

**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 Fiscal Policy

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BILL: SB 956

INTRODUCER: Senator Stargel

SUBJECT: Special Districts

DATE: February 3, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

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## I. Summary:

SB 956 requires a special district to publish additional information on its website and to ensure other current information is maintained on their website for longer periods of time. The bill also reorganizes the oversight provisions of ch. 189, F.S., to increase clarity and avoid duplication. The bill clarifies the power of the Legislature to create dependent special districts. The bill revises the process for the Department of Economic Opportunity (DEO) to declare a special district inactive and clarifies the power of the Legislature to dissolve inactive independent special districts by general law. It also makes conforming changes to a number of related statutes.

According to the DEO, the bill will have a minimal fiscal impact that the agency can absorb within existing resources.

The bill is effective October 1, 2016.

## II. Present Situation:

A “special district” is “a unit of local government created for a special purpose... operat[ing] within a limited geographic boundary and is created by general law, special act, local ordinance, or rule of the Governor and Cabinet.”<sup>1</sup> Special districts are created to provide a wide variety of services, such as mosquito control,<sup>2</sup> beach facilities,<sup>3</sup> children’s services,<sup>4</sup> fire control and rescue,<sup>5</sup> or drainage control.<sup>6</sup>

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<sup>1</sup> Section 189.012(6), F.S.

<sup>2</sup> Section 388.021(1), F.S. (however, new independent mosquito control districts are prohibited, *see* s. 388.021(2), F.S.).

<sup>3</sup> *See* s. 189.011, F.S.

<sup>4</sup> Section 125.901(1), F.S.

<sup>5</sup> Section 191.002, F.S.

<sup>6</sup> Section 298.01, F.S.

Special districts can be classified as “dependent special districts” or “independent special districts.” For a district to be classified as a “dependent special district,” the district must meet at least one of the following criteria:

- Membership of its governing body is identical to that of the governing body of a single county or a single municipality;
- All members of its governing body are appointed by the governing body of a single county or a single municipality;
- The members of its governing body are subject to removal at will by the governing body of a single county or single municipality, during their unexpired terms; or
- The district’s budget requires approval or can be vetoed by the governing body of a single county or a single municipality.<sup>7</sup>

An “independent special district” is any special district that does not meet the definition of “dependent special district.” Furthermore, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely within the borders of a single municipality.<sup>8</sup>

Special districts are governed generally by the Uniform Special District Accountability Act of 1989 (act) which was enacted by the Legislature to reform and consolidate laws relating to special districts.<sup>9</sup> In 2014, the act was revised extensively and reorganized into eight parts. The revision made significant changes to provisions concerning independent special districts and special district oversight and accountability.<sup>10</sup>

According to the DEO’s Special District Accountability Program Official List of Special Districts, the state currently has 1,659 special districts. Specially there are:

- 1,648 active districts, 11 inactive districts;
- 634 dependent special districts; and
- 1,025 independent special districts.<sup>11</sup>

### **Internet Accessible Budgets**

Each special district is required to post a tentative budget to its website at least 2 days before a budget hearing. When a budget is approved, it must be posted to the website within 30 days. If the budget is later amended, the adopted amendment must be posted on the district’s website within 5 days after adoption. If a dependent special district does not operate a website, the act creates alternative avenues for publication.<sup>12</sup>

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<sup>7</sup> Section 189.012(2), F.S.

<sup>8</sup> *Id.* at (3).

<sup>9</sup> Section 189.06, F.S.

<sup>10</sup> Chapter 2014-22, L.O.F.

<sup>11</sup> See Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, *Official List of Special Districts Online – Directory*, available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last visited January 29, 2016).

<sup>12</sup> Sections 189.016(4) and (7), F.S.

