



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### Codification Generally

Codification is the process of compiling, updating, and systematically arranging the special acts that comprise a special district's charter. After a special district's charter is created by special act of the Legislature, the original charter provisions may be amended by subsequent special acts. However, special act amendments are not automatically incorporated into one special act charter. Therefore, in order to ascertain the current status of a special district's charter, it is necessary to locate all special acts amending a district's original charter. This can often be a difficult and time-consuming process for persons interested in determining the current status of a district's charter. Codification of special district charters is important because it permits readers to easily locate and identify the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature in ss. 189.429<sup>1</sup> and 191.015<sup>2</sup>, F.S., both of which were amended in 1998. The laws provide for codification of all special district charters by December 1, 2004.<sup>3</sup> Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor supersede 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.

To date, 173 special districts have codified their charters.

###### Sebring Airport Authority Generally

The Sebring Airport Authority (Authority) was created in 1967<sup>4</sup> and is a dependent special district located in Highlands County, Florida. Since its creation, the original charter of the Authority has been amended by five special acts<sup>5</sup>. This bill is a straight-forward codification of existing special acts related to the Authority and does not substantively amend the charter of the Authority.

##### **Effect of Proposed Changes**

Section 3 of the bill re-creates the Authority and reenacts the Authority's charter. The charter as it will be codified by this bill includes the following provisions:

Section 1. Provides short title of the act.

<sup>1</sup> Chapter 189, F.S., is known as the "Uniform Special District Accountability Act".

<sup>2</sup> Chapter 191, F.S., is known as the "Independent Special Fire Control District Act".

<sup>3</sup> The 1998 amendment allows for the adoption of the codification schedule provided for in an October 3, 1997, memorandum issued by the Chair of the House Committee on Community Affairs.

<sup>4</sup> Ch. 67-2070, L.O.F.

<sup>5</sup> Chs. 82-382, 89-484, 91-415, 95-526, 2001-332, L.O.F.

Section 2. Provides for the creation of the Sebring Airport Authority.

Section 3. Establishes the boundaries of the Authority.

Section 4. Provides for the appointment, composition, and administration of the governing board. The Authority is governed by a 7-member board appointed by the City Council of Sebring. Members serve 4 year terms. At least four members must be qualified electors of the City of Sebring. Four members constitute a quorum for meetings and an affirmative vote of a majority of the members present is necessary for any action taken by the board.

Section 5. Provides for selection of governing board officers.

Section 6. Lists the general powers of the Authority, including the powers to:

- Adopt bylaws for the regulation of its affairs and the conduct of its business.
- Maintain an office at such place or places as it may designate.
- Sue and be sued in its own name, plead, and be impleaded.
- Acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain, and operate any airport and other industrial facilities (including tire and automobile testing and racing) which may be located on the property of the authority.
- Issue bonds to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement, or equipment. However, bonds issued by the Authority are not debt or pledge of the faith and credit of the state or any political subdivision. Bonds may be issued without obtaining consent of any state agency or political subdivision.
- Issue revenue certificates or refunding bonds.
- Fix and collect rates, fees, and other charges for the use of or for the services and facilities furnished by any airport facilities.
- Acquire in the name of the Authority by gift, purchase, or the exercise of the right of eminent domain, in accordance with the laws of the state which may be applicable to the exercise of such powers by counties or municipalities, any lands or rights in land, and to acquire such personal property as it deems necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, or operation of any airport facilities, and to hold and dispose of all real and personal property under its control.
- Enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act.
- Accept grants or money or materials or property of any kind for any airport or other facilities from any federal or state agency, political subdivision, or other public body or from any private agency or individual, upon such terms and conditions as may be imposed.
- Contract with other governmental entities to operate airports, airfields, and other related facilities and services, including providing all personnel, tools, equipment, supervision, and other materials and services.
- Perform all acts and things necessary or convenient to carry out the powers granted by this act.

Section 7. Authorizes the City of Sebring to make grants of money to the Authority and to lease, lend, grant or convey real or personal property to the Authority.

Section 8. Establishes bidding requirements for certain construction contracts and contracts to purchase equipment or services.

Section 9. Authorizes the Authority to enter into all contracts and/or leases for Authority-owned facilities.

