

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This CS creates a new independent special district for the purpose of providing services for seniors and adults with developmental disabilities in Broward County.

Ensure lower taxes --- The CS authorizes the district to levy an ad valorem tax not to exceed .5 mill on taxable property within the district, pursuant to a referendum.

Empower families --- The CS permits the district to provide and maintain in Broward County preventive, developmental, treatment, rehabilitative and any other services the council determines are needed for the general welfare of the county's seniors and adults with developmental disabilities. In addition, the council may consult and coordinate with other agencies serving seniors and adults with developmental disabilities to prevent overlapping of services.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter. See *State ex re. City of Gainesville v. St. Johns River Water Management District*, 408 So.2d 1067 (Fla. 1st DCA 1982).

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s.189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

Effect of Proposed Changes

Creation of Independent Special District in Broward County

CS for HB 1501 creates an independent special district for the purpose of providing funding for services for seniors and adults with developmental disabilities in Broward County.

The CS includes definitions of “senior”¹ and “adult with development disabilities”² to clarify that the district provide two distinct types of services. The boundaries of the district must be coterminous with the boundaries of Broward County.

The CS authorizes the district to levy an ad valorem tax not to exceed .5 mill on taxable property within the district subject to referendum approval by voters of the district. The referendum required to approve the ad valorem tax levy must be held in conjunction with the primary election held on September 5, 2006.

The CS is effective upon its approval by a majority vote of those qualified electors of Broward County voting in a referendum.

Governing Board Members and Elections

The governing board of the district is the “Broward County Council for Services for Seniors and Adults with Developmental Disabilities” (council). The council must consist of 11 members:

- the executive director of the area agency on aging of Broward County, or his or her designee who is a director of senior programs, as a permanent position;
- the Broward County Director of Human Services or his or her designee who is a director of elderly services, as a permanent position;
- a director of programs for adults with developmental disabilities or his or her designee, as a permanent position;
- one member of the Broward County Board of County Commissioners for a 2-year term;
- one nonvoting member of the Broward County legislative delegation appointed by the delegation chair for a 2-year term;
- one representative of the Broward League of Cities for a 2-year term; and
- five members appointed by the Governor for 4-year terms, initially staggered, with reappointment for one additional term permitted, and meeting these additional qualifications -
 - these members must, to the greatest extent possible, represent the cultural diversity of Broward County's population;
 - one of these members must be a caretaker or family member of a person who has a developmental disability and is 22 years of age or older;
 - one these members must be 60 years of age or older;
 - these members must have been residents of Broward County for the previous 24-month period; and
 - the County must provide three recommended names for each vacancy, determined by category, and the Governor must make a selection within a 45-day period or request a new list of candidates.

¹ “senior” means a person who is at least 60 years of age. HB 1501 at lines 64-65.

² “adult with developmental disabilities” means an adult with developmental disabilities who is at least 22 years of age. HB 1501 at lines 65-67.

The Governor may remove a member for cause or upon the written petition of the Broward County Board of County Commissioners. If any of the members of the council required to be appointed by the Governor resign, die, or are removed from office, the vacancy is filled by appointment by the Governor, using the same method as the original appointment, and such appointment to fill a vacancy shall be for the unexpired term of the person who resigns, dies, or is removed from office.

Members of the council shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses consistent with s. 112.061, F.S.

General Powers

The district council is given a number of permissive powers:

1. provide and maintain in the county such preventive, developmental, treatment, and rehabilitative services for seniors and for adults with developmental disabilities as the council determines are needed for their general welfare;
2. provide any other services as the council determines are needed for the general welfare of the county's seniors and adults with developmental disabilities;
3. allocate and provide funds for other agencies in the county which are operated for the benefit of seniors and adults with developmental disabilities;
4. collect information and statistical data and conduct research that will be helpful to the council and the county in deciding the needs of the county's seniors and adults with developmental disabilities;
5. consult and coordinate with other agencies serving seniors and adults with developmental disabilities to prevent overlapping of services;
6. seek grants from state, federal, and local agencies and accept donations from public and private sources;
7. lease or buy real estate, equipment, and personal property and construct buildings as needed to execute district powers and functions. Such purchases must be paid for with cash on hand or secured by funds deposited in financial institutions; no authority to issue bonds is granted; and
8. employ, pay, and provide benefits for required district personnel.

