (I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or
    - (II) The time to competitively award the project will jeopardize the funding for the project, or will materially increase the cost of the project or will create an undue hardship on the public health, safety, or welfare.

c. In the event the project is to be awarded by any method other than a competitive selection process, the published notice must clearly specify the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. In the event the project is to be awarded by a method other than a competitive selection process, the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection; and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d)1. If the project is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. If the project uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. If the project is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(e) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999, and is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999, and is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner as inspections required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(2) The threshold amount of \$200,000 for construction or \$50,000 for electrical work must be adjusted by the percentage change in the Consumer Price Index from January 1, 1994, to January 1 of the year in which the project is scheduled to begin.

(3) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the

letting of contracts for public work, for the construction of public bridges, buildings, and other structures must always specify lumber, timber, and other forest products produced and manufactured in this state whenever such products are available and their price, fitness, and quality are equal. This subsection does not apply when plywood specified for monolithic concrete forms, when the structural or service requirements for timber for a particular job cannot be supplied by native species, or when the construction is financed in whole or in part from federal funds with the requirements that there be no restrictions as to species or place of manufacture.

(4) Any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall have standing to challenge the propriety of the local government's actions when the local government seeks to invoke the provisions of this section. The prevailing party in such action shall be entitled to recover its reasonable attorney's fees.

*Construction contracts, section 159.32, Florida Statutes:*

Contracts for the construction of the project may be awarded by the local agency in a manner as in its judgment will best promote free and open competition, including advertisement for competitive bids in a newspaper of general circulation within the boundaries of the local agency; however, if the local agency determines that the purposes of this part will be more effectively served, the local agency in its discretion may award or cause to be awarded contracts for the construction of any project, or any part thereof, upon a negotiated basis as determined by the local agency. The local agency will prescribe bid security requirements and other procedures in connection with the award of contracts as in its judgment will protect the public interest. The local agency may by written contract engage the services of the lessee, purchaser, or prospective lessee or purchaser of any project in the construction of the project and provide in the contract that the lessee, purchaser, or prospective lessee or purchaser act as an agent of, or an independent contractor for, the local agency for the performance of the functions described therein, subject to the conditions and requirements consistent with the provisions of this part as will be prescribed in the contract, including functions such as the acquisition of the site and other real property for the project; the preparation of plans, specifications, and contract documents; the award of construction and other contracts upon a competitive or negotiated basis; the construction of the project, or any part thereof, directly by the lessee, purchaser, or prospective lessee or purchaser; the inspection and supervision of construction; the employment of engineers, architects, builders, and other contractors; and the provision of money to pay the cost thereof pending reimbursement by the local agency. Any contract may provide that the local agency may, out of proceeds of bonds, make advances to or reimburse the lessee, purchaser, or prospective lessee or purchaser for its costs incurred in the performance of those functions, and set forth the supporting documents required to be submitted to the local agency and the reviews, examinations, and audits that will be required in connection to assure compliance with the provisions of this part and the contract.

Background on the Codification Process

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was authorized by the 1997 Legislature when it amended chapter 189, Florida Statutes, to provide for codification of all special district charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first.

The 1998 Legislature amended section 189.429, Florida Statutes, to: (1) extend the codification deadline to December 1, 2004; (2) allow for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the Committee on Community Affairs; (3)

remove the prohibition of substantive amendments in a district's codification bill; and (4) remove the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the scheduled deadline. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district.

Additionally, the 2001 Legislature amended section 189.429, Florida Statutes, creating subsections (2) and (3). The subsections provide that reenactment of existing law pursuant to section 189.429: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

According to the schedule of submittals, Special Fire Control Districts are to submit their charters during the 2004 Legislative Session.

C. SECTION DIRECTORY:

**Section 1.** Provides that this act is the District's charter codification required under section 189.429, Florida Statutes; provides Legislative intent; preserves all District authority.

**Section 2.** Repeals, amends, reenacts, and codifies chapter 98-527, Laws of Florida, relating to the Panama City-Bay County Airport & Industrial District.

**Section 3.** Re-creates the Panama City-Bay County Airport & Industrial District and re-creates and reenacts the charter to read:

Section 1. Establishes an independent special airport district in Bay County to be named the Panama City-Bay County Airport & Industrial District; provides boundaries that are coterminous with the legal boundaries of Bay County; and provides the district will not lease, own, or acquire any real estate except in Bay County without the permission of the county or city within whose jurisdiction such property is located.

Section 2. Provides definitions.

Section 3. Provides for the district's governing board; provides for appointment of Board members; provides for terms; provides quorum; requires three members approval before spending or borrowing of authority funds; provides for reimbursement of members expenses; provides reimbursement requirements; authorizes the employment of an airport manager; provides salary; provides for hiring other employees; authorizes the establishment of an independent airport police department with full police powers; and grants the power to contract with other airport authorities in carrying out common projects and purposes.

