

**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.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 1120

INTRODUCER: Senator Norman

SUBJECT: Special Districts

DATE: March 10, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill deletes the current requirement that the merger or dissolution of an independent special district created and operating pursuant to a special act may only be effectuated by the Legislature. This bill requires an involuntary dissolution or merger to be subject to a special act of the Legislature and approved by voter referendum. The bill also provides for the payment of associated referendum expenses and the distribution of assets and indebtedness.

This bill allows a special district that meets the criteria for being declared inactive or that has already been declared inactive to be dissolved or merged without a referendum. The bill also allows the governing body of a special district to unanimously adopt a resolution to declare itself inactive and therefore dissolve without a referendum.

The bill provides that this act shall preempt any special act to the contrary, unless a specific dissolution date of the independent special district is provided in the special act.

This bill substantially amends the following sections of the Florida Statutes: 189.4042 and 189.4044, F.S.

## II. Present Situation:

### Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.<sup>1</sup> Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.<sup>2</sup> A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.<sup>3</sup> A special district does not include:

- A school district,
- A community college district,
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.),
- A municipal service taxing or benefit unit (MSTU/MSBU), or
- A political subdivision board of a municipality providing electrical service.<sup>4</sup>

Special districts have the same governing powers and restrictions as counties and municipalities.<sup>5</sup> Like other forms of local government, special districts operate through a governing board and can “enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services.”<sup>6</sup> Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.<sup>7</sup>

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.<sup>8</sup>

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.<sup>9</sup> Independent special districts may

<sup>1</sup> Ch. 189, F.S., *see* s. 189.401, F.S.

<sup>2</sup> Section 189.403(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Mizany, Kimia and April Manatt, WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).

<sup>6</sup> *Id.* (alteration to original) (citation omitted).

<sup>7</sup> Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.

<sup>8</sup> Section 189.403(2)(a)-(d), F.S.

<sup>9</sup> Section 189.403(3), F.S.

encompass more than one county.<sup>10</sup> The public policy behind special districts is to provide an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services.”<sup>11</sup>

### **The Special District Information Program**

The Special District Information Program (SDIP), administered by the Department of Community Affairs (DCA or Department), is designed to collect, update, and share detailed information on Florida’s special districts with more than 685 state and local agencies.<sup>12</sup> The Department also maintains an official master list of the individual functions and status of all the dependent and independent special districts throughout the state.<sup>13</sup> As of March 2011, there were approximately 1,629 special districts in the state of Florida: 621 dependent districts and 1,008 independent districts.<sup>14</sup> Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.<sup>15</sup>

### **Current Merger and Dissolution Procedures**

Section 189.4042, F.S., specifies the requirements for the merger or dissolution of a special district. Pursuant to this section, the merger or dissolution of a special district “created and operating pursuant to a special act may only be effectuated by the Legislature unless otherwise provided by general law.”<sup>16</sup> Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act.

An independent special district that is created by a county or municipality by a referendum or other procedure can be merged or dissolved by the county or municipality that created the special district pursuant to the same procedures in which the special district was created. “However, for any independent special district that has ad valorem taxation powers, the same procedure required to grant such independent special district ad valorem taxation powers shall also be required to dissolve or merge the district.”<sup>17</sup>

An independent special district created by a county or municipality through a referendum that has been declared inactive, may be dissolved by the creating county or municipality after publishing notice pursuant to s. 189.4044, F.S.<sup>18</sup>

<sup>10</sup> *Id.*

<sup>11</sup> Section 189.402(3)-(4), F.S.

<sup>12</sup> Florida Department of Community Affairs, *Special Districts Information Program* (available online at <http://www.floridaspecialdistricts.org>) (last visited on Sept. 21, 2010).

<sup>13</sup> Sections 189.412(2) and 189.4035, F.S. *See also* Florida Department of Community Affairs, *Official List of Special Districts Online*, (available online at <http://www.floridaspecialdistricts.org/OfficialList/index.cfm>) (last visited on August 11, 2010). Note: This list is updated on October 1 of each year.

<sup>14</sup> Florida Department of Community Affairs, *Special Districts Information Program* (available online at <http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm>) (last visited on March 10, 2011) (Note: This number is subject to change daily.)

<sup>15</sup> Florida Department of Community Affairs, *Official List of Special Districts Online* (available online at <http://www.floridaspecialdistricts.org/OfficialList/index.cfm>) (last visited on August 11, 2010).

