

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 719 Municipal Conversion of Independent Special Districts

**SPONSOR(S):** Roth

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Banner	Miller
2) Government Accountability Committee			

### SUMMARY ANALYSIS

Special districts are used to create, fund, administer, and oversee provision and delivery of a variety of local services in Florida. Often they are established with the authority to impose ad valorem taxes, fees, and charges. Independent districts are often created by special act and are not subsidiary to local general-purpose governments such as cities or counties. Independent special districts have their own governing structure, their governing board members often are elected by the voters within the district, and their budgets are not subject to local government veto.

Independent special districts may petition to incorporate the district as a municipality provided the district meets all criteria prescribed in law. The bill adds to the required criteria that the district have at least 1,500 persons in counties with a population of 75,000 or less or 5,000 persons in counties with a population of more than 75,000, as is required for all proposed municipality incorporations.

There is no fiscal impact associated with this bill.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

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

An “independent special district” is characterized by having a governing board comprised of members which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality.<sup>5</sup> Additionally, 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.

Special districts are governed generally by ch. 189, F.S, the Uniform Special District Accountability Act (Act). The Act addresses provisions governing special districts, such as formation,<sup>6</sup> governance,<sup>7</sup> administration,<sup>8</sup> supervision,<sup>9</sup> merger,<sup>10</sup> and dissolution<sup>11</sup> of special districts, unless otherwise expressly provided in law. Statute requires special district charters to contain provisions related to the:<sup>12</sup>

- Purpose of the district.
- Powers, functions, and duties of the district regarding taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and foreclosure of liens, tax deeds and certificates, and contractual agreements.
- Methods for establishing the district.
- Method for amending the charter of the district.
- Membership and organization of the governing body, including administrative duties and maximum compensation of the members.
- Applicable financial disclosure, noticing and reporting requirements.
- Procedures and requirements for issuing bonds, if applicable.
- Procedures for conducting district elections or referenda required and the qualifications of an elector of the district
- Millage rate, if applicable
- Method for collecting non-ad valorem assessments, fees, or service charges.
- Planning requirements.
- Geographic boundary limitations.

Statute does not provide for specific parameters of the charter provisions, such as the length of time before the governing body must be turned over and elected by the members of the district. As such,

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

<sup>2</sup> Section 125.901, F.S.

<sup>3</sup> Section 191.002, F.S.

<sup>4</sup> Section 298.01, F.S.

<sup>5</sup> Section 189.012(3), F.S.

<sup>6</sup> Section 189.031, F.S.

<sup>7</sup> Section 189.0311, F.S.

<sup>8</sup> Section 189.019, F.S.

<sup>9</sup> Section 189.034, F.S.

<sup>10</sup> Sections 189.071 and 189.074, F.S.

<sup>11</sup> Sections 189.071 and 189.072, F.S.

<sup>12</sup> Section 189.031(3), F.S.

districts identifying as stewardship districts tend to allow for a longer time before mandatory election of the governing body members, typically allowing for development of residential areas and occupancy of units.

Chapter 298, F.S., authorizes the creation of water management and drainage districts and provides the authority for these districts to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan within its jurisdiction. Given the scope of authority provided in law, it is likely that these districts provide such municipal services as water, sewer, solid waste, drainage, and public works.

Section 165.0615, F.S., allows the qualified electors of an independent special district to file a petition to incorporate the district as a municipality, provided the independent special district meets all of the following criteria:

- It was created by a special act of the Legislature.
- It is designated as an improvement district and created pursuant to ch. 298, F.S., or is designated as a stewardship district and created pursuant to s. 189.031, F.S.
- Its governing board is elected.
- Its governing board agrees to the conversion.
- It provides at least four of the following municipal services: water, sewer, solid waste, drainage, roads, transportation, public works, fire and rescue, street lighting, parks and recreation, or library or cultural facilities.
- No portion of the district is located within the jurisdictional limits of a municipality.

The petition must include signatures of at least 40 percent of the qualified electors of the district. Following the verification and approval of the petition by the supervisor of elections, the governing body of the district is required to prepare, and approve by resolution, a proposed elector-initiated combined conversion and incorporation plan. Section 165.0615(4)(e), F.S., requires the inclusion of a feasibility study,<sup>13</sup> including standards for total population,<sup>14</sup> average population density,<sup>15</sup> and minimum distance from boundaries of an existing municipality within the county.<sup>16</sup>

Communities proposing to incorporate as a municipality are required to have a total population, as determined in the latest official state census, special census, or estimate of population, of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 persons in counties with a population of more than 75,000.<sup>17</sup> Additionally, the proposed area of incorporation must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.<sup>18</sup> Independent special districts are currently exempt from these requirements if the buildout of the land use allowed under the current county-approved comprehensive plan and zoning designations will meet the total population and average population density requirements once fully developed.

