

**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 Committee on Appropriations

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BILL: CS/CS/SB 1632

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Stargel

SUBJECT: Special Districts

DATE: April 18, 2014

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<b>Fav/CS</b>
2. <u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/CS</b>
3. <u>Pingree</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1632 is an omnibus special district bill that reorganizes, renumbers and makes numerous technical and conforming changes to special district provisions in ch. 189, F.S. The bill outlines a process by which the Joint Legislative Auditing Committee (JLAC) and the Department of Economic Opportunity (DEO) may enforce reporting and other requirements when special districts fall out of compliance with their obligations or become inactive. After notifying the DEO, relevant legislators and the local general-purpose government, and after a public hearing, the JLAC may request that the DEO file a petition for enforcement with the Circuit Court of Leon County. Additionally, the bill:

- Requires special districts to maintain a website that offers the public specified information;
- Requires special districts to give the website address to the DEO for publication on its website;
- Amends the definition of agency in the Code of Ethics to specifically include special districts;
- Redefines the term special district in s. 189.403, F.S.;
- Removes provisions concerning a special district's application to amend its charter;
- Amends the circumstances under which the DEO may declare a special district inactive;
- Requires the DEO to notify the chair of the county legislative delegation and the Legislative Auditing Committee;
- Prohibits inactive districts from collecting taxes, fees, and assessments;
- Changes the required education for new special district members;

- Revises the provisions concerning the failure to file certain reports;
- Requires administrative fees to be placed into the Operating Trust Fund (see Section VI); and
- Requires public hearings concerning certain noncompliance.

The fiscal impact of the bill on the DEO, the JLAC, and local governments is indeterminate, but expected to be minimal. See Section V.

## **II. Present Situation:**

### **Special Districts**

Special districts are local units of special purpose government, within limited geographical areas, which are used to manage, own, operate, maintain, and finance basic capital infrastructure, facilities, and services. Special districts have existed in Florida since 1845 when the Legislature authorized five commissioners to drain the “Alachua Savannah” also known as Paynes Prairie. The project was financed by special assessments made on landowners based on the number of acres owned and the benefit derived. Since that time, special districts have been used by local governments to provide a broad range of government services. All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 which was enacted by the Legislature to reform and consolidate laws relating to special districts. Chapter 189, F.S., applies to the formation, governance, administration, supervision, merger and dissolution of special districts unless otherwise expressly provided in law.<sup>1</sup> The Act includes an extensive statement of legislative intent emphasizing improved accountability to state and local governments, better communication and coordination in monitoring required reporting of special districts, and improved uniformity in special district elections and non-ad valorem assessments. The statement also specifies the elements required in the charter of each new district.<sup>2</sup>

Special districts serve a limited purpose, function as an administrative unit separate and apart from the county or city in which they may be located, and are often referred to as a local unit of special purpose. Special districts may be created by general law (an act of the Legislature), by special act (a law enacted by the Legislature at the request of a local government and affecting only that local government), by local ordinance, or by rule of the Governor and Cabinet.

The Special District Information Program (SDIP) within the Department of Economic Opportunity (DEO) serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function which can include community development districts (575), community redevelopment districts (213), downtown development districts (14), drainage and water control districts (86), economic development districts (11), fire control and rescue districts (65), mosquito control districts (18), and soil and water conservation districts (62).<sup>3</sup> There are a total of 1,634 special districts in Florida. There are two types of special districts, dependent and independent. There are 1,008 independent special districts and 644 dependent special districts.

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<sup>1</sup> For example, the creation of community development districts and their charters is exclusively controlled by ch. 190, F.S. Section 190.004, F.S.

<sup>2</sup> Section 189.402(2), F.S.

<sup>3</sup> Information relating to special districts and their functions can be found in the SDIP online publication “Florida Special District Handbook Online” which can be found at <http://www.floridaspecialdistricts.org/handbook/>.

Each special district must file with the SDIP the ordinance or document creating the district, amendments to the creation document, and a written statement referencing the basis for the district's dependent or independent status. The SDIP enforces compliance with financial reporting requirements and currently collects an annual special district fee of \$175 to cover administrative costs of the SDIP.<sup>4</sup>

### ***Dependent Special Districts***

A dependent special district meets at least one of the following criteria:

- The special district governing body members are the same as the governing body members of the county or city that created the district;
- The special district governing board members are appointed by the governing body of the county or city that created the district;
- During the terms of membership, the governing board members of the special district are subject to removal at will by the governing body of the county or city that created the district;
- The special district budget must be approved by an affirmative vote of the governing body of the county or city that created the district; or
- The special district budget can be vetoed by the governing body of the county or city that created the district.

