

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 855 Special Districts  
**SPONSOR(S):** Payne and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration Subcommittee	11 Y, 0 N	Rivera	Miller
2) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Toliver	Smith
3) State Affairs Committee			

### SUMMARY ANALYSIS

Special districts are units of local government used to provide a variety of local services. Independent districts typically are created by special act and operationally are independent of any local general-purpose government. Dependent districts generally are created by local ordinance and are subject to the control of a local general-purpose government. Special districts are required to maintain an official website and post certain information including an annual budget and any recent audit reports.

State and local government websites are subject to Title II of the Americans with Disabilities Act (ADA), which prohibits state and local governments from discriminating against a qualified disabled person because of a disability unless a modification is unreasonable, alters the nature of the service, or causes the government an undue financial or administrative burden. The U.S. Department of Justice (DOJ) administers Title II. While the DOJ has not provided any regulations on how state and local government websites can comply with the ADA, it has issued an ADA Best Practices Tool Kit for State and Local Governments which provides suggestions and checklists. Under Title II of the ADA, state and local governments may be sued and many have recently faced increased litigation outlining the boundaries of ADA compliance for state and local government website access.

The bill will allow special districts to satisfy the statutory requirement to post the most recent financial audit by providing a link to the report maintained on the state's Auditor General's website. The bill also removes the requirement for districts to post facility reports and meeting materials online, only requiring the district to post a meeting or event agenda. The facility reports and meeting materials will continue to be available for inspection and copying.

The bill may have a limited positive fiscal impact on local governments to the extent special districts would no longer be required to place specific public documents on their websites while remaining responsible to provide access to the documents.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Special Districts

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 provide a wide variety of services, such as mosquito control,<sup>2</sup> children’s services,<sup>3</sup> fire control and rescue,<sup>4</sup> or drainage control.<sup>5</sup>

Special districts are classified as “dependent special districts”<sup>6</sup> or “independent special districts.”<sup>7</sup> A dependent special 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;<sup>8</sup>
- All members of its governing body are appointed by the governing body of a single county or a single municipality;<sup>9</sup>
- 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;<sup>10</sup> or
- The district’s budget requires approval or can be vetoed by the governing body of a single county or a single municipality.<sup>11</sup>

An “independent special district” is any special district that does not meet the definition of “dependent special district.”<sup>12</sup> Furthermore, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely with the borders of a single municipality.<sup>13</sup>

According to the Department of Economic Opportunity’s (DEO) Special District Accountability Program Official List of Special Districts list, the state currently has 1,757 special districts. There are 1,124 independent districts and 633 dependent districts.<sup>14</sup>

Special districts are governed generally by the Uniform Special District Accountability Act (Act).<sup>15</sup> The Act, initially passed in 1989,<sup>16</sup> created ch. 189, F.S., to centralize provisions governing special districts. The Act applies to the formation,<sup>17</sup> governance,<sup>18</sup> administration,<sup>19</sup> supervision,<sup>20</sup> merger,<sup>21</sup> and

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

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

<sup>3</sup> S. 125.901(1), F.S.

<sup>4</sup> S. 191.002, F.S.

<sup>5</sup> S. 298.01, F.S.

<sup>6</sup> S. 189.012(2), F.S.

<sup>7</sup> S. 189.012(3), F.S.

<sup>8</sup> S. 189.012(2)(a), F.S.

<sup>9</sup> S. 189.012(2)(b), F.S.

<sup>10</sup> S. 189.012(2)(c), F.S.

<sup>11</sup> S. 189.012(2)(d), F.S.

<sup>12</sup> S. 189.012(3), F.S.

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

<sup>14</sup> *See* Department of Economic Opportunity, *Official List of Special Districts Online, Special District Statewide Totals as of December 12, 2019*, available at <http://specialdistrictreports.floridajobs.org/webreports/StateTotals.aspx> (last visited January 23, 2020).

<sup>15</sup> S. 189.01, F.S., *but see* ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts).

<sup>16</sup> Ch. 89-169, Laws of Fla.