Section 10. Authorizes the issuance of bonds or revenue certificates for the purpose of paying the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, or equipping any of the Authority's facilities.

Section 11. Authorizes securing bond issuances with trust agreements.

Section 12. Deems all monies received by the Authority as trust funds to be applied as provided by the Authority's charter.

Section 13. Provides for enforcement of bondholder or trustee rights.

Section 14. Authorizes issuance of refunding bonds.

Section 15. Specifies that the Authority is without power to bind or commit the City of Sebring and provides that the city is not liable for the Authority's debts.

Section 16. Requires the maintenance of accounting records that are open to reasonable public inspection. In addition, the Authority must prepare an annual budget and conduct an annual audit of its affairs. Within two weeks after completion of the audit, notice that the audit is available for public inspection must be published in a local newspaper.

Section 17. Requires the Authority, if approved by the City of Sebring, to exercise any powers relating to aviation conferred upon municipalities by general law.

Section 18. Requires regular meetings of the board.

Section 19. Specifies that the Charter is regarded as supplemental and additional to powers conferred by other laws and is not a derogation of any powers now existing under other laws. Also specifies that the issuance of bonds need not comply with the requirements of any other law applicable to the issuance of bonds.

Section 20. Provides for severability of the act.

Section 21. Provides that all facilities acquired or constructed by the Authority under its charter constitute public property used for public purposes. (See Section III, Constitutional Issues, for further discussion.)

Section 22. Authorizes issuance of revenue certificates.

Section 23. Authorizes the use of certain funds for promotion and public relations purposes.

#### C. SECTION DIRECTORY:

Section 1. Provides that the bill constitutes the codification of all special acts relating to the Authority; provides legislative intent.

Section 2. Codifies, reenacts, amends, and repeals chs. 67-2070, 82-382, 89-484, 91-415, 95-526, and 2001-332, L.O.F.

Section 3. Recreates and reenacts the charter of the Authority.

Section 4. Repeals chs. 67-2070, 82-382, 89-484, 91-415, 95-526, 2001-332, L.O.F.

Section 5. Provides for the bill to take effect upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 7, 2005

WHERE? Highlands Today and The Tampa Tribune, Sebring, Highlands County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

Section 21 of the charter contains the following language, which may be construed as an effort to establish an exemption from ad valorem taxation for property owned by the Authority and leased to a private entity:

As airport facilities and other facilities located thereon are essential to the economic welfare of the inhabitants of the City of Sebring, and will promote the economic, commercial, industrial, and residential development of said city, and as the exercise of the powers conferred by this act to effect such purposes constitutes the performance of essential public functions, and as such, all facilities acquired or constructed under the provision of this act will constitute public property used for public purposes.

Property owned by governmental entities is subject to ad valorem taxation unless immune or exempt, and such exemptions are strictly construed against party claiming them. Immunity from taxation precludes the power to tax, while an exemption from taxation presupposes the existence of the power to tax but the power is limited by a constitutional or statutory provision. The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

Special districts are not immune from taxation. Therefore, property owned by special districts is taxable unless the Legislature enacts an exemption from taxation that is consistent with the Florida Constitution. Section 189.403(1), F.S., provides that special districts are treated as municipalities for purposes of s. 196.199(1), F.S., which exempts from ad valorem taxation property owned by a municipality and used for "governmental, municipal, or public purposes". Thus, property owned by a special district may be entitled to exemption only if used for a governmental or public purpose.

If a private entity leases government owned property from an exempt governmental entity, such as a special district, the actual use of the property determines whether an exemption from ad valorem taxation continues to apply. If public property is leased to a private entity, but is not used for a "public purpose", the fee interest in the property is taxable. The "public purpose" standard applicable in tax exemption cases is the "governmental-governmental" standard under which property leased to private entities for "governmental-proprietary" activities is not tax exempt. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). Non-exempt "governmental-proprietary" use occurs when a nongovernmental lessee utilizes public property for proprietary and for-profit aims to promote the comfort, convenience, safety and happiness of citizens. Conversely, exempt "governmental-governmental" use occurs when a lease of public property concerns the administration of some phase of government. See *Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

B. RULE-MAKING AUTHORITY: The bill does not address rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

It is anticipated that the bill sponsor will offer a strike-all amendment in the Council on Local Government to delete obsolete language and update references to government agencies and general law.