If a special district does not operate a website the special district must, within a reasonable period of time, transmit the tentative and final budget or amendment to the local government authority. The local governing authority must then post the budget or amendment to its own website.<sup>13</sup>

### **Creation of Dependent Special Districts**

Dependent special districts typically are created by the passage of an ordinance.<sup>14</sup> The ordinance creating the special district must include:

- Purpose, powers, functions, and duties of the district;
- Geographic boundaries of the district;
- Authority of the district;
- An explanation of why the district is the best mechanism for service delivery;
- Membership, organization, compensation, and administrative duties of the district's board;
- Applicable financial disclosure, noticing, and reporting requirements;
- Method for financing the district; and
- A declaration that the creation of the district is consistent with the approved local government comprehensive plans.<sup>15</sup>

### **Status Statement as dependent or independent**

The charter for any new special district created after October 1, 1997, must contain a reference to the status of the district as dependent or independent. Existing special districts are required to amend their charter to contain status information, as practical.<sup>16</sup> If a district fails to submit its status to the DEO, then the department is authorized to determine the district's status as dependent or independent.<sup>17</sup>

### **Oversight of Special Districts**

When an independent special district fails to file required reports or requested information, the Joint Legislative Auditing Committee (JLAC) must provide written notice of the district's noncompliance to the;

- President of the Senate,
- Speaker of the House of Representatives,
- Standing committees of the Senate and House of Representatives charged with special district oversight, and
- Legislators who represent any portion of the geographic jurisdiction of the district.<sup>18</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Section 189.02(1), F.S. Prior to September 30, 1989, some dependent special districts were created by general law or special act. There are currently 108 active dependent special districts that were created by general law and 74 created by special act.

<sup>15</sup> Section 189.02(4), F.S.

<sup>16</sup> Section 189.031(5), F.S.

<sup>17</sup> Section 189.061(4), F.S.

<sup>18</sup> Section 189.034(2), F.S.

The JLAC may then convene a public hearing and the special district is required to provide the annual financial report for the prior fiscal year, audit report for the previous fiscal year, and the annual report for the previous fiscal year, providing a detailed review of the performance of the special district.<sup>19</sup>

When a dependent special district fails to file required reports or requested information, the JLAC provides written notice of the district's noncompliance to the head of the local general-purpose government to which the district is dependent.<sup>20</sup> The local general-purpose government may conduct a public hearing on the issue of noncompliance within 3 months of the receipt of the notice. The local general-purpose government has 30 days upon receipt of the notice to inform the JLAC of the date, time, and place of the public hearing.<sup>21</sup>

The special district must provide the local general-purpose government the same information required by an independent special district to the JLAC. If the local general-purpose government convenes a public hearing, it must provide the DEO and the JLAC a report containing findings and conclusions within 60 days.<sup>22</sup>

### **Special District Accountability Program**

The DEO is tasked with the administration of the Special District Accountability Program.<sup>23</sup> As part of administering the program, the DEO is required to publish and update the "Florida Special District Handbook." The Florida Special District Handbook must contain:

- Definitions of special districts and status distinctions;
- Provisions concerning special district creation, implementation, modification, dissolution, and operating procedures; and
- Summary of reporting requirements.<sup>24</sup>

### **Official List of Special Districts**

The official list of special districts contains all special districts and identifies the district's status as independent or dependent. The DEO must make the list available on its website and must provide links to the website of each special district that operates a website.<sup>25</sup>

### **Inactive Special Districts**

Whether dependent or independent, when a special district no longer fully functions or fails to meet its statutory responsibilities, the DEO is required to declare that district inactive by following a specified process. The DEO must declare a special district inactive by documenting one of the following criteria:

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<sup>19</sup> Sections 189.034(3) and (4), F.S.

<sup>20</sup> Section 189.035(2), F.S.

<sup>21</sup> Sections 189.035(2) and (3), F.S.

<sup>22</sup> Sections 189.035(4) and (5), F.S.

<sup>23</sup> Section 189.064, F.S.

<sup>24</sup> Section 189.064(3), F.S.

<sup>25</sup> Sections 189.061(1) and (5), F.S. *See also supra* note 11.

