HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 713 Special Districts
SPONSOR(S): Economic Affairs Committee; Finance & Tax Committee; 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	23 Y, 0 N, As CS	Aldridge	Langston
3) Economic Affairs Committee	17 Y, 0 N, As CS	Duncan	Tinker

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 allows two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge under specified circumstances. The bill allows merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by 40 percent or more of the qualified electors in each district. The bill requires independent special districts to adopt a merger plan that outlines the specific components for the proposed merger, which shall be subject to a public hearing and a voter referendum.

The voluntary merger provisions of this bill do not apply to independent special districts whose governing bodies are elected by district landowners voting the acreage owned within the district and shall preempt any special act to the contrary. The bill repeals current statutory provisions addressing the merger of independent special fire control districts. The merger of independent special fire control districts will be governed pursuant to the provisions established under this act

The bill also deletes the current requirement that the dissolution of an independent special district created and operating pursuant to a special act may only be effectuated by the Legislature. The bill requires an involuntary dissolution or merger of an independent special district 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.

The 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.

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 1989[1] (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]

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[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

[11] Section 189.4042(2), F.S.
[12] Section 189.4044, F.S.
[13] Section 189.4044(1)(a), F.S.

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]

- 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]

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.[17] 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.[18] Depending upon whether the independent special district is a single- or multi-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.[19]

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.[20]

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.[21] 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:
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> 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.

[14] Section 189.4044(1)(b), F.S.
[15] Section 189.4044(1)(c), F.S.
[16] Section 189.4044(4), F.S.
[17] *See* s. 189.428, F.S.
[18] Section 189.428(2), F.S.
[19] 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.
[20] *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.
[21] Section 189.428(7), F.S.

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.[22]

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.[23] This section does not apply to deepwater ports, airport authorities, or healthcare districts operating in compliance with other master plan requirements under Florida Statutes.[24]

Senate Committee on Community Affairs Interim Project, *Interim Report 2011-210*

In 2010, the Senate Committee on Community Affairs conducted an interim report on the merger of independent special districts.[25] 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.

Staff determined that mergers and consolidations provide a mechanism for independent special districts to increase government efficiency while saving taxpayers money. Independent special district mergers and consolidations can generate cost-savings through volume purchasing, standardized operating procedures, pooled investments, joint training, efficient personnel allocation, and cost avoidance.

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. The recommended statutory criteria, included:[26]

- The fiscal, legal, and administrative components that should be evaluated in pre-merger or consolidation feasibility studies.
- How mergers and consolidation proceedings can be initiated, i.e. by resolution, voters, etc.
- The necessary statutory thresholds to approve or petition an independent special district merger or consolidation.
- Requiring 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 applying to voluntary special district mergers.
- Precluding special districts from exceeding the powers granted to them in their existing special acts until a unified charter is adopted by the Legislature.

[22] Section 189.428(8), F.S.
[23] *Id.*
[24] 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.).
[25] The Florida Senate, Committee on Community Affairs, *Merger of Independent Special Districts*, Interim Report 2011-110, Oct. 2010, *available at* http://www.flsenate.gov/Committees/InterimReports/2011/2011-110ca.pdf.
[26] *Id* at 15-16.

Effect of Proposed Changes

The bill makes the following changes to s. 189.4042, F.S., :

- Provides definitions for the following terms:
  - "Component independent special district" means an independent special district that proposes to be merged into a merged independent district, or an independent special district as it existed before its merger into the merged independent district of which it is now a part.
  - "Elector-initiated merger plan" means the merger plan of two or more independent special districts, a majority of whose qualified electors have elected to merge, which outlines the terms and agreements for the official merger of the districts, and is finalized and approved by the governing bodies of the districts.
  - "Joint merger plan" means the merger plan that is adopted by resolution of the governing bodies of two or more independent special districts, that outlines the terms and agreements for the official merger of the districts, and that is finalized and approved by the governing bodies.
  - "Merged independent district" means a single independent special district that results from a successful merger of two or more independent special districts.
  - "Merger" means the combination of two or more contiguous independent special districts that combine to become a newly created merged independent district that assumes jurisdiction over all of the component independent special districts.
  - "Merger plan" means a written document that contains the terms, agreements, and information regarding the merger of two or more independent special districts.
  - "Proposed elector-initiated merger plan" means a written document that contains the terms and information regarding the merger of two or more independent special districts and that accompanies the petition initiated by the qualified electors of the districts, but that is not yet finalized and approved by the governing bodies of each component independent special district.
  - "Proposed joint merger plan" means a written document that contains the terms and information regarding the merger of two or more independent special districts and that has been prepared pursuant to a resolution of the governing bodies of the districts, but that is not yet finalized and approved by the governing bodies of each component independent special district.
  - "Qualified elector" means an individual at least 18 years of age who is a citizen of the United States, a permanent resident of this state, and a resident of the district who registers with the supervisor of elections of a county within which the district lands are located when the registration books are open.
- Eliminates 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.
- Provides procedures for the involuntary dissolution or merger of an independent special district.
- Allows two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to special act.

