

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 666

INTRODUCER: Senator Rich

SUBJECT: Senior Services/Independent Special District

DATE: February 27, 2009 REVISED: 03/10/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/1 amendment
2.			CF	
3.			FT	
4.			HA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill authorizes counties to create by ordinance an independent special district to provide senior services throughout the county. In order to levy ad valorem taxes to fund the independent special district, the county governing body must obtain approval from the majority of electors in the county voting on the question. The bill provides the membership of a governing council, powers and duties of the council, and reporting requirements.

This bill creates an undesignated section of law and directs the Legislature's Division of Statutory Revision to place the act in part V of chapter 125 of the Florida Statutes.

II. Present Situation:

Special Districts in Florida

The Florida Constitution specifically provides for four types of local governments: counties, municipalities, school districts, and special districts. The 67 counties are subdivisions of the state, and provide a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the

court) pursuant to authority granted in the constitution and consistent with general law.¹ The 67 school districts are coterminous with the boundaries of the county. Each school district is governed by a school board who is responsible for the operation, control and supervision of all free public schools within the district.² Florida's more than 400 municipalities exist pursuant to charters established by law and approved by the electorate in a referendum. They possess "home rule" authority to provide traditional municipal services, to the extent consistent with their charges and not inconsistent with general law.³ The State Constitution limits the property taxing authority of each of these forms of government to a maximum of 10 mills⁴ on the assessed value of real estate and tangible personal property.⁵

Special districts have been a part of Florida's history for a long time. In 1822, Florida was governed by a territorial council and one of the first session laws created a special district for establishing and maintaining public roads. Special districts are limited-purpose units of local government. Their property tax millage is limited by general law and subject to referendum approval by the affected electorate.⁶ Special districts are subject to the same restrictions on credit,⁷ bonding,⁸ employment (civil service),⁹ elections,¹⁰ public records and meetings,¹¹ as are counties, municipalities, and school districts.¹²

Section 189.401(1), F.S., provides that a special district "is a local unit of special purpose, as opposed to general-purpose, government, within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The purposes of special districts are implemented by specialized functions and related prescribed powers." Special districts are either dependent or independent districts.

A dependent special district is usually established through enactment of a county or municipal ordinance which must provide for the powers of the district. An example of a dependent special district is a municipal service taxing unit (MSTU). An independent special district is generally created by the Legislature through enactment of a general bill or a special act which must also provide for the purposes and powers of the district. There are exceptions: community development districts may be created by the Governor and the Cabinet, or a county or municipality.¹³ Regional water supply authorities may be created by the Governor and the Cabinet, and two or more counties or municipalities.¹⁴ Also, counties may create children's services districts,¹⁵ and health and mental health care districts.¹⁶ All special districts with taxing

¹ Section 1, Art. VIII of the State Constitution.

² Section 4(a), Art. IX of the State Constitution

³ Section 2, Art. VIII of the State Constitution.

⁴ A "mill" is equal to \$1 for each \$1,000 of assessed value.

⁵ Section 9, Art. VII of the State Constitution.

⁶ Section 9, Art. VII of the State Constitution.

⁷ Section 10, Art. VII of the State Constitution

⁸ Section 12, Art. VII of the State Constitution

⁹ Section 14, Art. VII of the State Constitution

¹⁰ Section 6, Art. VI of the State Constitution

¹¹ Section 24, Art. I of the State Constitution.

¹² Section 8, Art. VII of the State Constitution

¹³ Chapter 190, F.S.

¹⁴ See s. 373.1962, F.S.

¹⁵ See s. 125.901, F.S.

¹⁶ See s. 154.331, F.S.

powers are commonly referred to as “special taxing districts,” a term that is used but undefined in statute.

Any district that is a multi-county district is an independent special district. Florida has 1,626 special districts: 1,012 independent districts, 614 dependent districts, and 69 multi-county districts. Special districts include the five water management districts, community development districts, community redevelopment districts, drainage and water control districts, housing authorities, fire control and rescue, and soil and water conservation districts,¹⁷ as well as districts that provide a variety of governmental services pertaining to airports, the arts, beach restoration, expressways and bridges, health care, housing, juvenile welfare, libraries, mosquito control, and transportation.