Section 4. Provides for purposes of the authority; and provides that the exercise of authorized powers serves a public purpose.

Section 5. Grants powers and duties to the district's governing board; and provides for monthly open meetings.

Section 6. Authorizes issuance of district bonds; provides purposes of bonds; and provides procedures.

Section 7. Grants additional powers to the board specifically related to bonds and related issues; provides that district revenues may be used to pay bonds principal and interest; authorizes

the use of other funds; grants all powers of a local agency pursuant to part II, chapter 159; and provides that district obligations are not obligations of the state or other subdivisions, except in a limited situation.

- Section 8. Provides requirements for bonds and issuance of bonds; provides procedures; allows for temporary bonds; provides for payment of bonds; provides for a sinking fund; provides provisions which may be addressed in the resolution authorizing the bonds; provides that bonds are negotiable instruments; provides for liens; and provides that UCC filings are not necessary.
- Section 9. Authorizes the issuance of revenue bonds; provides requirements of revenue bonds; provides procedures for issuance; and prohibits the authority from conveying or mortgaging any facility or part of a facility as security for the payment of revenue bonds.
- Section 10. Authorizes the issuance of refunding bonds and refunding revenue bonds; provides purposes for the issuance; and provides that the maturities, remedies, rights, duties and other issues are governed by the act's provisions.
- Section 11. Provides that district bonds constitute legal investments; and provides that district bonds also are securities eligible for deposit as security.
- Section 12. Grants remedies to bond holders; and provides that bond holders can enforce and compel required duties.
- Section 13. Provides that the district serves a public purpose; provides that exercise of powers by the district is a public purpose; and exempts the authority's facilities or any parts from having any taxes or assessments levied against the property.
- Section 14. Provides procedures and requirements relating to the expenditure of district funds; provides that fidelity bonds may be required; and provides that the district pays the premiums on the fidelity bonds.
- Section 15. Requires an annual audit; and requires that the audit be submitted to the authority, city commission, and county commission.
- Section 16. Requires bids for improvements, construction, and purchase of goods and materials if the amount to be paid is above a specific amount; allows the bypass of this section in the case of an emergency; provides this act is not to be construed to prohibit the district from utilizing and complying with other laws governing the issuance of contracts for construction, goods, supplies, or services by a political subdivision, or with the rules and regulations of the Federal Government or state government assisting in the financing of district facilities on a negotiated basis utilizing provisions in section 159.32, Florida Statutes.
- Section 17. Prohibits any member or entity it has an interest in from selling goods or materials to the district; provides that the district is not obligated to pay if the situation arises; prohibits any member or entity it has an interest in from submitting a bid for any work; provides that violation of this provision is malfeasance of office; and allows for recovery.
- Section 18. Prohibits members, officers or employees from acting as a consultant, employed by, or receiving compensation from, any vendor or other entity of the airport authority; prohibits conduct other than airport business within the facility or property; and provides that violation of this provision is malfeasance of office.



Section 19. Provides that the powers in this act are supplemental to existing powers; and repeals prior special acts of the district.

Section 20. Provides for the repeal of any section, clause, or provision of this act if it is held ineffective or unconstitutional.

**Section 3.** Repeals chapter 98-527, Laws of Florida.

**Section 4.** Provides effective date of upon becoming a law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 30, 2004

WHERE? *Florida Freedom Newspapers, Inc.*, publishers of the News Herald, Panama City, Bay County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

There do not appear to be any constitutional issues with the bill.

B. RULE-MAKING AUTHORITY:

The bill only grants rule-making authority to the Authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Mr. Terry E. Lewis, Esq., with the law firm of Lewis, Longman & Walker, P.A., representing the District, sent the following letter relating to the boundaries of the district:

This will serve to explain the boundary modifications proposed in HB 1677 related to Panama City-Bay County Airport and Industrial District (District). The District is currently authorized to acquire property outside of its boundaries, so its current boundary description becomes out-of-date each time the District acquires or sells property. For purposes of efficiency, the District wishes to have its boundaries the same as the boundaries for Bay County. This will allow the District to acquire and sell property within Bay County in the same manner as most county port or airport authorities without the need to update its special act every time property is acquired or sold. In addition, the change in the District's boundaries will not affect taxation of property owners because the District does not have taxing authority and HB 1677 does not propose to authorize taxing authority.<sup>1</sup>

<sup>1</sup> Letter received from Terry E. Lewis, Esq., Lewis, Longman & Walker, P.A. (March 16, 2004) (on file with the Committee on Local Government & Veterans' Affairs).

#### IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

Not Applicable.