

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government

This bill would grant broad powers to an independent special district.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Sarasota-Manatee Airport Authority (SMAA) is a bicounty governmental agency created by special act of the Florida Legislature for the purpose of "acquiring, constructing, improving, financing, operating, and maintaining airport facilities." The enabling legislation for the authority states that it is "a body politic and corporate" and a "public instrumentality," and specifically designates the authority as a political subdivision for the purpose of certain tax statutes.

The SMAA is an independent special district as defined by s. 189.403, F.S., and has been identified as such by the Florida Department of Community Affairs. The governing board of the authority is appointed by the Governor and consists of six members, three of whom are residents of Manatee County and three of whom are residents of Sarasota County.

Effect of Proposed Changes

HB 1579 amends the current "Sarasota Manatee Airport Authority Act," ch. 2003-309, L.O.F., as amended. The bill authorizes and empowers the authority, *to the extent permitted by the State Constitution and laws of the state*:

- to establish, operate or support subsidiaries and affiliates—either for profit or not for profit—to *assist the authority in fulfilling its declared public purposes*, including, but not limited to:
 - the provision of airport and aviation-related services to other airport owners or operators and to aviation-related businesses; and
 - the acquisition, management and disposition of properties; and
- to establish or support *nonaffiliated* corporations not for profit *that operate primarily within Sarasota and Manatee Counties* and that have as their purposes the furtherance of the authority's provision and support of its airport, airport facilities, and airport operations and system; and to accomplish such by means of:
 - interest-free or low interest loans;
 - leases of real or personal property either rent-free or for low fees;
 - gifts and grants of funds; or
 - guarantees of indebtedness.

The bill specifies that these subsidiary or affiliate corporations or nonaffiliated corporations not for profit shall not be empowered to engage in business activities within the air operations area¹ of the Sarasota Bradenton International Airport, except to the extent that such activities involve the provision of direct services to air carriers or involve the manufacture, processing or assembly of goods or materials for sale or distribution.

¹ "Air operations area" is defined by the authority's special act for purposes of its law enforcement function to mean "a portion of the airport designed and used for landing, taking off, or surface maneuvering of airplanes." See, Section 14(1)(a) of ch. 2003-309, L.O.F.

The bill also provides that the establishment, operation or support of such subsidiaries or affiliate corporations or nonaffiliated corporations not for profit is *declared to be a public purpose and necessary* for the authority to carry out its public responsibilities and for the welfare of the authority and the public. The bill further states that it is the intent of the Legislature to authorize the formation of these entities to further the interests of the residents of Sarasota and Manatee Counties in maintaining the financial well-being of the authority.

The declared public purpose of the airport authority is to acquire, construct, improve, finance, operate and maintain airport facilities. The proposed language appears to significantly expand on these activities. Ostensibly, the language “to the extent permitted by the State Constitution and laws of the state” serves as security against any unintended consequences which could result from the provisions of this bill. Nonetheless, such drafting may leave the determination of the SMAA’s powers to the courts.

The bill also would allow the authority to establish non-affiliated not-for-profit corporations (not 100 percent owned or controlled by the authority), and to provide these entities with interest free loans and gifts, and to guarantee their indebtedness. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES of this analysis. Language in the bill additionally suggests that these entities may operate outside the jurisdiction of the special district.

The authority has indicated that:

It is envisioned that the SMAA might use the powers that would be granted to provide a range of vendor services, such as ground handling, fueling or technical aviation to aviation users at the SMAA’s airport, and to other airport operators outside the SMAA’s district. Other airports currently providing services such as these include Jacksonville, Houston and Frankfurt, Germany. Such corporations not for profit might also have practical application in the development of those SMAA real estate assets that are not earmarked for aviation purposes. Presently, the SMAA is in the midst of a \$4.5 million project to relocate a flight instrument from the infield in order to open up 40 acres for development. An entity, solely owned and controlled by the SMAA, could be used to manage these non-aviation real estate assets.

The bill additionally authorizes the authority, *to the extent permitted by the State Constitution and laws of the state:*

- to participate as a shareholder in a corporation, a joint venturer, a partner in a limited partnership or a general partnership, or a member of a limited liability company or any other lawful form of business organization that provides airport or aviation services or engages in activities related thereto; and
- to make or arrange for loans, contributions to capital, and other debt and equity financing for the activities of such corporations, joint ventures, partnerships, or other lawful forms of business organization and to guarantee loans for such purposes; to elect the boards of directors of its corporations not for profit; and to utilize, for any lawful purpose, assets and resources of the authority to the extent not needed for airport, aviation, and related activities.

The bill also specifies that the authority shall not be empowered to utilize the authorized business organizations to engage in business activities within the air operations area of the Sarasota Bradenton International Airport, except for limited activities.