The ordinance creating a dependent special district must provide the following:

- A statement referencing the district's dependent status, including a statement that explains why the special district is the best way to provide the service being provided;
- The purpose, powers, functions, authority, and duties of the district;
- District boundaries;
- The membership, organization, compensation, and administrative duties of the special district governing board;
- Applicable financial disclosure, noticing, and reporting requirements;
- The method by which the special district will be financed; and
- A declaration that the creation of the special district is consistent with the approved local government comprehensive plan.

### ***Independent Special Districts***

An independent special district does not have any of the characteristics of a dependent district, may encompass more than one county unless the district lies wholly within the boundaries of one city, and generally is created by an act of the Legislature. However, counties and cities may create community development districts of less than 1,000 acres,<sup>5</sup> public hospital districts,<sup>6</sup> county children's services districts,<sup>7</sup> and county health and mental health care districts.<sup>8</sup> Two or

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<sup>4</sup> Section 189.427, F.S., requires the DEO to establish a schedule of fees to pay one-half of the costs incurred by the department in administering the Act. The fee may not exceed \$175 per district per year.

<sup>5</sup> Section 190.005(2), F.S.

<sup>6</sup> Sections 155.04 and 155.05, F.S.

<sup>7</sup> Section 125.901, F.S.

<sup>8</sup> Section 154.331, F.S.

more counties may create regional jail districts,<sup>9</sup> and any combination of counties or cities, or both, may create regional water supply authorities.<sup>10</sup> Regional transportation authorities may be created by any combination of contiguous counties, cities, or other political subdivisions.<sup>11</sup> Finally, the Governor and the Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, have the authority to create community development districts.<sup>12</sup>

With the exception of a community development district, the charter creating an independent special district must contain the following information:

- The purpose of the special district;
- The powers, functions and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- Method for establishing the district and amending the district charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- Method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.

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

#### **General Statutory Structure (Section 1)**

The bill changes the subject of ch. 189, F.S., from “Special Districts: General Provisions” to “Special Districts,” and divides the chapter into the following named parts:

- Part I - “General Provisions”
- Part II - “Dependent Special Districts”
- Part III - “Independent Special Districts”
- Part IV - “Elections”
- Part V - “Finance”
- Part VI - “Oversight and Accountability”
- Part VII - “Merger and Dissolution”
- Part VIII - “Comprehensive Planning”

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<sup>9</sup> Section 950.001, F.S.

<sup>10</sup> Section 373.1962, F.S.

<sup>11</sup> Section 163.567, F.S.

<sup>12</sup> Section 190.005(1), F.S.

## **Joint Legislative Auditing Committee (Section 2)**

### ***Current Situation***

The Joint Legislative Auditing Committee (JLAC) has the authority to enforce provisions against local governmental entities when they fail to submit financial reports required by law. All counties, municipalities and special districts are required to complete an annual financial report (AFR) for each fiscal year. Counties, municipalities and independent special districts are required to submit the AFR to the Department of Financial Services (DFS). Any dependent special district that is a component unit<sup>13</sup> of the county or the municipality to which it is dependent is required to provide that entity the financial information necessary to comply with the AFR reporting requirements. It is then the county's or the municipality's responsibility to include the financial information of the dependent special district in its AFR. A dependent special district that is not determined to be a component unit of the county or the municipality to which it is dependent is required to file the AFR with the DFS.

In addition, all counties, municipalities and special districts that meet a certain threshold for revenues or expenditures/expenses are also required to have an annual financial audit (audit) of their accounts and records conducted by an independent certified public accountant (CPA). Audits are required to be submitted to both the DFS and the Auditor General. Each year, these offices provide the JLAC with a list of all entities that have failed to comply with these financial reporting requirements. The JLAC may choose to take action pursuant to s. 11.40(2), F.S., against noncompliant entities. For counties and municipalities, the JLAC may direct the DFS and the Department of Revenue (DOR) to withhold any funds due to the entity that are not pledged for bond debt service satisfaction until they have complied with the law. For special districts, the JLAC may direct the Department of Economic Opportunity (DEO or department) to begin legal proceedings against the special district to compel compliance or declare the special district inactive pursuant to the provisions of s. 189.4044, F.S., if applicable.

### ***Effect of Proposed Changes***

**Section 2** amends s. 11.40, F.S., to provide additional notification responsibilities for the JLAC when a special district fails to comply with the financial reporting requirements. If a district was created by special act, the JLAC must notify the DEO, the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight, and legislators representing the geographical jurisdiction of the special district. If the district was created by local ordinance, the JLAC must notify the local general-purpose government and the DEO. If the district was created by any other manner than special act or local ordinance, the JLAC must notify the local general-purpose government and the DEO. Upon receipt, the DEO must proceed pursuant to s. 189.062, F.S., (special procedures for inactive districts) or 189.067 F.S., (failure of district to disclose financial reports).