District Duties

The district council is also charged with a number of duties:

1. elect a chair and a vice chair from among its members, and elect other officers as deemed necessary by the council;
2. identify and assess the needs of the county's seniors and adults with developmental disabilities and submit to the Broward County Commissioners a written description of:
 - o the activities, services, and opportunities that will be provided to seniors and adults with developmental disabilities;
 - o the anticipated schedule for providing those activities, services, and opportunities;
 - o the manner in which seniors and adults with developmental disabilities will be served, including a description of arrangements and agreements which will be made with community organizations, state and local educational agencies, federal agencies, public assistance agencies, the court system, guardianship groups, and other applicable public and private agencies and organizations;
 - o the special outreach efforts that will be undertaken to provide services to at-risk, abused, or neglected and ailing seniors or profoundly afflicted adults with developmental disabilities;
 - o the manner in which the council will seek and provide funding for unmet needs; and
 - o the strategy that will be used for interagency coordination to maximize existing human and fiscal resources;
3. provide training and orientation to all new council members;
4. make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the council's operation; and

5. provide an annual written report, due January 1 of each year, to the Broward County Commissioners, which includes:
 - o information on the effectiveness of activities, services, and programs offered by the council, including cost-effectiveness;
 - o a detailed anticipated continuation budget and a list of all sources of requested funding, both public and private;
 - o procedures used for early identification of at-risk seniors and adults with developmental disabilities who need additional or continued services and methods for ensuring receipt of those services;
 - o a description of the degree to which the council's objectives and activities are consistent with the goals of this section;
 - o detailed information of the various programs, services, and activities available to, and the degree to which they have been successfully used by, seniors and adults with developmental disabilities; and
 - o information on those programs, services, and activities that should be eliminated, those which should be continued, and those that should be added to the basic format of the council.

The council must also maintain minutes of each meeting, including a record of all votes cast, and make them available to any interested person.

Fiscal Matters and Millage Rates

The CS provides a number of financial and budgeting parameters for the districts:

- The fiscal year of the district is the same as that of Broward County.
- The council must prepare a tentative annual written budget of the district's expected income and expenditures, including a contingency fund.
- The council must also compute a proposed millage rate within the voter-approved cap necessary to fund the tentative budget and comply with the provisions of s. 200.065, F.S., relating to the method of fixing millage, and fix the final millage rate by resolution of the council.
- The adopted budget and final millage rate are then certified and delivered to the Broward County Commissioners as soon as possible following the adoption by the council of the final budget and millage rate pursuant to ch. 200, F.S. The millage rate, adopted by resolution of the council, necessary to be applied to raise the funds budgeted for district operations and expenditures must be included in each certified budget.
- The millage rate may not exceed 0.5 mills of assessed valuation of all properties subject to ad valorem county taxes within Broward County.
- After the district budget is certified and delivered to the Broward County Commissioners, it may not be changed or modified by the Broward County Commissioners or any other authority.
- All taxes collected under this section shall be paid directly to the council by the Broward County Revenue Collection Division.
- All moneys received by the council must be deposited in qualified public depositories, as defined in s. 280.02, F.S., with separate and distinguishable accounts established specifically for the council and may only be withdrawn by checks signed by the council chair and countersigned by one other member of the council or by a chief executive officer authorized by the council.
- The chair and the other member of the council or chief executive officer who signs its checks must each file a surety bond in the sum of at least \$1,000 for each \$1 million or portion thereof of the council's annual budget, which bond shall be conditioned that each shall faithfully discharge the duties of his or her office. The premium on such bond may be paid by the district as part of the expenses of the council. No other council members have to give bond or other security.
- District funds may only be expended by check, except expenditures from a petty cash account not exceeding \$100. All expenditures from petty cash must be recorded. Council funds other than petty cash may not be spent unless first budgeted for and approved by the council.