Children’s Services District

Section 125.901, F.S., authorizes counties to create by ordinance an independent or dependent special district to provide funding for preventative, development, treatment, and rehabilitative services for children throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills. In addition, this section provides a governing board for the district, the powers and functions of the board, requires each board to identify and assess the needs of the children in the county served by the board, requires the board to provide an annual written report to the governing body of the county, provides for the preparation of a budget and the filing of a financial report with the governing body of the county, and provides for dissolution of the district.

Health Care District

Section 154.331, F.S., authorizes counties to create, by ordinance, an independent or dependent special district to provide funding for indigent and other health and mental health care services throughout the county. Upon approval by the electors in the county, the district may annually levy ad valorem taxes, not to exceed 0.5 mills. In addition, this section creates an appointed governing board for the special district, specifies the powers and functions of the board, requires the board to prepare a budget and to prepare and file financial report with the governing body of the county, and provides for dissolution of the district.

III. Effect of Proposed Changes:

This bill authorizes counties to create by ordinance an independent district to provide funding for seniors’ services throughout the county. These provisions are modeled on similar statutory provisions for Children’s Services Districts and Health Care Districts.

Section 1. Subsection (1) defines “senior” as a person at least 60 years of age.

Subsection (2) provides the following:

- Authorizes each county to create an independent special district by ordinance to provide county-wide funding for senior services.

¹⁷ “Official List of Special Districts Online”, www.floridaspecialdistricts.org (Department of Community Affairs)

- The boundaries of the special district are coterminous with the boundaries of the county in which the district is created.
- The county governing body must obtain the approval of a majority of the electors voting on the issue in a referendum to annually levy ad valorem taxes.
- The independent special district shall levy and fix millage as provided in s. 200.065, F.S.
- Once the millage is approved, the district need not seek the electorate's approval to levy the millage in future years.
- The special district is required to maintain the same fiscal year as the county.
- The special district must file all required financial or compliance reports under part III of chapter 218, F.S.¹⁸
- The district must comply with the provisions of s. 189.415, F.S., relating to public facilities reports; the provisions of s. 189.417, F.S., relating to meeting notices; and the provisions of s. 189.418, F.S., relating to reports, budgets, and audits.
- The special district may be dissolved by a special act of the Legislature, by ordinance adopted by the county governing body subject to the approval of the electorate, and by the dissolution provisions of s. 189.4042, F.S.
- Prior to dissolution, the county must obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county for all county and municipal purposes.
- A county is not prohibited from exercising such power as provided by general law or by a special law to provide or fund services for seniors.

Subsection (3) provides that the district will be governed by a 9-member council consisting of:

- Two permanent positions consisting of the executive director of the area agency on aging or a designee who is a director of senior programs in the county, and the county director of social services or a designee who is a director of elderly services.
- Three members appointed for 2-year terms representing the county governing body, the county's legislative delegation, and the League of Cities in the county. The representative of the legislative delegation is appointed by the delegation chair and may not be a voting member of the council.
- Four members appointed by the Governor and representing the cultural diversity of the county's population. One of these members must be at least 60 years of age. All appointees must have been county residents during the previous 24 months.
 - The county governing body must submit three names to the Governor for each vacancy, and the Governor must make a selection within 45 days of receipt of the names or request a new list of candidates.
 - Appointees serve 4-year terms and may be reappointed for one additional term.
 - Initial appointments are staggered.
 - The Governor may remove a member for cause or upon the written petition of the county governing body. Upon resignation, death, or removal of a member

¹⁸ Part III, chapter 218, F.S., requires independent special districts to file an annual financial report with the Department of Financial Services no later than April 30 of each year. In addition, any special district with revenues and expenditures between \$50,000 and \$100,000 must undergo a financial audit of its accounts and records within a 12 month period after the end of the fiscal year. The audit must be performed by an independent certified public accountant and is conducted only if the special district has not been subject to an audit conducted by the Auditor General within the two preceding fiscal years.

appointed by the Governor, the vacancy shall be filled using the same method as the original appointment and for the unexpired length of the term.

- Council members are eligible for per diem and travel expenses consistent with s. 112.061, F.S.,¹⁹ but may not receive compensation for services.