If the special district remains noncompliant, the JLAC may request that the DEO file a petition for enforcement with the Circuit Court of Leon County.<sup>14</sup>

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<sup>13</sup> "Component unit" as defined by Generally Accepted Accounting Principles. *See* Governmental Accounting Standards Board (GASB) Statement No. 14, *The Financial Reporting Entity* (Issued 6/91).

<sup>14</sup> *See* Section 43 of the bill.

### **Code of Ethics for Public Officers and Public Employees (Section 3)**

#### ***Current Situation***

The term “agency” means: any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.<sup>15</sup>

This definition of “agency” would encompass a special district.

#### ***Effect of Proposed Changes***

The bill specifically adds “any special district as defined in s.189.012, F.S.” to the definition of “agency.”

### **Governor’s Suspension Power (Section 4)**

#### ***Current Situation***

Pursuant to Article IV, s. 7, of the State Constitution, the Governor may suspend any state officer not subject to impeachment, any officer of the militia not in active service of the United States, or any county officer for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, or commission of a felony. If the Governor suspends one of these officers, the decision to remove or reinstate the officer is made by the Senate.<sup>16</sup>

Pursuant to Article IV, s. 7(c), of the State Constitution, the Governor may suspend any elected municipal officer indicted for a crime. Additionally, the Legislature provided the Governor the authority to suspend any elected or appointed municipal official for misfeasance, malfeasance, neglect of duty, public drunkenness, incompetence, permanent inability to perform public duties, arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor.<sup>17</sup> This jurisdiction is concurrent in the Governor and in the statutory or charter authority.<sup>18</sup> In the event that a municipal officer is convicted, the Governor is required to remove him or her from office.<sup>19</sup>

Currently, the law contemplates the following types of special districts:

- An independent special district that is created by special act,
- An independent special district created by county/municipal charter or ordinance,
- An independent special district created by agreement between counties,

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<sup>15</sup> Section 112.312(2), F.S., provides definitions as used in Part III of ch. 112, F.S. (Code of Ethics for Public Officers and Employees) and for purposes of the provisions of section 8, Article II of the Florida Constitution, unless the context otherwise requires.

<sup>16</sup> Article IV, s. 7(b), Fla. Const.

<sup>17</sup> Section 112.51, F.S.

<sup>18</sup> Section 112.50, F.S.

<sup>19</sup> Section 112.51(5), F.S.

- An independent special district created by agreement between a county and a municipality,
- A county/municipal dependent district created by charter, or
- A county/municipal dependent special district created by ordinance.

Members of special districts may be considered to be county officers, municipal officers, or neither county or municipal officers. If a Governor were to suspend a member of a special district board that exercises powers and duties that are county-related, the Senate would likely have jurisdiction over the executive order of suspension pursuant to Art. IV, s. 7, Fla. Const. If the Governor were to suspend a member of a special district that exercises powers and duties that are municipal in nature, then the Senate would not have jurisdiction. The Governor could take any action consistent with ss. 112.50-112.52, F.S. It is unclear what would happen in the event that a special district board member whose board is created by interlocal agreement between multiple counties or municipal-county agreement was suspended.

### ***Effect of Proposed Changes***

The bill provides that the Governor may suspend board members of special districts exercising state or county jurisdiction subject to removal or reinstatement by the Senate as provided in Art. IV, s. 7(a), of the State Constitution. Alternatively, the bill provides that the Governor may suspend and remove board members of special districts exercising powers other than state or county powers as provided in s. 112.51, F.S.

### **Children's Services Independent Special Districts (Section 5)**

#### ***Current Situation***

The governing body of a children's services independent special district is typically composed of 10 members, and serves to promote juvenile welfare. A county, as defined in s. 125.011(1), F.S., may instead have a governing body composed of 33 members, one of whom is a member of the state Legislature who represents residents of the county. The member of the Legislature is selected to serve on the governing body of the children's services district by the chair of the local legislative delegation.

Any children's services district may be dissolved by a special act of the Legislature, or by ordinance of the county governing body. A county ordinance dissolving the independent special district is conditioned upon the approval of the electorate. The question of retention or dissolution of the district must be presented to the electorate in a general election no later than 12 years after initial authorization, although a shorter period for reauthorization may be specified.<sup>20</sup>

#### ***Effect of Proposed Changes***

The bill removes the selection criteria for the member of the state Legislature serving on the governing body of the children's special district of a county defined in s. 125.011(1), F.S. In the absence of any direction, it is unclear how this member would be selected.

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<sup>20</sup> Section 125.901(4), F.S.

**Statement of Legislative Intent (Sections 7-9)*****Current Situation***

Section 189.402, F.S., contains the statements of legislative intent concerning creation and purpose of special districts. In its current form, it contains statements of legislative intent relating to both dependent and independent special districts.

