

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 939 Panama City-Bay County Airport and Industrial District, an Independent Special District in Bay County

SPONSOR(S): Coley and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>6 Y, 0 N</u>	<u>Smith</u>	<u>Hamby</u>
2) <u>Finance & Tax Committee</u>	<u>8 Y, 0 N</u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill re-codifies ch. 98-527, L.O.F., relating to the Panama City-Bay County Airport and Industrial District (District), an independent special district located in Bay County.

This bill codifies, or reenacts, all prior special acts of the District into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority.

The bill contains provisions which do not simply codify existing law, but amend the charter of the District:

Currently, the District is within certain legal boundaries in Bay County. The bill amends the District’s boundaries by removing the current legal boundary description from the charter and providing 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’s revenue sources are rates, fees, rentals and other charges for the use of or for the services of any District facilities.

Currently, board members have 2-year terms. The bill provides staggered 4-year terms for board members.

The bill allows airport police officers engaged in hot pursuit of a suspect to continue pursuit beyond property owned or controlled by the airport district.

The bill clarifies the current exemption from taxation for District property that is used for governmental purposes.

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

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

According the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

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

STORAGE NAME: h0939c.FT.doc
DATE: 3/23/2005

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:

This bill re-codifies ch. 98-527, L.O.F., 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 ch. 67-1099, L.O.F., 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.

Codification

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 initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows 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. 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 s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to 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.

Since the enactment of ss. 189.429 and 191.015, F.S., 173 special districts have codified their charters.

Changes to the Panama City-Bay County Airport and Industrial District Charter

Currently, the District is within certain legal boundaries in Bay County. The bill amends the District's boundaries by removing the current legal boundary description from the charter and providing 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's revenue sources are rates, fees, rentals and other charges for the use of or for the services of any District facilities.

Currently, board members have 2-year terms. The bill provides staggered 4-year terms for board members. Initially, seat 1 will be appointed by the City Commission of the City of Panama City for a term beginning on July 1, 2005, and seat 3 will be appointed by the Board of County Commissioners of Bay County for a term beginning on July 1, 2005. By July 31, 2005, the board will hold a drawing to determine the initial terms for seats 1 and 3, one of which will be a 2-year term and one a 3-year term. Seat 2 will be appointed by the City Commission of the City of Panama City for a term beginning on July 1, 2006, and seat 4 shall be appointed by the Board of County Commissioners of Bay County for a term beginning on July 1, 2006. Seat 5 will be appointed by the other board members for an initial term beginning on July 1, 2005. The terms of board members will begin on July 1 and expire on June 30. Board members will be limited to serving two terms on the board.

Currently, the District has an independent Airport Police Department with full police powers. The bill will allow airport police officers engaged in hot pursuit of a suspect to continue pursuit beyond property owned or controlled by the airport district.

The bill clarifies the current exemption from taxation for District property that is used for governmental purposes, providing the board will not be required to pay any taxes or assessments upon any such facilities or parts thereof.

The charter currently requires a bid process for contracts of \$15,000 or more, allows for bid rejections, prohibits the purchasing of goods in lots in order to avoid a required bid process, and provides for personal liability. The 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 s. 255.20, F.S.

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 s. 159.32, F.S.

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

Charter of District

In recreating and reenacting the charter for the District, the bill:

- 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 for "Airport district" or "district", "City", "County", "County Commissioners", "Aviation facility", "Airport project" or "project", "Improvements", "Cost", "Bonds", "Revenue bonds", and "Facility."
- Section 3. Provides for the District's governing board; provides the Board of Directors, a body corporate and politic, will be the governing board of the Panama City-Bay County Airport and Industrial District.
 - (1) Provides the board will consist of five members who are residents of Bay County: two board members will be appointed by the City Commission of

the City of Panama City, these seats will be denominated seats 1 and 2; two members will be appointed by the Board of County Commissioners of Bay County, these seats will be denominated seats 3 and 4. These four members will appoint the fifth member, whose seat will be denominated seat 5; except as provided, upon the expiration of the several terms of the members as provided, the Board of County Commissioners of Bay County and the City Commission of the City of Panama City will appoint successors for the members whose terms are expiring, each to hold office for a term of 4 years.