Subsection (4) provides that the council must:

- Elect a chair, a vice chair, and other officers deemed necessary which shall be done immediately after all council members are appointed.
- Immediately after members are appointed and officers are elected, identify and assess the needs of seniors within the county and submit a written report to the county governing that describes:
 - The activities, services, and opportunities that will be provided to seniors.
 - The manner in which services will be provided, including a description of arrangements and agreements which will be made with community organizations, state and local education agencies, federal agencies, public assistance agencies, the court system, guardianship groups, and other applicable public and private agencies and organizations.
 - The anticipated schedule for providing services.
 - Special outreach efforts which will be taken to provide services to seniors who are at-risk, abused, neglected, or ailing.
 - How the council will seek and obtain funding for unmet needs.
 - The strategy for interagency coordination to maximize existing human and fiscal resources.
- How the council will provide training and orientation for new council members to allow them to perform their duties.
- Develop and adopt bylaws and rules for the council's guidance, operation, governance and maintenance which are consistent with applicable federal or state laws or local ordinances.
- Provide an annual written report to the county governing body by January 1 containing:
 - Information on the effectiveness of the council's activities, services, and programs.
 - A detailed, anticipated budget for continuation of services, activities, and programs.
 - A list of all sources of funding.
 - Procedures used to identify at-risk or special needs seniors who need additional or continued services, and how those additional or continued services will be provided.
 - A description of how the council's objectives and activities are consistent with the goals of the act.
 - Detailed information on programs, services, and activities available to seniors.
 - Information on programs, services, and activities that should be continued, eliminated, or added to the council's responsibilities.

¹⁹ Section 112.061(6), F.S., provides for \$80 per diem or actual expenses if actual expenses exceed \$80 per day when traveling on bona fide state business, and a mileage allowance of \$0.445 per mile if traveling in a privately owned vehicle on such state business. Subsection (14) of that section allows the governing body of a special district to establish different rates by ordinance so long as the rates established are not lower than the 2005-2006 statutorily established rates which were \$50 for per diem, actual expenses if actual expenses exceeded \$50 per day, and a mileage rate of \$.25 per mile when traveling in a privately owned vehicle.

- Maintain minutes of each meeting, including a record of all votes cast, and the minutes the meetings must be available to any person who asks.

Subsection (4) also provides that the council may:

- Provide and maintain in the county the preventative, developmental, treatment, and rehabilitative services for seniors which the council deems are necessary.
- Allocate and provide funds to other county agencies that operate for the benefit of seniors.
- Collect information and statistical data, and conduct research and assessments that are helpful to the council and the county in determining the needs of seniors in the county.
- Consult and coordinate with other agencies to prevent the duplication of services.
- Seek grants from state, federal, and local agencies and accept donations.
- Lease or buy real estate, equipment, or personal property, and construct buildings as needed to perform the business of the council.
 - Purchases may not be made or buildings constructed unless paid for with cash on hand or secured by funds deposited in a financial institution.
 - The district is not authorized to issue bonds of any nature and may not require the imposition of a bond by the county governing body.
- Employ, pay, and provide benefits for any part-time or full-time personnel necessary for the district to perform its duties.
- Enter into a cooperative agreement with another council to share administrative costs, and to seek grants, accept donations, or jointly fund programs serving multicounty areas.

Subsection (5) provides that with respect to the council budget, the council must:

- On or before July 1 of each year, prepare a tentative annual written budget of the district's expected income and expenditures, including a contingency fund.
- Compute a proposed millage rate within the voter-approved cap necessary to fund the tentative budget.
- Prior to adopting a final budget, comply with s. 200.065, F.S., relating to the method for fixing millage, and fix the final millage rate by resolution of the council.
 - The adopted budget and final millage rate must be certified and delivered to the county governing body as soon as possible following the council's adoption of the final budget and millage rate.
 - The millage rate adopted by the council must be included in each certified budget.
 - District millage may not exceed 0.5 mills of assessed valuation of all property within the county which are subject to ad valorem county taxes.
- After the district budget is certified and delivered to the county governing body, the budget may not be changed or modified by the governing body or any other authority.
- As soon after collection as is reasonably practicable, all taxes collected must be paid directly to the council by the county's revenue-collection entity.
- All moneys received by the council must be deposited into qualified public depositories, as defined in s. 280.02, F.S.,²⁰ with separate and distinguishable accounts established specifically for the council.