Involuntary Dissolution or Merger

The bill amends s. 189.4042, F.S., in order to:

- Provide, with respect to involuntary dissolution, 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 is approved by a majority of the resident electors of the district or landowners voting in the same manner the governing board is elected.

- Provide, with respect to involuntary merger, 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 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 are 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.
- State that the financial allocations of the assets and indebtedness of a dissolved independent special district is pursuant to s. 189.4045, F.S.

Voluntary Merger

The bill creates a new subsection (5) in s. 189.4042, F.S., for voluntary independent special district mergers in order to:

- Allow two or more contiguous independent special districts with similar functions and governing bodies that were created by the Legislature to voluntarily merge prior to a special act.
- Allow merger proceedings to be initiated either by joint resolution of the governing bodies of each district or by qualified elector initiative.
- Require independent special districts to adopt a merger plan that outlines the specific components for the proposed merger.
- Require the proposed merger plan to be subject to a public hearing and voter referendum, consistent with certain notice requirements under Florida Statutes.
- Provide election procedures and require a proposed merger to be approved by the majority of votes cast in each independent special district in order for merger to take effect.
- Treat each component independent special district of the merger as a subunit of the merged independent special district until such time as the Legislature formally approves the unified charter of the new merged district pursuant to special act. The unified charter must make the powers of the district consistent within the merged independent district and repeal the special acts of the districts which existed before the merger.
- Provide that during the transition period, the individual subunits are limited to the powers and financing capabilities of each subunit as previously existed prior to merger.
- Provide for the transfer of assets, debts and liabilities of each component independent special district to the merged independent special district.
- Provide that in any action or proceeding pending on the effective date of merger to which a component independent special district is a party, the merged independent special district shall be substituted in its place.
- Provide that ch. 171, F.S., shall continue to apply to all annexations by a city within the component independent special districts' boundaries after merger occurs.
- Outline the effect of merger on current employees and governing bodies of each component independent special district participating in the merger proposal.

The provisions in subsection (5) addressing voluntary independent special district mergers do not apply to independent special districts whose governing bodies are elected by district landowners voting the based upon acreage owned within the district.

This bill will preempt any special act to the contrary.

The bill amends s. 191.014, F.S., to delete current subsection (3), which provides specific merger procedures for independent special fire control districts. The merger of independent special fire control districts will be governed pursuant to the provisions established under this act.

The bill amends s. 189.4044(1)(a), F.S., creating a new paragraph 4. to allow DCA to declare a special district inactive if the governing body of a special district provides documentation that it has unanimously adopted a resolution declaring the district (itself) to be inactive. The bill provides that any special district so declared to be inactive under paragraph (1)(a)4., may be dissolved without a referendum. This section also provides that the special district shall be responsible for payment of any expenses associated with its dissolution.

The bill takes effect on July 1, 2011.

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. 191.014, F.S., relating to district creation and expansion.

Section 3: Amends ss. 189.4044(1) and (4), F.S., authorizing the merger or dissolution of inactive special districts by special law without a referendum under certain circumstances.

Section 4: 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.

On April 5, 2011, the Finance and Tax Committee adopted a strike-all amendment. The amendment contained substantial changes that:

- Provide definitions.
- Clarify the process for involuntary merger or dissolution of independent special districts.
- Provide the process for voluntary merger or dissolution of independent special districts.
- Clarify the criteria for independent special districts being declared inactive.
- Clarify the process by which independent special districts that have been declared inactive are to be dissolved or merged.

The analysis has been updated to reflect the strike-all amendment.

On April 21, 2011, the Economic Affairs Committee adopted three technical amendments as follows:

Amendment #1 clarifies that the merger of independent special districts may also be initiated by a qualified elector initiative.

Amendment #2 added the number "60" to provide that a resolution endorsing the proposed joint merger plan must be adopted by a majority vote of the governing bodies of each component independent district at least 60 business days before an election on the proposed merger plan.

Amendment #3 added the number "60" to provide that the final version of the joint merger plan must be approved by the governing bodies within 60 business days after the final hearing.