<sup>16</sup> Section 189.4042(2), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

## Inactive Special Districts

Section 189.4044, F.S., outlines special procedures for inactive special districts. Paragraph (1)(a), of this section requires the Department of Community Affairs (DCA) to declare a special district to be inactive if it meets at least one of the following three criteria:

- 1) The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has taken no action for 2 or more years;
- 2) Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government notifies the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for 2 or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government fails to respond to the department's inquiry within 21 days; or
- 3) The department determines, pursuant to s. 189.421, F.S., that the district has failed to file any of the reports listed in s. 189.419, F.S.<sup>19</sup>

After proposing a special district to be inactive, the Department, special district, or local general purpose government must publish a notice of the proposed declaration of inactive status in a newspaper of general circulation in the county or municipality where the territory of the special district is located.<sup>20</sup> The entity must allow 21 days from the date of publication for administrative appeals to be filed.<sup>21</sup> Thereafter, the entity that created the special district declared to be inactive must dissolve the special district by repealing its enabling laws or by other appropriate means.<sup>22</sup>

If the inactive special district was created by a special act of the Legislature, then the Department must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate. This notice shall constitute as sufficient notice under Article III, section 10, of the Florida Constitution, of which the Legislature shall be authorized to repeal any special laws so reported in the notice of declaration of inactive status.<sup>23</sup>

## Oversight Review Process

Although Florida Statutes currently do not provide statutory guidelines to facilitate the merger of independent special districts prior to a Legislative Act, s. 189.428, F.S., does offer an oversight review process that allows counties and municipalities to evaluate the degree of special district services and determine the need for adjustments, transitions or dissolution.<sup>24</sup> The oversight review process is performed in conjunction with the special district's public facilities report and the local governmental evaluation and appraisal report prescribed in ss. 189.415(2) and 163.3191, F.S.<sup>25</sup> Depending upon whether the independent special district is a single- or multi-

<sup>19</sup> Section 189.4044(1)(a), F.S.

<sup>20</sup> Section 189.4044(1)(b), F.S.

<sup>21</sup> Section 189.4044(1)(c), F.S.

<sup>22</sup> Section 189.4044(4), F.S.

<sup>23</sup> Section 189.4044(3), F.S.

<sup>24</sup> See s. 189.428, F.S.

<sup>25</sup> Section 189.428(2), F.S.

county district, the oversight review may be conducted by the county or municipality where the special district is located, or by the government that created the special district.<sup>26</sup>

During the oversight review process, the reviewing authority must consider certain criteria, including, but not limited to:

- The degree to which current services are essential or contribute to the well-being of the community;
- The extent of continuing need for current services;
- Current or possible municipal annexation or incorporation and its impact on the delivery of district services;
- Whether there is a less costly alternative method of delivering the services that would adequately provide district services to district residents; and
- Whether the transfer of services would jeopardize the districts' existing contracts.<sup>27</sup>

The reviewing authority's final oversight report must be filed with the government that created the district, and shall serve as a basis for any modification, dissolution or merger of the district.<sup>28</sup> If a legislative dissolution or merger is proposed in the final report, subsection (8) of s. 189.428, F.S., further provides that:

- (8) . . . the reviewing government shall also propose a plan for the merger or dissolution, and the plan shall address the following factors in evaluating the proposed merger or dissolution:
- a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger or dissolution is the best alternative for delivering services and facilities to the affected area.
  - b) Whether the services and facilities to be provided pursuant to the merger or dissolution will be compatible with the capacity and uses of existing local services and facilities.
  - c) Whether the merger or dissolution is consistent with applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive plans of the affected area.
  - d) Whether the proposed merger adequately provides for the assumption of all indebtedness.<sup>29</sup>

The final report must also be considered at a public hearing in the affected jurisdiction and adopted by the governing board. Thereafter, the adopted plan for merger or dissolution can be filed as an attachment to the economic impact statement regarding the proposed special act or general act of local application dissolving a district.<sup>30</sup> This section does not apply to deepwater

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<sup>26</sup> Section 189.428(3), F.S. Note: dependent special districts are reviewed by the local government entity that they are dependent upon, *see* s. 189.428(3) (a), F.S.

<sup>27</sup> *See* s. 189.428(5) (a)-(i), F.S., for a full list of the statutory criteria that is evaluated during the oversight review process.

<sup>28</sup> Section 189.428(7), F.S.

<sup>29</sup> Section 189.428(8), F.S.

<sup>30</sup> *Id.*

ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.<sup>31</sup>

### **Senate Interim Project, *Interim Report 2011-210***

This summer, the Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts.<sup>32</sup> The purpose of this interim report was to explore potential statutory guidelines for voluntary independent special district mergers and consolidations. The report reviewed current Florida law and existing merger and consolidation laws in three other states, and discussed previous merger attempts that have failed in Florida. Based on this information, Senate staff provided criteria for the Legislature to consider, should it choose to adopt statutory guidelines that would allow independent special districts formed under special law to voluntarily merge prior to a Legislative Act.