²⁰ Section 280.02, F.S., defines "qualified public depository" as any bank, savings bank, or savings association that:

- Funds may only be withdrawn by checks signed by the council chair and countersigned by one other council member or by a chief executive officer authorized by the council.
- Upon taking office, the chair and the other person authorized to sign checks must each file a surety bond in the sum of \$1,000 for each \$1 million, or portion thereof, of the council’s annual budget, which shall be conditioned upon the faithful discharge of duties. The district may pay the bond premium.
- Funds of the district may only be expended by check, except expenditures from a petty cash account that may not exceed \$100. All petty cash expenditures must be recorded. With the exception of petty cash expenditures, funds of the council may not be expended without prior approval of the council.
- The council must file quarterly financial reports, within 10 days from the end of the quarter, that include:
 - Total receipts and expenditures for the quarter.
 - Total funds on hand, total funds invested, and total funds deposited.
 - Total administrative costs for the quarter.
- After or during the first year of operation, the county governing body may fund the council’s budget from its own funds.
- The council may not require any service provider to provide matching funds.
- Funds collected under the act may not be used as a substitute for existing resources used to fund senior services.

Section 2. Directs the Division of Statutory Revision to place the provisions of the act in part V of chapter 125, Florida Statutes, and to appropriately retitle that part.

Section 3. Provides that the act will take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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- (a) Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States.
 - (b) Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
 - (c) Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss 1811 et seq.
 - (d) Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.
 - (e) Meets all the requirements of this chapter.
 - (f) Has been designated by the Chief Finance Officer as a qualified public depository.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This bill authorizes counties to create independent special districts by ordinance with the authority to levy ad valorem taxes to raise revenue to provide senior services.

B. Private Sector Impact:

To the extent that a county enacts an ordinance, property owners living within the county will pay additional property taxes. To the extent that additional property taxes are collected, seniors may receive increased services.

C. Government Sector Impact:**VI. Technical Deficiencies:**

Subsection (2) of the bill requires the county governing body to obtain the approval of a majority of voters before the governing body can levy an ad valorem tax within the millage rate established in the act but doesn't provide the purpose of the tax. The bill provides that the independent special district shall levy the tax and fix the millage. The bill provides that after the millage is approved, the district need not seek the electorate's approval to levy the millage in future years, yet doesn't require the electorate to approve millage for the district at all.

Subsection (3) provides for the appointment of three specified members, one of whom must represent the county governing body, one of whom must represent the county's legislative delegation, and one member representing the League of Cities in the county, but doesn't designate who shall appoint the county governing body or the League of Cities representative. Also, the bill authorizes the Governor to remove any member of the council for cause, rather than the members appointed by the Governor, and does not provide the county governing body with the authority to remove any of the other members. The bill provides a process for replacement of members appointed by the Governor, but does not provide a replacement process for any of the other appointees. The bill provides for per diem and travel reimbursement for members of the council but doesn't specify that the source of the reimbursement should be the district budget.

Subsection (4) requires the council to submit a list of all sources of requested funding, both public and private, which is redundant since "all sources" includes public and private. The bill provides that the council must submit detailed information on the various programs, services, and activities that should be eliminated or continued but doesn't limit the information to programs, services and activities offered by the district. The bill provides that the district may not require the imposition of a bond by the county governing body which is unnecessary because the district can't compel the county governing body to issue bonds.

Subsection (5) refers to the council's budget when it should refer to the district budget. The bill authorizes the council to set millage in compliance with s. 200.065, F.S., and then requires the

council to fix millage by resolution. Section 200.065(2), F.S., already requires that no millage may be levied until a resolution or ordinance has been approved by the governing board of the taxing authority and provides a process for approval, including public hearing and notice requirements. The bill provides that the adopted budget and the millage rate must be certified and delivered to the county governing body, but it is unclear as to what is meant by “certified.” Section 200.068, F.S., requires that each taxing authority that adopts an ordinance or resolution establishing a property tax levy must, within 30 days after such adoption, certify compliance with the provisions of chapter 200, Florida Statutes, to the Department of Revenue. The bill limits the ad valorem assessment for senior service only to property subject to county taxes.

Subsection (5) also provides for a surety bond to be issued for each \$1 million, or portion thereof, of the council’s annual budget instead of the district’s annual budget. Also, the bill provides for expenditures from a petty cash account that may not exceed \$100 but it is unclear if the limitation is on the expenditure or the amount of the account.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 641234 by Community Affairs on March 10, 2009:

This “delete everything” amendment clarifies provisions of the bill relating to referendum approval, council appointments, and the district budget. Two members are added to the governing council of the independent special district and the legislative delegation appointee is removed, references to the council budget are corrected to reflect that the budget is the district budget, and clarifications are made to reporting requirements with regard to district programs and services for seniors. (WITH TITLE AMENDMENT)