The incorporation plan takes effect only upon approval of a referendum by a majority vote of the qualified electors residing within the limits of the proposed municipality.

As of February 2017, there are 54 improvement districts and 7 stewardship districts that have the potential to meet all criteria of s. 165.0615, F.S.<sup>19</sup>

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<sup>13</sup> Section 165.041(1)(b), F.S., outlines the required components of a feasibility study for the purpose of municipal incorporation.

<sup>14</sup> Section 165.061(1)(b), F.S.

<sup>15</sup> Section 165.061(1)(c), F.S.

<sup>16</sup> Section 165.061(1)(d), F.S.

<sup>17</sup> Section 165.061(1)(b), F.S.

<sup>18</sup> Section 165.061(1)(c), F.S.

<sup>19</sup> Florida Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (February 23, 2017).

In 2014, the Palm Beach County Commission approved the development of Minto West, a 4,500-home community located within the Seminole Improvement District in the western portion of the county.<sup>20</sup> Approximately 18 months later, prior to the commencement of construction, the developer petitioned for municipal incorporation as Westlake. At the time of the petition, the Palm Beach County Supervisor of Elections indicated there were 5 registered voters in the area proposed for municipal conversion.<sup>21</sup> As a result, the petition required 2 signatures and the referendum required 3 affirmative votes.

### Effect of Proposed Changes

The bill amends s. 165.0615, F.S., to require that an independent special district meet minimum population requirements prior to commencing a municipal conversion proceeding.

According to the 2016 Florida Population Estimate, there are 29 counties with total populations less than 75,000 and 38 counties with total populations of 75,000 or greater.<sup>22</sup> A majority of the improvement districts (44 of 54) and stewardship districts (5 of 7) have boundaries that are limited to a single county. Based on the total county populations,

- 6 improvement districts and 1 stewardship district are in counties with a total population less than 75,000.
- 38 improvement districts and 4 stewardship districts are in counties with a total population of 75,000 or greater.

The remaining 10 improvement districts and 2 stewardship districts contain a portion of two different counties within its boundary lines. Based on the total county populations,

- 4 improvement districts are comprised of 2 counties both with a total population of less than 75,000.
- 2 improvement districts and 2 stewardship districts are comprised of 2 counties both with a total population of 75,000 or greater.
- 4 improvement districts are comprised of 2 counties in which one has a total population less than 75,000 and the other a total population of 75,000 or greater.

Current law is silent with respect to a special district's ability to meet the minimum population requirement when the boundaries of the proposed municipality encompass more than one county and when the counties cross the 75,000 total population threshold.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 165.0615, F.S., to require that an independent special district meet minimum population requirements prior to commencing a municipal conversion proceeding.

**Section 2.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

<sup>20</sup> Joe Capozzi, *Minto West OK'd by Palm Beach County commission after 10-hour meeting*, Palm Beach Post (October 29, 2014), <http://www.mypalmbeachpost.com/news/local-govt--politics/minto-west-palm-beach-county-commission-after-hour-meeting/5bGQ7v3CuYuYQRuF0wlCXM/>.

<sup>21</sup> Andy Reid and Skyler Swisher, *Tallahassee power play paved the way for possible city of Westlake*, Sun-Sentinel (April 15, 2016), <http://www.sun-sentinel.com/local/palm-beach/fl-westlake-new-city-proposal-20160415-story.html>.

<sup>22</sup> Office of Economic and Demographic Research, *Florida Population Estimates for Counties and Municipalities: April 1, 2016*, available at <http://edr.state.fl.us/Content/population-demographics/data/> (February 23, 2017).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

A municipal conversion of a special district will result in a new city that is constitutionally-authorized to levy ad valorem taxes of up to 10 mills.<sup>23</sup> Municipalities also may raise revenues via various other mechanisms such as special assessments, impact fees, user fees or service charges, licenses and permits, public service taxes, and communication services taxes. This additional local government may fiscally impact other area local governments in numerous ways. For example, counties may no longer be able to assess certain taxes and fees within the incorporated area, and state-shared revenue sources, to the extent that these funds are distributed proportionally, may decrease for the county and existing municipalities.<sup>24</sup>

2. Expenditures:

None.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>23</sup> See, Section 9(b), Art. VII, of the State Constitution

<sup>24</sup> Specifically, a newly created municipality will impact the amount of funds that existing municipalities receive in the two major state shared revenue programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing. The county government within which the new municipality if formed will realize fiscal impacts in two state shared revenue programs: Local Government Half-Cent Sales Tax and County Revenue Sharing.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.