***Effect of Proposed Changes***

The general statements of legislative intent applicable to both types of districts in ss. 189.402(1), 189.402(6), and 189.402(7), F.S., are transferred to s. 189.011, F.S., which is located in “Part I - General Provisions.” The bill moves from s. 189.402(6), F.S., to s. 189.011(2), F.S., the Legislative findings that special districts serve a necessary and useful public purpose and the intent that the public trust be secured by requiring independent special districts to register and provide certain financial reports.

Additionally, the current statements of legislative intent concerning improvement of communication and uniformity in s. 189.402(2), F.S., are moved and renumbered to s. 189.06, F.S., located in “Part VI - Oversight and Accountability.”

The statements of legislative intent concerning independent special districts in s. 189.402(3), (4), (5), and (8) are moved to s. 189.03, F.S., in “Part III - Independent Special Districts,” and substantively revised. The revisions include deleting references to managing and financing capital infrastructure, facilities and services.

**Special District Definition (Section 10)*****Current Situation***

Under s. 189.403, F.S., “special district” means:

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 special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts shall be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

***Effect of Proposed Changes***

**Section 10** transfers, renumbers, and amends s. 189.403, F.S., to redefine the term “special district” as:

a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

## **Creation, Dissolution, Reporting Requirements of Special Districts (Section 12)**

### ***Current Situation***

Section 189.4031, F.S., requires all special districts to follow creation, dissolution, and reporting requirements set forth in Chapter 189 of the Florida Statutes. It also requires certain information concerning powers and duties of the district, methods for establishing and amending the charter, certain information concerning ad valorem taxing and fees, planning requirements, and geographical boundaries to be contained in the charter of an independent special district. Because the only charter available for a community development district is that provided in ss. 190.006-190.041, F.S., an exception is created for community development districts.

### ***Effect of Proposed Changes***

The bill moves the provision that all special districts must follow creation, dissolution and reporting requirements to s. 189.013, F.S., which is located in “Part I - General Provisions.” The remaining provisions are moved to s. 189.0311, F.S., which is located in “Part III - Independent Special Districts.”

## **Official List of Special Districts (Section 13)**

### ***Current Situation***

Section 189.4035, F.S., requires the DEO to compile and maintain an official list of special districts which must be posted on the department’s website. That provision also states that if a special district was created by a local general-purpose government or a state agency, any proposed charter amendments must be approved as a matter of right. If the special district was created by the Legislature, the district must seek legislative amendment to its charter during the next legislative session or it will become a dependent special district.

### ***Effect of Proposed Changes***

In addition to moving s. 189.4035, F.S., to s. 189.061, F.S., located in “Part VI - Oversight and Accountability,” the bill makes the following changes:

- Requires the DEO to post a link to the special district’s website, which is required to contain certain information pursuant to newly created s. 189.069, F.S.;
- Deletes the requirement that charter amendment requests made by a local general-purpose government or state agency be approved as a matter of right; and

- Deletes the requirements that special districts created by the Legislature seek an amendment at the next legislative session and that failure to do so will result in conversion to a dependent special district.

## **Merger and Dissolution of Special Districts (Sections 18-23)**

### ***Current Situation***

Section 189.4042, F.S., governs the merger and dissolution of special districts. That section provides definitions, procedures for merger or dissolution of a dependent special district, dissolution of an independent special district, legislative dissolution of special districts created by special acts of the Legislature, dissolution of inactive independent special districts, legislative or voluntary merger of independent special districts, the merger by referendum process, and involuntary merger of independent special districts.

### ***Effect of Proposed Changes***

The following provisions of s. 189.4042, F.S., are relocated to “Part VII - Merger and Dissolution:”

- Definitions in s. 189.4042(1), F.S., are moved to s. 189.07, F.S.;
- Merger or dissolution of dependent special districts provisions in s. 189.4042(2), F.S., are moved to s. 189.071, F.S.;
- Dissolution of independent special districts provisions in s. 189.4042(3), F.S., are moved to s. 189.072, F.S.;
- Legislative merger of independent special districts provisions are moved from s. 189.4042(4), F.S., to s. 189.073, F.S.;
- The provisions for voluntary merger of independent special districts in s. 189.4042(5), F.S., are moved to s. 189.074, F.S.;
- The provisions relating to involuntary merger of independent special districts in s. 189.4042(6), F.S., are moved to s. 189.075, F.S.; and
- The provisions relating to community development districts is moved from s. 189.4042(7), F.S., to s. 189.0761, F.S.

## **Special Procedures for Inactive Districts (Section 24)**

### ***Current Situation***

Section 189.4044, F.S., requires the DEO to declare a special district inactive and provides the circumstances under which it must do so. That section provides for repayment of an inactive district’s debt and that the remainder of any assets or property escheat to the county or municipality wherein the district is located. If the department declares a district inactive, that statute specifies who the department must notify.