- The registered agent of the district, the chair of the district governing body, or the governing body of the appropriate local general-purpose government:
- Provides the DEO with written notice that the district has taken no action for 2 or more years.
- Provides the DEO with written notice that the district has not had any members on its governing body or insufficient numbers to constitute a quorum for 2 or more years.
- Fails to respond to an inquiry from the DEO within 21 days.
- Following statutory procedure, the DEO determines the district failed to file specified reports,<sup>26</sup> including required financial reports.
- For more than 1 year, no registered office or agent for the district was on file with the DEO.
- The governing body of the district unanimously adopts a resolution declaring the district inactive and provides documentation of the resolution to the DEO.<sup>27</sup>

Once the DEO determines which criterion applies to the district, notice of the proposed declaration of inactive status is published by the DEO.<sup>28</sup> The notice must state that any objections to declaring the district inactive must be filed with the DEO pursuant to ch. 120, F.S., within 21 days after the publication date. If no objection is filed within the 21-day period, the DEO declares the district inactive.<sup>29</sup>

Prior to 2014, the former statute required the DEO to document the existence of one of the criteria listed in paragraph s. 189.062(1)(a), publication and service under paragraph (1)(b) of a notice of intent to declare the district inactive, and the lack of any administrative appeal of the declaration within 21 days of that publication.<sup>30</sup> In 2014, as ch. 189, F.S., was extensively revised and restructured, the word “or” was added at the end of s. 189.062(1)(a)6., F.S., allowing the DEO either to document one of the six criteria or publish notice of intent to declare the district inactive and find no objection is filed.<sup>31</sup>

### **Internet Accessible Reporting**

Each special district is required to maintain an official website containing essential information about the district.<sup>32</sup> Independent special districts are required to maintain their own website, while a link to information about dependent special districts must be displayed on the home page of the local general-purpose government which created the district. Dependent special districts may maintain their own webpages, but are not required to do so.<sup>33</sup>

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<sup>26</sup> Section 189.066, F.S.

<sup>27</sup> Section 189.062(1)(a), F.S.

<sup>28</sup> Section 189.062(1)(b), F.S. Publication must be in a newspaper of general circulation in the county or municipality where the district is located and a copy sent by certified mail to the district’s registered agent or chair of the district’s governing body, if any.

<sup>29</sup> Section 189.062(1), F.S.

<sup>30</sup> Section 189.4044, F.S. (2013).

<sup>31</sup> Chapter 2014-22, s. 24, L.O.F.

<sup>32</sup> Section 189.069(1), F.S. The website must include: the district’s legal name, public purpose, geographic area, code of ethics, charter and associated information, budget, fiscal year, and audit report for the most recently completed fiscal year; vital information about the district’s governing body; contact information for the district, including for district’s spokesperson; and a table of all taxes and fees of the district. Section 189.069(2)(a), F.S.

<sup>33</sup> Section 189.069(1), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 11.40, F.S., to conform cross-references.

**Section 2** amends s. 189.011, F.S., to expand legislative intent to include all special districts in the requirements of registration and reporting financial and other activities. The bill also clarifies that failure to comply with the minimum disclosure requirements may result in action against the special district, as opposed to the officers of the district.

**Section 3** amends s. 189.016, F.S., to require a special district to post its tentative budget on its website where it must remain for at least 45 days after the budget hearing. The final budget must be posted 30 days after adoption and remain online for at least 2 years. If the budget is amended, then any adopted amendment must be posted on the website within 5 days and remain online for at least 2 years after adoption.

The bill removes the requirement for a special district without a website to transmit its tentative budgets, final budgets, and amendments to the local governing authority or the local general-purpose government in which the special district is located. Beginning October 1, 2015, all special districts were required to maintain an official website.

**Section 4** reenacts s. 165.0615(16), F.S., relating to municipal conversion of independent special districts upon elector-initiated and approved referendum to incorporate amendments made by the bill

**Section 5** creates s. 189.02(5), F.S., to allow the Legislature create dependent special districts by special act at the request or with the consent of the local government upon which the special district will be dependent.

**Section 6** creates s. 189.022, F.S., to require dependent special districts to identify themselves as such in their charters.

**Section 7** amends s. 189.031, F.S., to require independent special districts to identify themselves as such in their charters.

**Section 8** renumbers, transfers and amends s. 189.034, F.S., concerning oversight of special districts created by special act of the Legislature. **Section 9** renumbers, transfers, and amends s. 189.035, F.S., concerning oversight of special districts created by local ordinance or resolution. Identical provisions in these sections related to information that must be submitted to the JLAC or the local general-purpose government pursuant to a hearing about noncompliance are instead consolidated into a newly created s. 189.0653, F.S. (**Section 13**).

