

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 713 Special Districts

SPONSOR(S): Community & Military Affairs Subcommittee; Pafford and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Duncan	Hoagland
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Uniform Special District Accountability Act of 1989 (Act) sets forth the general provisions for the definition, creation, and operation of all special districts. Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.

The Act also establishes the method for the merger and dissolution of dependent and independent special districts. Any dependent or independent district created and operating by special act may only be merged or dissolved by the Legislature unless otherwise provided by general law. An inactive independent special district created by a county or municipality through a referendum or any other procedure, may be merged or dissolved pursuant to the same procedure by which the district was created.

The bill revises the merger and dissolution procedures for active independent special districts by requiring a referendum for dissolutions and mergers sought by a municipality or county where the districts' governing board is opposed to the dissolution or merger. Additionally, inactive special districts may be dissolved by special act without a referendum under certain circumstances.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Overview

The Uniform Special District Accountability Act of 1989¹ (Act) sets forth the general provisions for the definition, creation, and operation of all special districts.² Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³ The term does not include:⁴

- A school district;
- A community college district;
- A Seminole and Miccosukee Tribe special improvement district;⁵
- A municipal service taxing or benefit unit; or
- A board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

As of March 10, 2011, there were approximately 1,629 special districts.⁶

The Act establishes criteria for determining whether a special district is a “dependent special district” or an “independent special district.” A “dependent special district” is a special district that meets at least one of the following criteria:⁷

- The membership of its governing body is identical to that of the governing body of a single county or single municipality.
- All members of its governing body are appointed by the governing body of a single county or single 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 single 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 single municipality.

As of March 10, 2011, there were 621 active dependent special districts.⁸

An “independent special district” is a special district that is not a dependent special district as defined in state law. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.⁹ As of March 10, 2011, there were 1,008 active independent special districts.¹⁰

¹ Chapter 89-169, L.O.F.

² Section 189.402(1), F.S.

³ Section 189.403(1), F.S.

⁴ *Id.*

⁵ Florida law establishes a special improvement district for each of the areas contained within the reservation set aside for the Seminole and Miccosukee Tribes, respectively. Section 285.17, F.S.

⁶ Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, Official List of Special Districts Online, *Special District Statewide Totals*, <http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm> (last visited March 10, 2011).

⁷ Section 189.403(2), F.S.

⁸ *See supra* note 6.

⁹ Section 189.403(3), F.S.

¹⁰ *See supra* note 6.

Merger and Dissolution Procedures for Special Districts

Article VIII, section 4 of the Florida Constitution governs the transfer of powers between governing bodies and states:

“by law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferee, or as otherwise provided by law.”

The Act also establishes the method for the merger and dissolution of dependent and independent special districts.¹¹

- Any dependent or independent district created and operating by special act may only be *merged or dissolved* by the Legislature unless otherwise provided by general law.
- If an inactive independent district was created by a county or municipality by referendum, the county or municipality that created the district may *dissolve* the district after public notice as required by law.
- If an independent district was created by a county or municipality by referendum or any other procedure, then the county or municipality that created the district has the authority to *merge or dissolve* the district using the same procedure used to create the independent district.
- However, “for any independent district that has ad valorem taxation powers, the same procedure required to grant such independent district ad valorem taxation powers shall also be required to *dissolve or merge* the district.”

Under certain circumstances, the Department of Community Affairs (DCA) may declare a special district inactive and take steps to dissolve a district by documenting that:¹²

- The special district meets one of the criteria listed below.¹³
 - (1) The registered agent or chair of the governing body of the district; or the governing body of the appropriate local government notifies DCA in writing that the district has taken no action for two or more years.
 - (2) Following an inquiry from DCA, the registered agent or chair of the governing body of the district; or the governing body of the appropriate local government notifies DCA in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for two or more years; or the registered agent or chair of the governing body of the district; or the governing body of the local government fails to respond to DCA's inquiry within 21 days.
 - (3) DCA determines that the district has failed to file with the appropriate state agency the following reports:
 - Retirement related reports with the Department of Management Services (DFS).
 - Annual Financial Report with the Department of Financial Services.
 - Annual Financial Audit Report with the Auditor General and DFS.
 - Bond related reports with the State Board of Administration, Division of Bond Finance.
- The DCA, special district, or local government published a notice of proposed declaration of inactive status in a newspaper of general circulation in the county or municipality in which the special district is located and a copy of the notice is sent to the registered agent or chair of the special district's governing board, if any.¹⁴

¹¹ Section 189.4042(2), F.S.