In the case of a district created by special act of the Legislature, the DEO must send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate.

***Effect of Proposed Changes***

The bill moves s. 189.4044, F.S., to s. 189.062, F.S., located in “Part VI - Oversight and Accountability.” The bill requires the DEO to send additional notices of declaration of a special district’s inactive status to the standing committees of the Senate and the House of Representatives charged with special district oversight, and the JLAC. Currently, the law authorizes the department to declare a district inactive when “following an inquiry from the department, the registered agent of the district or the chair of the governing body of the appropriate unit of local general-purpose government notifies the department in writing that the district has not had a governing body or a sufficient number of governing body members to constitute a quorum for 2 or more years.” The bill removes the condition precedent that the department must ask whether there has been a board or a quorum for the past two years.

The bill also allows a special district that declares itself inactive by unanimously adopted resolution to be dissolved without a referendum.

The bill prevents a special district declared inactive from collecting taxes, fees, or assessments, unless the declaration is withdrawn or revoked by the department or invalidated in proceedings initiated by the special district. The governing body of the special district may initiate such proceedings by filing a petition for administrative hearing, or filing an action for declaratory and injunctive relief in the circuit court where the majority of the geographic area of the district is located.

The DEO may also file a petition to enforce the prohibitions on the district from collecting taxes, fees, or assessments. Such a petition for enforcement would be filed with the circuit court in and for Leon County. The petition may request declaratory, injunctive, or other equitable relief, including appointment of a receiver. The prevailing party shall be awarded litigation costs and reasonable attorney fees.

**Governing Body Elections (Sections 27 and 28)*****Current Situation***

Section 189.405, F.S., requires elections of board members of dependent special districts be conducted by the supervisor of elections of the county where the district is located. That section also provides that elections of board members of independent special districts located entirely within one county may be conducted by the supervisor of elections of that county. Alternatively, if such a district conducts its own elections it must report the results to the supervisor of elections. The statute also provides an election process for multicounty special districts. It also allows the department to provide education for newly elected or appointed board members concerning the Code of Ethics, public records and open meetings laws, public finance, and parliamentary procedure. Education may be provided by means of videotapes, live seminars, workshops, conferences, teleconferences, computer-based training, multimedia presentations, or other available instructional methods. Finally, the law does not apply to community development districts or water management districts.

***Effect of Proposed Changes***

The bill moves these provisions, with the exception of the education of newly elected or appointed officials, to newly created s. 189.04, F.S., located in “Part IV - Elections.” The education programs provisions are moved to newly created s. 189.063, F.S., located in “Part VI - Oversight and Accountability.” However, the bill deletes the references to the specific means of providing training.

**Special District Information Program (Section 33)*****Current Situation***

The Special District Information Program (SDIP) is created in s. 189.412, F.S., to:

- Maintain a database of special district non-compliance reports;
- Maintain a master list of special districts for the DEO website;
- Publish and update the “Florida Special District Handbook;”
- Secure and maintain access to special district information collected by all state agencies, when feasible;
- Facilitate coordination and communication among state agencies regarding special districts;
- Conduct studies relevant to special districts;
- Provide assistance to comply with the requirements of law, including assistance with an annual conference presented by the Florida Association of Special Districts; and
- Provide assistance to local general-purpose governments and certain state agencies in collecting delinquent reports or information, help special districts comply with reporting requirements, declare special districts inactive when appropriate, and initiate enforcement actions when directed to by the JLAC.

***Effect of Proposed Changes***

The bill renames the Special District Information Program as the “Special District Accountability Program” and moves the program to s. 189.064, F.S., in “Part VI - Oversight and Accountability.” It requires electronic publication of special district noncompliance status reports. The bill requires the program to maintain the official list of special districts. Additionally, the bill requires that the program provide technical advisory assistance to special districts which may be performed by the DEO or a qualified third-party vendor pursuant to a contract entered into in accordance with applicable bidding requirements.

**Failure to File Reports or Information (Sections 41 and 43)*****Current Situation***

If a special district fails to file the required reports or information, the person authorized to receive and read the reports or information or the local general-purpose government must notify the district’s registered agent.<sup>21</sup> The district can request, and be granted, a 30 day extension of time in which to file the required report or information. If the governing body of the local general-purpose government or governments determines that the failure was unjustified, it may

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<sup>21</sup> Section 189.419, F.S.

notify the department. The department must then provide the district 60 days to comply and follow subsequent remedial procedures in s. 189.421, F.S., if warranted.