Initially, seat 1 will be appointed by the City Commission of the City of Panama City for a term beginning on July 1, 2005, and seat 3 will be appointed by the Board of County Commissioners of Bay County for a term beginning on July 1, 2005; by July 31, 2005, the board will hold a drawing to determine the initial terms for seats 1 and 3, one of which will be a 2 year term and one a 3-year term; seat 2 will be appointed by the City Commission of the City of Panama City for a term beginning on July 1, 2006, and seat 4 will be appointed by the Board of County Commissioners of Bay County for a term beginning on July 1, 2006; seat 5 will be appointed by the other board members for an initial term beginning on July 1, 2005; the terms of board members will begin on July 1 and expire on June 30; and provides board members will be limited to serve two terms on the board.

- (2) Provides for a quorum; requires approval by three members before incurring any indebtedness or expenditures of District funds or money;
- (3) Provides members will not receive compensation for their services, but provides for reimbursement for travel and per diem pursuant to ch. 112, F.S.; and provides reimbursement requirements.

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

Section 5. Provides for the powers of the Board of Directors, including the power to: sue and be sued; contract and be contracted with; adopt and use a common seal and alter the same at pleasure; acquire, purchase, hold, lease, mortgage, and convey such real and personal property as the board deems proper or expedient to carry out the purposes of this act; employ persons or agents as the board may deem advisable and to fix their compensation and to remove any appointees or employees, agents, or servants; insure improvements, fixtures, and equipment against loss by fire, windstorm, or other coverage in amounts the board deems reasonable and proper; borrow and issue evidence of indebtedness of the District to carry out the provisions of this act. The board also has the right and power to:

- (1) acquire property, including the power of eminent domain for aviation purposes only;
- (2) grant easements of right-of-way over or through any lands owned by the airport District;
- (3) construct, acquire, establish, extend, enlarge, improve, reconstruct, maintain, equip, repair, and operate any project;
- (4) borrow money, incur indebtedness, and issue bonds for and on behalf of the airport District as the board may from time to time determine; but in no case will the indebtedness of the District for bonds issued be considered a debt of the city or the county;

- (5) apply to the proper authorities of the United States for the right to establish, operate, and maintain foreign and domestic trade zones within the limits of the airport District and to establish, operate, and maintain such foreign and domestic trade zones;
- (6) fix and revise from time to time and to collect rates, fees, rentals, and other charges for the use of or for the services of any facility as it may be permissible for the board to do so under the State Constitution and the Constitution and laws of the United States;
- (7) make rules and regulations for its own government and hold regular meetings at least once a month, said meetings to be open to the public;
- (8) operate, manage, and control all projects;
- (9) enter into joint agreements and arrangements with steamship lines, railroads, airlines, or other transportation lines or any common carrier as the board shall deem to its advantage to do so;
- (10) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers and appoint and employ engineers, architects, attorneys, agents, and other employees as may be necessary in its judgment and fix their compensation; however, such compensation must be within the amount appointed for such purpose in the annual budget of the District;
- (11) exercise such powers as may be reasonably necessary to effectively control and regulate facilities on property owned or controlled by the airport District;
- (12) appoint a manager of the airport District and determine his or her duties and compensation;
- (13) appoint an airport manager, who will be a full-time employee and devote his or her time and attention to the discharge of his or her duties -- the airport manager will receive a salary as the board may set;
- (14) employ persons in addition to the airport manager as the business of the airport District may require;
- (15) maintain a full-time airport law enforcement staff and determine its duties and compensation;
- (16) receive and accept from any local or state government or the Federal Government or any agency grants for or in aid of the construction of any project and/or operation of the airport and other aviation facilities and facilities;
- (17) make rules and regulations governing aircraft which are on property owned or controlled by the airport District;
- (18) make rules and regulations governing the operation of the airport and other aviation facilities and facilities.
- (19) impose a franchise or license tax upon businesses and occupations carried on or operated under and by virtue of any franchises, licenses, or privileges granted by the board with respect to airports, and other aviation facilities and facilities, controlled or operated by the airport District and the board;
- (20) advertise the airports of the District in such manner as the board deems advisable and negotiate and contract with airlines and other institutions as the board may deem necessary for development, expansion, and operation of the airport District;
- (21) acquire, own, and control the properties now owned and held by the Panama City-Bay County Airport and Industrial District and assume all of its indebtedness, obligations, and liabilities;
- (22) adopt a budget with which all expenditures must be made in strict accordance with the budget adopted and approved;