Staff recommended that any adopted statutory criteria should:

- Discuss how mergers can be initiated, i.e. by resolution, voters, etc.;
- State the required statutory thresholds to approve or petition a merger;
- Require special districts to adopt a merger plan that evaluates how personnel and governing board changes will be made, how assets and liabilities will be apportioned, and how to standardize varying pay levels and benefits;
- Only apply to voluntary special district mergers; and
- Preclude special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.<sup>33</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 189.4042, F.S., to making the following changes:

- Eliminate the requirement that the merger or dissolution of independent special districts created and operating pursuant to a special act may only be effectuated by the Legislature.
- Dissolution: Provide that if a local general-purpose government seeks to dissolve an active independent special district created and operating pursuant to a special act, whose board objects to the dissolution by resolution or the dissolution is supported by less than a supermajority vote of the board, then the dissolution is not effective until a special act of the Legislature approved by a majority of the resident electors of the district or landowners voting in the same manner the governing board is elected.
- Merger: Provide that if a local general-purpose government seeks to merge an active independent special district created and operating pursuant to a special act, whose board objects to the merger by resolution, then the merger is not effective until a special act of the Legislature is approved by a majority of the resident electors of the district or landowners voting in the same manner the governing board is elected at a separate

<sup>31</sup> Section 189.428(9), F.S. (Discussing deepwater ports operating in compliance with a port master plan under s. 163.3178(2)(k), airport authorities operating in compliance with the Federal Aviation Administration approved master plan, and special districts organized to provide health systems and facilities licensed under chapters 395, 400, and 429, F.S.).

<sup>32</sup> Comm. on Community Affairs, The Florida Senate, *The Merger of Independent Special Districts* (Interim Report 2011-210) (Oct. 2010).

<sup>33</sup> *Id.*

- referenda. The bill also requires the special act to include a merger plan that addresses transition issues such as the effective date of the merger, governance, administration, powers, pensions, and assumption of all assets and liabilities.
- Provide that the political subdivisions proposing the involuntary dissolution or merger shall be responsible for payment of referendum expenses.
  - Provide that any independent or dependent special districts that meet the criteria for being declared inactive or that have already been declared inactive pursuant to s. 189.4044, F.S., may be dissolved or merged by a special act without a referendum.
  - Declare that this subsection shall preempt any special act to the contrary, unless a specific dissolution date of the independent special district is provided in the special act.
  - State that the government formed by merger shall assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district or districts.
  - State that the financial allocations of the assets and indebtedness of a dissolved independent special district shall be pursuant to s. 189.4045, F.S.

**Section 2** amends s. 189.4044(4), F.S., to allow a governing body of a special district that unanimously adopts a resolution declaring the district (itself) to be inactive without receiving administrative appeals under paragraphs (1)(b) and (c), may dissolve a special district without a referendum; notwithstanding the current provisions of subsection (4) and other provisions of law.

This section also states that the special district shall be responsible for payment of any expenses associated with its dissolution.

**Section 3** provides that this act shall take effect on July 1, 2011.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Indeterminate.

### C. Government Sector Impact:

As a result of this bill, independent special districts created and operating pursuant to a special act will no longer require a special act by the Legislature to dissolve or merge. Special districts will not be permitted to involuntarily dissolve or merge without a special act of the Legislature and approval by voter referendum.

Special districts that meet the criteria for being declared inactive or that have already been declared inactive, pursuant to s. 189.4044, F.S., may dissolve or merge without a referendum. In addition, the governing body of a special district that unanimously adopts a resolution to declare itself inactive may dissolve without a referendum.

This bill may impact how districts are reported under the Special District Information Program, within the Department of Community Affairs. The Department of Community Affairs has indicated that this bill does not have a fiscal impact on the Department.<sup>34</sup>

### VI. Technical Deficiencies:

Section 2 of this bill allows a governing body of a special district that unanimously adopts a resolution declaring the district (itself) to be inactive, to dissolve the district without referendum assuming that no administrative appeals have been timely filed. This section also provides that the special district shall be responsible for paying the expenses associated with its dissolution. This section of the bill creates inconsistencies with subsection (1) of s. 189.4044, F.S.

The Department of Community Affairs, has suggested the following technical amendment to fix this inconsistency: “On page 4, delete lines 97-109 and insert:

Section 2. Section 189.4044, F.S., is amended to read:

189.4044 Special procedures for inactive districts. –

(1) The department shall declare inactive any special district in this state by documenting that:

(a)The special district meets one of the following criteria:

4. The governing body of a special district provides documentation to the Department that it has unanimously adopted a resolution declaring the special district inactive, has published notice pursuant to paragraph (1)(b), and certifies that no administrative appeals were timely filed. The special district shall be responsible for payment of any expenses associated with its dissolution.

(4) The entity that created a special district declared inactive under this section must dissolve the special district by repealing its enabling laws or by other

<sup>34</sup> Florida Department of Community Affairs, *SB 1120 Fiscal Analysis*, at 7 (March 7, 2011) (on file with the Senate Committee on Community Affairs).



appropriate means. Any special district declared inactive pursuant to paragraph (1)(a)4. may be dissolved without a referendum.<sup>35</sup>

The Department also states that newly created paragraphs (2)(b) and (c), of s. 189.4042, F.S., provided in section 1 of the bill fail “to address independent special districts created and operating pursuant to special act that have appointed boards or a combination of appointed and elected boards.”<sup>36</sup>

**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:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.*