If a dependent special district fails to file required reports or information, the local governing authority on which the district is dependent may take whatever steps it deems necessary to enforce the district's accountability, including withholding funds, removing governing board members at will, vetoing the special district's budget, conducting the oversight review process set forth in s. 189.428, F.S., or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.

If a special district fails to file a notice of bond issuance with the appropriate state agency, the agency is required to notify the DEO. The department must notify the district of the requirements and encourage the special district to take steps to assure that noncompliance will not recur.

If a special district fails to file actuarial reports or statements of actuarial impact with the appropriate state agency, that agency must notify the department and the department may begin the remedial measures in s. 189.421(1), F.S.

Finally, if a special district fails to file annual financial reports or annual financial audits, the appropriate state agency or office must, and the Joint Legislative Auditing Committee may, notify the department and the department must proceed pursuant to s. 189.421, F.S.

Section 189.421, F.S., provides that if the department has been notified of a special district's failure to file a required report or information, it must provide a letter to the district notifying the district that it has 60 days to comply and offer assistance to the district in complying. If a district is unable to make the 60 day deadline, the district must notify the department why it cannot comply and the steps it is taking to prevent a recurrence. The district must also notify the department when it will file the report. The department must forward the letter to the appropriate entity. The law provides a mechanism for filing a suit seeking a writ of certiorari.

### ***Effect of Proposed Changes***

The bill moves s. 189.419, F.S., to s. 189.066, F.S., located in "Part VI - Oversight and Accountability." The bill requires the governing body of the local general-purpose government to notify the DEO if they determine that a special district has an unjustified failure to file reports or information, required under s. 189.08, 189.014, 189.015, or 189.016(9), F.S.

The bill also provides that if a special district created by special act of the Legislature fails to file annual financial reports or annual financial audits, the JLAC must notify the President of the Senate, the Speaker of the House of Representatives, and the standing committees of the Senate and the House of Representatives charged with special district oversight. If a special district created by ordinance fails to file annual financial reports or annual financial audits, the JLAC must provide written notification to the DEO and chair or equivalent of the local general-purpose government that created the district.

The bill moves s. 189.421, F.S., to s. 189.067, F.S., located in “Part VI - Oversight and Accountability.” The bill provides remedies for noncompliance with reporting requirements. To enforce compliance, the DEO may file a petition with the circuit court in and for Leon County requesting declaratory, injunctive, any equitable relief, or any remedy provided by law.

### **Grants and Donations Trust Fund (Section 47)**

#### ***Current Situation***

Section 189.427, F.S., requires the DEO to establish, by rule, a schedule of fees to pay one-half of the costs incurred by the department to administer the special districts act. The fee may not exceed \$175 per district each year. The fees must be deposited in the department’s Grants and Donations Trust Fund. Any fee rule must consider factors including the special district’s dependent or independent status and the district’s reported revenues for the most recent fiscal year. That section also authorizes the DEO to assess fines of not more than \$25, with an aggregate total not to exceed \$50, as penalties against special districts that fail to remit required fees. The section provides legislative intent that general revenue funds will be provided to the DEO to pay one-half of the costs to administer the special districts act.

#### ***Effect of Proposed Changes***

The bill moves s. 189.427, F.S., to s. 189.018, F.S., located in “Part I - General Provisions.” The bill also renames the trust fund as the “Operating Trust Fund.” See Section VI.

### **Oversight Review Process (Sections 48, 51 and 52)**

#### ***Current Situation***

Section 189.428, F.S., contains several statements of legislative intent. It specifies the order in which special districts may be subject to oversight review and criteria for evaluating the district’s performance. Special districts being reviewed may provide written questions, concerns, preliminary reports, draft reports, or final reports relating to the district. The final report shall form the basis of a charter modification or dissolution. That section provides the process for legislative dissolution. Deepwater ports and airport authorities are exempt under certain circumstances. Finally, special districts organized to operate licensed health systems and facilities are exempt.

#### ***Effect of Proposed Changes***

The bill moves s. 189.428, F.S., to s. 189.068, F.S., located in “Part VI - Oversight and Accountability.” The bill also creates s. 189.034, F.S., located in “Part III - Independent Special Districts.” The bill requires the JLAC to oversee special districts created by special act of the Legislature when a special district fails to file required reports or information under ss.11.45(7), 218.32, 218.39, and 218.503(3), F.S. The JLAC would perform the following:

- Provide written notice of district’s noncompliance to the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight, and legislators representing the geographical jurisdiction of the special district.