- (23) establish an independent airport police department with full police powers on property owned or controlled by the airport District, or in accordance with mutual aid agreements with other law enforcement agencies -- officers engaged in hot pursuit of a suspect may continue pursuit beyond property owned or controlled by the airport District; and
- (24) contract with similar authorities in carrying out common projects and the purposes of this act.

- 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 bond principal and interest; authorizes the use of other funds; grants all powers of a local agency pursuant to part II, ch. 59, F.S.; provides that District obligations are not obligations of the state or political subdivisions; provides that neither the state nor any agency or political subdivision shall be liable for the payment of principle of or interest on such obligations except from the special funds provided for in this act or pursuant to interlocal agreements entered into with public agencies of the state.
- 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 filings under the Florida Uniform Commercial Code are not necessary.
- Section 9. Authorizes the issuance of revenue bonds; provides requirements of revenue bonds; provides procedures for issuance; and prohibits the board 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 for the exemption of property from taxation; provides facilities owned or operated by the District under the provisions of this act constitute public property; provides when the facilities are used for governmental purposes, the board will not be required to pay any taxes or assessments on any facilities or parts.
- 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 board, 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 s. 159.32, F.S.
- Section 17. Prohibits board members, officers, and employees from purchasing supplies, goods, or materials for use by the District from themselves or any entity in which they have an interest; 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 in office.
- Section 19. Provides the powers conferred by this act will be in addition and supplemental to the existing powers of the board as provided.
- Section 20. Provides for the repeal of any section, clause, or provision of this act if it is held ineffective or unconstitutional.

C. SECTION DIRECTORY:

- Section 1:** Provides that the bill constitutes the codification of all special acts relating to the District; provides legislative intent.
- Section 2:** Codifies, reenacts, amends and repeals ch. 98-527, L.O.F.
- Section 3:** Recreates the District and recreates and reenacts the charter of the District.
- Section 4:** Repeals ch. 98-527, L.O.F.
- Section 5:** Provides effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 6, 2005

WHERE? *Florida Freedom Newspaper, Inc.*, 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:

EXEMPTIONS FROM AD VALOREM TAXATION

Section 13 of section 3 of the bill provides:

Exemption of property from taxation. The exercise of the powers by the board conferred in this act constitutes the performance of government functions. Facilities owned or operated by the district under the provisions of this act constitute public property. When such facilities are used for governmental purposes, the board shall not be required to pay any taxes or assessments upon any such facilities or parts thereof.

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. *Orange State Oil Co. v. Amos*, 139 So.2d 707 (Fla. 1930). 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". Accordingly, property owned by a municipality or special district is 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 a valid 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. It should be noted that the leasehold interest in leased public property may be subject to the intangibles tax regardless of whether the leased property itself is subject to ad valorem taxation. See *Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

B. RULE-MAKING AUTHORITY:

The bill grants rule-making authority to the Authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 correspondence will serve to explain the boundary modifications proposed in House Bill 939, related to the 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 939 does not propose to authorize taxing authority.¹

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

¹ Letter received from Terry E. Lewis, Esq., Lewis, Longman & Walker, P.A. (March 7, 2005) (on file with the Local Government Council).