

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.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	<u>16 Y, 0 N</u>	<u>Smith</u>	<u>Cutchins</u>
2) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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: h1677a.lgv.doc
DATE: March 26, 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. The district was created in 1967, by chapter 67-1099, Law of Florida, for the purpose of acquiring, constructing, improving, financing, operating and maintaining airport projects and any other development of land owned or leased by the district and necessary to the economic welfare of the inhabitants of the district and which will promote the economic, commercial and industrial development of the district.

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 requirements 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.

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 [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

A current provision of the charter which is being reenacted by this bill provides that “the facilities owned, operated, supervised, and controlled by the district and the board under the provisions of this act constitute public property and are used for public purposes, the board shall not be required to pay any taxes or assessments upon any such facilities or any parts thereof.”¹

The Property Appraisers’ Association of Florida, Inc. argues that this provision is unconstitutional: “there is no constitutional authority for such an exemption...the Florida Supreme Court on several occasions has rejected this virtually identical contention. See *Sebring Airport Auth. v. McIntyre*, 783 So.2d 283 (Fla. 2001); *Canaveral Port Auth. v. Dept. of Revenue*, 690 So.2d 1226 (Fla. 1996); *Sebring Airport Auth. v. McIntyre*, 642 So.2d 1072 (Fla. 1994).”²

The unconstitutionality of this language does not appear, however, to be settled. While *Canaveral Port Authority* does hold that an independent special district is not entitled to *immunity* from ad valorem taxation like the immunity provided to counties by the Florida Constitution, the Court in *Canaveral Port Authority* did evaluate whether the independent special district is *exempt* from ad valorem taxation by operation of statute. In fact, in construing the statutes, the court considered the language in the special acts of the district, as well as general law providing for the repeal of these exemptions. Thus, this case can reasonably be read to permit the Legislature to provide these exemptions by general law, as it has done in section 189.403(1), Florida Statutes, or special act.

Yet *Canaveral Port Authority* did not address specifically address the *authority* of the Legislature to enact such exemptions for these special districts. This issue was considered, in dicta, by the Second District Court of Appeal in *Sun N’ Lake of Sebring Improvement Dist. v. McIntyre*, 800 So.2d 715 (Fla. 2d DCA 2001). In that case the Court noted that the “Florida Supreme Court...has determined that the legislature is without authority to grant an exemption from ad valorem taxes where the exemption has no constitutional basis.”³ The District Court also noted the inability of the special district to provide a constitutional basis for its exemption from ad valorem taxation.⁴ In addition, the District Court opined that section 196.199(1)(c), Florida Statutes,⁵ is a “codification” of existing constitutional exemptions and refers only to political subdivisions entitled to immunity from ad valorem taxation.⁶ While the District Court commented that the arguments against the constitutionality of section 189.403(1), Florida Statutes, had “merit,” the District Court did not ultimately make such a ruling since the issue was not raised by a party with the ability to challenge the constitutionality of the statute.

B. RULE-MAKING AUTHORITY:

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

¹ HB 1677, s. 3, s. 13 of the charter (2004).

² Letter from Larry E. Levy, Property Appraisers’ Association of Florida, Inc., to the Honorable Ken Sorensen, Chair, Committee on Local Government & Veterans’ Affairs (March 25, 2004) (on file with the Committee on Local Government & Veterans’ Affairs).

³ *Sun N’ Lake of Sebring Improvement Dist. v. McIntyre*, 800 So.2d 715, 720 (Fla. 2d DCA 2001).

⁴ *Id.*

⁵ Providing that “all property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.”

⁶ *Sun N’ Lake of Sebring Improvement Dist* at 720-721.

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.⁷

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.

⁷ 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).