Again, the language “to the extent permitted by the State Constitution and laws of the state” presumably protects against any unintended consequences which may result from the provisions of the bill, but may require the construal of certain activities conducted pursuant to this subsection to be litigated. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES of this analysis.

The bill also provides that any organization described in the bill will be exempt from state and local taxation to the extent that said organization engages in educational, scientific, charitable or governmental purposes.

Section 18 of the Sarasota-Manatee Airport Authority Act specifically provides that the "authority as a public body corporate is deemed a political subdivision within the meaning of the exemptions granted under section 196.199, Florida Statutes." Section 196.199(1)(c), F.S., provides 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.

This section also contains various scenarios whereby government property is exempt from taxation. The proposed provision in the bill appears to be overly broad. Also, the use of the language "to the extent" may be subject to interpretation. Tax exempt status may be available for certain nongovernmental entities in situations where property is used exclusively for literary, scientific, religious or charitable purposes. Nonetheless, the determination of such status necessarily is made on a case-by-case basis.

With regard to industrial development revenue bonds, the bill expressly authorizes and empowers the authority to do all acts or things necessary or proper to be and serve as a "local agency" under part II of ch. 159, F.S., with respect to any project as defined therein, and provides that any bonds issued by the authority pursuant to part II of ch. 159, F.S., will be entitled to all the benefits contained in said part, including, but not limited to, ss. 159.31, 159.39, and 159.40, F.S.

Section 159.27(4), F.S. defines a "local agency" as "... any special district or other local governmental body existing or hereafter created pursuant to the laws of the state, the purpose for the creation of which could reasonably be interpreted to be consistent with the issuance of revenue bonds to finance the cost of projects within the meaning of this part." It would seem that Section 10 of the authority's special act, which grants the authority the authorization to issue such bonds, suffices to bring the authority within this definition.

The bill also eliminates the \$3 million aggregate cap for outstanding industrial development revenue bonds. This cap was enacted 28 years ago with no adjustment for inflation. In s. 159.26, F.S., of the "Florida Industrial Development Financing Act," the Legislature has declared a need to enhance economic activity in the state by attracting manufacturing development, business enterprises management, and other activities conducive to economic promotion. While the SMAA has the power to issue these bonds, the antiquated cap in its enabling act may render them impracticable as a means of financing economic development.

The bill also makes several technical changes including deleting the hyphens in "Sarasota-Manatee Airport Authority" and "Sarasota-Bradenton International Airport," substituting the "Transportation Security Administration" for the "Federal Aviation Administration" as the federal agency authorized to enforce security programs; renaming "airport authority police" as "airport police"; changing the reference to adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining "airport grounds";² and renaming "airport authority parking enforcement specialists" as "traffic control specialists."

The act takes effect upon becoming a law.

² Since its founding as a private college in 1960, the campus of New College of Florida (NCF) has abutted the Sarasota Bradenton International Airport. In 1975, NCF merged with the University of South Florida (USF). However, the Legislature granted NCF its independence, and it is now the public liberal arts honors college for the State of Florida. This change in the charter reflects the fact the NCF is no longer affiliated with USF. See s. 1004.32, F.S.

C. SECTION DIRECTORY:

Section 1: Amends ch. 2003-309, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 8, 2005

WHERE? The Sarasota Herald-Tribune, a daily newspaper published in Sarasota County.

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

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement of this bill is \$1,000. It is assumed that it will cost approximately \$1,000 to create each subsidiary and affiliated and non-affiliated business organization, and that the SMAA will create one such entity per year in the first two years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

SECTION 10 of Article VII of the State Constitution provides:

Pledging credit.—Neither the state nor any county, school district, municipality, *special district*, or agency of any of them, *shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person....*

This provision bars governments within Florida from using their taxing power or credit to aid private corporations or persons. The purpose of section 10 is to prevent state government from using its vast resources to monopolize, or otherwise "destroy," a segment of private enterprise, and also "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefited." Northern Palm Beach County Water Control Dist. v. State, 604 So.2d 440 (Fla., 1992) citing Bannon v. Port of Palm Beach Dist., 246 So.2d 737, 741 (Fla. 1971).

The courts have recognized the authority of a local government to pledge public funds or property to a nongovernmental entity such as a nonprofit corporation, but "[o]nly when there was some clearly identified and concrete public purpose as primary objective and reasonable expectation that such

purpose would be substantially and effectively accomplished...and there must have been some control retained by the public authority....” O’Neill v. Burns, 198 So.2d 1 (Fla. 1967).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Sponsor should consider amending the bill to retain the status quo with regard to the designation of “airport authority police” and “parking enforcement specialists” in order to conform the act’s terminology to the use of terms in the Florida Statutes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.