<sup>17</sup> *See* s. 189.02, F.S. (creation of dependent special districts), s. 189.031, F.S. (creation of independent special districts).

<sup>18</sup> *See* s. 189.0311, F.S. (charter requirements for independent special districts).

<sup>19</sup> *See* s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).

<sup>20</sup> *See* s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).

<sup>21</sup> Ss. 189.071, 189.074, F.S.

dissolution<sup>22</sup> of special districts, unless otherwise expressly provided in law.<sup>23</sup> The Act also provides a statement of legislative intent providing that the legislature sought to improve the accountability of special districts to state and local governments as well as promote more effective communication and coordination in the monitoring of required reporting.<sup>24</sup>

### Reporting Requirements

Special districts are subject to oversight and review by state and local governments to better determine the need for the continued existence of a district, the appropriate future role and focus of a district, improvements to the function or service by a district, and the need for any transition, adjustment, or special implementation periods or provisions.<sup>25</sup>

Special districts created by special act are subject to review by the Legislative Auditing Committee at a public meeting for not complying with reporting requirements under the Act, as well as oversight matters in general.<sup>26</sup> Special districts created by local ordinance or resolution are subject to review by the chair, or the equivalent, of the local governing body.<sup>27</sup> Special districts created or established by rule of the Governor and Cabinet may be reviewed as directed by the Governor and Cabinet.<sup>28</sup> Special districts not subject to other oversight may be reviewed as directed by the President of the Senate and the Speaker of the House of Representatives.<sup>29</sup>

State agencies administering funding programs to eligible special districts are responsible to oversee the use of such funds by the special district, including reporting the existence of the program to the Special District Accountability Program of DEO and annually submitting a list of special districts participating in a state funding program to the Special District Accountability Program.<sup>30</sup>

### *Maintaining Official Websites*

Special districts are required to maintain an official website and list certain information on the website.<sup>31</sup> An independent special district is required to maintain a website separate from the local governing body's official website.<sup>32</sup> A dependent special may maintain a separate website but is only required to be prominently displayed on the homepage of the local general purpose government's website with a hyperlink to the pages that provide the information required by statute.<sup>33</sup>

Every special district is required to post, at a minimum, the following information on its official website:

1. The full legal name, mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
2. The public purpose of the special district.
3. The primary contact information for the special district for purposes of communication from DEO.
4. The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.
5. The fiscal year of the special district.

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<sup>22</sup> Ss. 189.071, 189.072, F.S.

<sup>23</sup> See, e.g., s. 190.004 (Ch. 190, F.S. as "sole authorization" for creation of community development districts).

<sup>24</sup> S. 189.06, F.S.

<sup>25</sup> S. 189.068(1), F.S. Any final recommendations from the oversight review process which are adopted and implemented by the appropriate level of government may not be implemented in a manner that would impair the obligation of contracts.

<sup>26</sup> S. 189.0651(2), F.S.

<sup>27</sup> S. 189.0652(2), F.S. Dependent special districts, not created by special act, may be reviewed by the local general-purpose government upon which it is dependent. See s. 189.068(2)(c), F.S.

<sup>28</sup> S. 189.068(2)(d), F.S.

<sup>29</sup> S. 189.068(2)(e), F.S.

<sup>30</sup> Ss. 189.065(1) & (2), F.S. The list of participating special districts must indicate if a district is not in compliance with state funding program requirements.

<sup>31</sup> S. 189.069(1), F.S.

<sup>32</sup> S. 189.069(1)(a), F.S.