- Convene a public hearing on the issue of noncompliance, as well as general oversight of the district, at the discretion of the Speaker of the House of Representatives and the President of the Senate.
- Obtain specified information from a special district in preparation for a public hearing, as follows:
  - The district's annual financial report for the previous fiscal year;
  - The district's audit report for the previous fiscal year;
  - An annual report containing:
    - The district's mission;
    - Funding sources;
    - Major activities, programs, and initiatives it undertook in the most recently completed fiscal year and the benchmarks or criteria used by the governing body to determine success or failure;
    - Challenges or obstacles faced by the district in fulfilling its mission and responsibilities;
    - Ways in which the district believes it could better fulfill its mission and related responsibilities and a description of the actions it intends to take during the ensuing fiscal year;
    - Proposed changes to its special act and the justifications for such changes;
    - Any reasons for the district's noncompliance;
    - Whether the district is currently in compliance and plans to correct any recurring issues of noncompliance; and
    - Efforts to promote transparency, including maintenance of the district's website in accordance with new s. 189.069, F.S.

The bill also creates a new provision concerning oversight of special districts created by local ordinance in s. 189.035, F.S., located in "Part III - Independent Special Districts." This new provision requires the JLAC or its designee to provide written notice of failure to file annual financial reports or annual financial audits to the chair or equivalent of the local general-purpose government. The chair may convene a public hearing on the non-compliance within 6 months after receiving such notice. The local general-purpose government is authorized to request:

- The district's annual financial report for the previous fiscal year;
- The district's audit report for the previous fiscal year;
- An annual report containing:
  - The district's purpose;
  - Funding sources;
  - Major activities, programs, and initiatives it undertook in the most recently completed fiscal year and the benchmarks or criteria used by the governing body to determine success or failure;
  - Challenges or obstacles faced by the district in fulfilling its purpose and responsibilities;
  - Ways in which the district believes it could better fulfill its purpose and a description of the actions it intends to take during the ensuing fiscal year;
  - Proposed changes to the ordinance that established it and the justifications for such changes;
  - Any reasons for the district's noncompliance;
  - Whether the district is currently in compliance;
  - Plans to correct any recurring issues of noncompliance; and

- Efforts to promote transparency, including maintenance of the district's website in accordance with new s. 189.069, F.S.

The local general-purpose government must report findings of any public hearing to the DEO and the JLAC within 6 months after completing the hearing.

### **Property Tax Exemption (Section 53)**

#### ***Current Situation***

The definition of special district in s. 189.403(1), F.S., in pertinent part, provides, "For the purpose of s. 196.199(1), special districts shall be treated as municipalities." Section 196.199(1), F.S., provides that municipalities are exempt from ad valorem taxes in the same manner that municipalities are exempt from taxes.

#### ***Effect of Proposed Changes***

The bill creates new s. 189.055, F.S., located in "Part V - Finance." The new statute incorporates the language quoted above to maintain property tax exempt status for special districts.

### **Web-based Public Access (Section 54)**

#### ***Current Situation***

There are currently no statutory requirements relating to special districts' websites.

#### ***Effect of Proposed Changes***

The bill creates new s. 189.069, F.S., in "Part VI - Oversight and Accountability." Beginning October 1, 2015, or by the end of the first fiscal year after creation of a special district, all special districts would be required to annually update and maintain their official websites and submit their official website address to the DEO. Independent special districts must maintain a separate internet website, while dependent special districts would be allowed to use the website of the general-purpose government that created them to provide the required information. The following information must be posted on the special district's website:

- The full legal name of the special district;
- The public purpose of the special district;
- The name, address, email address, and, if applicable the term and appointing authority for each member of the governing body of the special district;
- The fiscal year of the special district;
- The full text of the special district's charter, the date the special district was established, the entity that established the special district, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established;<sup>22</sup>
- The mailing address, e-mail address, telephone number, and Internet website uniform resource locator of the special district;

<sup>22</sup> Community development districts may use chapter 190, as the uniform charter, but must include information relating to any grant of special powers.

- A description of the boundaries or service area of, and the services provided by, the special district;
- A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts charged for the fiscal year and the statutory authority for the levy of the tax, fee, or charge;
- The primary contact information for the special district for the purpose of communication from the DEO;
- The code of ethics that applies to the special district, and whether the special district has adopted additional ethics provisions;
- The budget of the special district; and amendments; and
- The final, complete audit report for the most recent completed fiscal year.

### **Effective Date (Section 89)**

The bill provides an effective date of July 1, 2014.

### **Other Provisions**

Created in 2000, the Community Improvement Authority Act was intended to facilitate improvement of port areas.<sup>23</sup> The purpose of the Act is to prescribe a uniform procedure for establishing independent authorities for the purpose of planning, financing, constructing, renovating, developing, operating, and maintaining facilities and other attractions, including professional sports facilities and other related amenities and infrastructure within highly populated counties of the state and within counties contiguous therewith.<sup>24</sup> Section 50 of the bill repeals Community Improvement Authority Act by repealing the following: ss. 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444, F.S.