- The district must timely prepare and file a quarterly financial report which includes: for the quarter --- total council expenditures and receipts; a statement of the funds on hand, invested, or deposited; and total council administrative costs.
- After or during the first year of operation of the council, the Broward County Commissioners, at its option, may fund in whole or in part the council budget from its own funds.

District Dissolution

The CS provides that the district created under this act may be amended or dissolved by a special act of the Legislature.

Additional Matching Funds

The CS provides that the council may not require any public or private service provider to provide additional matching funds as a condition of the council's or district's providing services or programs to seniors and adults with developmental disabilities.

District Compliance with Other Statutory Requirements

The CS requires that the district created under this act must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports required under part III of ch. 218, F.S., or any other report or documentation required by law, including the reporting requirements of ss. 189.415, 189.417, and 189.418, F.S.

Referendum

The CS takes effect upon approval by a majority vote of those qualified electors of Broward County voting in a referendum to be conducted by the Broward County Supervisor of Elections in conjunction with the next primary election held on September 5, 2006, in accordance with the provisions of law relating to elections currently in force.

C. SECTION DIRECTORY:

Section 1: Provides for the creation, governing body, powers, duties, and functions of an independent special district to provide funding for services for seniors and services for adults with developmental disabilities throughout Broward County.

Section 2: Provides for a referendum.

Section 3: Provides that the act shall take effect upon becoming a law, except for otherwise provided.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? September 5, 2006

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 189.404(2)(e), F.S., provides as follows:

(2) SPECIAL ACTS PROHIBITED.--Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application which:

- (e) Create an independent special district for which a statement has not been submitted to the Legislature that documents the following:
1. The purpose of the proposed district;
 2. The authority of the proposed district;
 3. An explanation of why the district is the best alternative; and
 4. A resolution or official statement of the governing body or an appropriate administrator of the local jurisdiction within which the proposed district is located stating that the creation of the proposed district is consistent with the approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

By letter to Representative Sorensen, Kristin D. Jacobs, Mayor and Commissioner of District 2, Broward County, stated that the Broward County Board of County Commissioners is in support of the legislation. This local option legislation has been included in the Commission's Legislative Program for the 2005 Legislative Session. Ms. Jacobs states that there are over 357,000 seniors residing in Broward County. For over a third of these seniors frailty is a major factor in the augmenting need for community based services. There are also an increasing number of adults with developmental disabilities. State funded services for children, in this category, end at 22 years of age. Developmentally disabled persons, over 22 years of age continue to need services, but often cannot get help. Ms. Jacobs further states that a taxing district for seniors and developmentally disabled adults will serve a public purpose as the revenue generated will supplement needed community based services resulting in an improved quality of life for these individuals. Additionally, there will be a positive economic impact through the creation of new jobs in the home health and community based service industries and employment opportunities for families caring for seniors and developmentally disabled adults.

B. RULE-MAKING AUTHORITY:

This CS requires the district council to make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the council's guidance, operation, governance, and maintenance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Fiscal Comments

According to the Economic Impact Statement, it is estimated that the Broward County Council for Services for Seniors and Adults with Development Disabilities will be eligible to receive approximately \$5,000,000 in federal and foundation grants, for each year following the implementation of the funding.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Local Government Council adopted one amendment on April 6, 2005. The amendment prohibits the council from requiring any public or private service provider to give additional matching funds as a condition of the council or district providing services or programs to seniors and adults with developmental disabilities.

At its April 13, 2005, meeting, the Committee on Elder & Long Term Care adopted one amendment to the CS. The amendment streamlines the referendum question. The Committee favorably reported a Committee Substitute for the Committee Substitute for HB 1501.