¹² Section 189.4044, F.S.

¹³ Section 189.4044(1)(a), F.S.

¹⁴ Section 189.4044(1)(b), F.S.

- Twenty-one days have elapsed from the date the notice was published and no administrative appeals were filed.¹⁵

A special district declared inactive must be dissolved by the entity that created the special district by repealing its enabling laws or other appropriate means.¹⁶

Effect of the Proposed Legislation

The bill revises the merger and dissolution procedures for independent special districts. First, the bill deletes current law stating that an independent special district created and operated pursuant to a special act may only be merged or dissolved by the Legislature. Dependent special districts created and operating pursuant to a special act would continue to be merged or dissolved by the Legislature.

The bill provides procedures to be used to dissolve or merge an independent special district when its board objects to either action as follows:

- If a local general-purpose government seeks to *dissolve* an active independent special district created and operating pursuant to a special act, and the district's board by resolution objects to the dissolution, the district may only be dissolved when a special act of the Legislature is approved by a majority of the electors or landowners voting in the same manner by which the district's governing board is elected. This same procedure applies if the district's governing board elects to dissolve the district by less than a supermajority vote of the board.
- If a local general-purpose government seeks to *merge* an active independent special district or districts and the board or boards of one or more districts by resolution object to the merger, the merger is not effective until the special act of the Legislature is approved at a separate referenda of the impacted local governments by a majority of the resident electors or landowners voting in the same manner by which each district's governing board is elected. The special act must include a "plan of merger" that addresses transition issues, including the effective date of the merger, governance, administration, powers, pensions, and assumption of assets and liabilities.

After the effective date of this act, a special act of the Legislature which dissolves a special district would take precedence over the provision in this act. However, in effect, the procedures established in the bill would permit the electors or landowners to take an action which could potentially nullify an act of the Legislature and be viewed as a diminishment of the Legislature's authority.

The bill provides that political subdivisions proposing the involuntary merger or dissolution that is opposed by the affected district's board must pay any of the expenses associated with the required referendums.

Independent and dependent special districts that meet any criteria for being declared inactive or have already been declared inactive, pursuant to s. 189.4044, F.S., may be dissolved or merged by special act without a referendum.

While the bill "preempts any special act to the contrary, unless a specific dissolution date of the independent district is provided in the special act [creating the district]," the provisions of the bill will only affect existing special acts. Special districts may exempt themselves from this requirement in subsequently enacted laws.

The government formed by *merger* of an existing independent special district or districts with another government must assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district. Financial allocations of the assets and indebtedness of a *dissolved* independent special district must be pursuant to the procedures¹⁷ established in current law.

Also, if the special district's governing body unanimously adopts a resolution declaring the district inactive and the notice requirements have been met as required by law and no appeal was filed, then the district may be dissolved without a referendum.

¹⁵ Section 189.4044(1)(c), F.S.

¹⁶ Section 189.4044(4), F.S.

¹⁷ Section 189.4045, F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 189.4042, F.S., relating to the merger and dissolution procedures for special districts.
- Section 2: Amends s. 189.4044(4), F.S., authorizing the merger or dissolution of inactive special districts by special law without a referendum under certain circumstances.
- Section 3: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
There will be costs associated with referendums.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2011, the House Community & Military Affairs Subcommittee adopted two amendments. Amendment #1 was adopted to correct a cross-reference relating to the costs associated with the referendums required for the involuntary merger or dissolution of an active independent special district. Amendment #2 moved a provision in the bill amending subsection (4) of s. 189.4044, F.S., relating to special procedures for inactive districts, to subsection (1) of s. 189.4044, F.S., to clarify the responsibilities of the Department of Community Affairs' Special District Information Program and to ensure that the DCA is notified when an independent special district has been declared inactive.