Numerous sections of the bill make only technical, conforming, or renumbering changes to the statutes. Those sections of the bill are: 6, 11, 14-17, 25, 26, 29-32, 34-40, 42, 44-46, 49, 50, 55-88.

## **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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<sup>23</sup> Ch. 2000-348, L.O.F.

<sup>24</sup> Section 189.431(2), F.S.

**D. Other Constitutional Issues:**

Article III, s. 11(a)(21) of the Florida Constitution states that there shall be no special law or general law of local application<sup>25</sup> pertaining to “any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.” Prohibited subject matters include s. 189.404(2), F.S., pertaining to independent special districts; and s. 190.049, F.S., pertaining to the creation of independent special districts having the powers enumerated in two or more of the paragraphs of s. 190.012, F.S. The bill raises an issue as to whether proposed conforming changes to s. 190.049 and s. 189.404(2), F.S., require a three-fifths vote of both houses in order to pass.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of CS/CS/SB 1632 is indeterminate, but anticipated to be minimal. Currently, the Department of Economic Opportunity’s website links to a special district’s website when a URL is provided. There will be minimal administrative costs associated with collecting all URLs for special districts and establishing links. The DEO indicates that these costs can be absorbed within existing resources. The bill contemplates the possibility of hearings and notices which would be conducted by local governments, the JLAC, or the DEO. The costs associated with such hearings and notices are indeterminate, but anticipated to be minimal.

**VI. Technical Deficiencies:**

Section 47 of the bill would have fees established and administered by the Department of Economic Opportunity (DEO) deposited into the Operating Trust Fund, instead of going into the Grants and Donations Trust Fund, as is currently required by law. Legislation in 2011<sup>26</sup> transferred all unexpended balances of an “Operating Trust Fund” from the Department of Community Affairs to the Executive Office of the Governor, not the Department of Economic Opportunity. The Operating Trust Fund does not currently exist in the DEO. To create a new trust fund, the relevant constitutional restrictions will apply.<sup>27</sup> Alternatively, the bill could be amended to continue depositing such fees in the DEO’s Grants and Donations Trust Fund.

<sup>25</sup> *School Board of Escambia Co. v. State*, 353 So. 2d 834, 839 (Fla. 1977).

<sup>26</sup> Chapter 2011-142, s. 3, Laws of Fla.

<sup>27</sup> Article III, s. 19(f) of the Florida Constitution requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill transfers, renumbers, and substantially amends the following sections of the Florida Statutes: 11.40, 112.312, 125.901, 189.401, 189.402, 189.403, 189.4031, 189.4035, 189.404, 189.40401, 189.4041, 189.4042, 189.4044, 189.4045, 189.4047, 189.405, 189.4051, 189.4065, 189.408, 189.4085, 189.412, 189.413, 189.415, 189.4155, 189.4156, 189.416, 189.417, 189.418, 189.419, 189.420, 189.421, 189.4221, 189.423, 189.425, 189.427, 189.428, 189.429, 11.45, 100.011, 101.657, 112.061, 112.63, 112.665, 121.021, 121.051, , 153.94, 163.08, 165.031, 165.0615, 171.202, 175.032, 190.011, 190.046, 190.049, 191.003, 191.005, 191.013, 191.014, 191.015, 200.001, 218.31, 218.32, 218.37, 255.20, 298.225, 343.922, 348.0004, 373.711, 403.0891, 582.32, and 1013.355.

This bill creates the following sections of the Florida Statutes: 112.511, 189.034, 189.035, 189.055, and 189.069.

This bill repeals the following sections of the Florida Statutes: 189.430, 189.431, 189.432, 189.433, 189.434, 189.435, 189.436, 189.437, 189.438, 189.439, 189.440, 189.441, 189.442, 189.443, and 189.444.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Community Affairs on April 1, 2014:**

- Postpones the date by which a special district must have a website to October 1, 2015;
- Requires a special district's website to include any code of ethics adopted, and any assessments imposed;
- Creates a process by which the JLAC and the DEO may enforce reporting and other requirements when special districts are noncompliant or inactive. Subsequent to notifying DEO, relevant legislators and the local general-purpose government, and subsequent to a public hearing, JLAC may request that DEO file a petition for enforcement with the Circuit Court of Leon County; and
- Establishes separate oversight controls appropriate to different special districts depending on how they were created.

**CS by Ethics and Elections on March 17, 2014:**

- Provides that the Governor may suspend board members of special districts exercising state or county jurisdiction subject to removal or reinstatement by the Senate;

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trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless recreated.

- Provides that the Governor may suspend and remove board members of special districts exercising powers other than state or county powers; and
- Provides that the Governor may suspend special district officers for violations of the Special District Act in Chapter 189, F.S., but the Governor and appointing authority must ensure that the governing body of the district maintains enough members to constitute a quorum.

B. Amendments:

None.