**Section 10** amends s. 189.061, F.S., to revise criteria for the official list of special districts to exclude all districts that are declared inactive. The official list must be maintained by the DEO using the information filed by the special districts with the DEO. If a special district does not submit the required written status statement, the DEO may determine the status of the district. After the DEO determines the status, the DEO must render its determination to an agent of the special district.

The official list of special districts or the determination of status does not constitute final agency action pursuant to ch. 120, F.S. The bill provides a procedural process if there is an inconsistency between the status of a special district on the official list and the status submitted by the district.

The Auditor General must notify the DEO of each entity that attempts to report as a special district in an audit report issued pursuant to s. 218.39, F.S., which is not included on the official list of special districts. If the DEO determines that such an entity is a special district, the DEO must add the entity to the official list and notify each such entity that it is required to comply with s. 189.013, F.S.

**Section 11** amends s. 189.062, F.S., to clarify that the DEO must declare a special district inactive by documenting that the special district meets one of the six statutory criteria for being considered inactive, publishing notice of intent to declare the district inactive, and affirming that no administrative appeal of the declaration has been filed within 21 days of publication.

The bill provides that each special act creating or amending the charter of a special district declared to be inactive may be repealed by general law initiated by either of the standing committees of the Senate or the House of Representatives with the approval of the chamber's presiding officer. Notice of the introduction of legislation providing for such repeal of a special act must be given to each member of the Legislature who represents any portion of the geographic jurisdiction of the special district.

The DEO must immediately remove each special district declared inactive from the official list of special districts. The DEO must create a separate list of all special districts declared inactive and must keep each inactive district on the list until the DEO has determined that the district has resumed active status or has dissolved.

**Section 12** amends s. 189.064, F.S., to require the special district handbook to contain a section that summarizes the public facilities reporting requirements and the evaluation and appraisal notification schedule provided in s. 189.08(2), F.S.

**Section 13** creates s. 189.0653, F.S., to require a special district to provide certain information at the request of the local general-purpose government or the Joint Legislative Auditing Committee. The section does not make any substantive changes to current law. Rather, this section is the consolidation of provisions that were shared by the independent and dependent special district oversight processes in ss. 189.034 and 189.035, F.S.

**Section 14** amends s. 189.067, F.S., to conform cross-references.

**Section 15** amends s. 189.068, F.S., to conform cross-references and other changes made in the bill.

**Section 16** amends s. 189.069, F.S., to require the website for a dependent special district to be displayed prominently on the home page of the local general-purpose government upon which it is dependent, whether that government created the special district or not. Related to the list of items required to be on a special districts website, the bill also requires the district's website include a:

- Listing of regularly scheduled public meetings (including date, time, and location);
- Copy of the district's public facilities report;
- Link to the Department of Financial Services website; and
- Agenda and meeting materials at least 7 days before a meeting or workshop. This information must remain online for at least 1 year after the event.

**Section 17** amends s. 189.071, F.S., to clarify language concerning the merger or dissolution of dependent special districts.

**Section 18** amends s. 189.072, F.S., to remove redundant language.

**Section 19** reenacts ss. 189.074(2)(e), (3)(g), F.S., relating to voluntary merger of independent special districts, to incorporate the amendment made by the bill to s. 189.016, F.S.

**Section 20** provides that the bill is effective October 1, 2016.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DEO, the bill will have a minimal fiscal impact on the department that can be absorbed within existing resources. The current system used to generate special districts already has the ability to report separately on active and inactive special districts.<sup>34</sup>

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<sup>34</sup> Department of Economic Opportunity, *2016 Legislative Bill Analysis for HB 479*, (November 6, 2015) (on file with the Senate Committee on Fiscal Policy).

**VI. Technical Deficiencies:**

Lines 380 – 394 restate law already provided in subsection (6) in the same section of s. 189.061, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 11.40, 189.011, 189.016, 189.02, 189.031, 189.034, 189.035, 189.061, 189.062, 189.064, 189.067, 189.068, 189.069, 189.071, and 189.072 of the Florida Statutes.

This bill reenacts sections 165.0615 and 189.074 of the Florida Statutes.

This bill creates sections 189.022 and 189.0653 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.