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

6. The full text of the special district's charter, the date of establishment, the establishing entity, 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..
7. A description of the boundaries or service area of, and the services provided by, the special district.
8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge .
9. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
10. The budget of the special district and any amendments thereto.
11. The final, complete audit report for the most recently completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
12. A listing of its regularly scheduled public meetings .
13. The public facilities report, if applicable.
14. The link to the Department of Financial Services' website.
15. At least seven days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least one year after the event.<sup>34</sup>

### *Noncomplying Special Districts*

If an independent special district fails to file required reports or information regarding registered agents<sup>35</sup>, public meetings<sup>36</sup>, public facilities<sup>37</sup>, or its budget<sup>38</sup> with the local general-purpose government or governments in which it is located, the local government is only permitted to notify the district's registered agent, grant a 30-day extension upon request, or notify DEO.<sup>39</sup>

If a dependent special district fails to file such reports with the local governing authority to which it is dependent, the local governing authority is obligated to take the necessary steps to enforce the special district's accountability, including, as authorized, withholding funds, removing the governing body members at will, vetoing the special district's budget, conducting the oversight review process,<sup>40</sup> or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.<sup>41</sup>

If a special district fails to file the reports or information relating to notice of bond issues<sup>42</sup> with the appropriate state agency, the agency must notify DEO, and DEO will send a certified technical assistance letter to the special district summarizing the requirements and compelling the district to take steps to prevent future noncompliance.<sup>43</sup> If a special district fails to file the reports or information required relating to actuarial reports with the appropriate state agency, the agency must notify DEO.<sup>44</sup> If a special district fails to file the reports or information required under s. 218.32 or s. 218.39 with the appropriate state agency or office, the state agency or office must, and the Legislative Auditing Committee may, notify DEO. If DEO receives notification of a special district failing to file these reports, it must send a certified letter to the special district, and, if the special district is dependent, send a copy

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<sup>34</sup> S. 189.069(2)(a), F.S.

<sup>35</sup> S. 189.014, F.S.

<sup>36</sup> S. 189.015, F.S.

<sup>37</sup> S. 189.08, F.S.

<sup>38</sup> S. 189.016(9), F.S.

<sup>39</sup> S. 189.066(1), F.S.

<sup>40</sup> As set out in s. 189.068, F.S.

<sup>41</sup> S. 189.066(2), F.S.

<sup>42</sup> S. 218.38, F.S.

<sup>43</sup> S. 189.066(3), F.S.

<sup>44</sup> S. 189.066(4), F.S.

of that letter to the chair of the local governing authority.<sup>45</sup> The letter must include a description of the required report, including statutory submission deadlines, a contact telephone number for technical assistance to help the special district comply, a 60-day deadline for filing the required report with the appropriate entity, the address where the report must be filed, and an explanation of the penalties for noncompliance.<sup>46</sup>

If a special district fails to comply after DEO has exhausted its attempt to assist, the failure is deemed final action by the district<sup>47</sup> and the district is then subject to the oversight process headed by either the Legislative Auditing Committee (LAC)<sup>48</sup> or the local governing body,<sup>49</sup> as appropriate.

If the noncompliance involves actuarial reports<sup>50</sup> or LAC requests,<sup>51</sup> DEO will attempt to assist if the district is not already receiving assistance, or initiate legal proceedings in circuit court requesting declaratory, injunctive, other equitable relief, or any remedy provided by law.<sup>52</sup> In such proceedings, the court must award the prevailing party reasonable attorney's fees and costs unless affirmatively waived by all parties.<sup>53</sup>

### Federal and State Laws Regulating Access to Records by Disabled Individuals

#### *The Americans with Disabilities Act of 1990*

The Americans with Disabilities Act of 1990 (ADA) was enacted to place persons with disabilities on an equal, not advantageous, footing to those without disabilities.<sup>54</sup> The ADA has three parts: Title I applies to employers, Title II applies to public entities, and Title III applies to private entities.

The ADA does not restrict the imposition of greater protection for individuals by other federal, state, or local laws,<sup>55</sup> and does not require covered entities to accommodate or modify their processes for individuals who are not actually disabled.<sup>56</sup>

#### *Public Entities*

Title II of the ADA prohibits public entities from excluding the participation in or denying the benefits of their services, programs, or activities to qualified individuals with a disability,<sup>57</sup> or otherwise discriminating against such individuals, because of the disability.<sup>58</sup> "Public entities" includes state and local governments, state and local agencies, and special districts.<sup>59</sup> To meet the definition of a qualified individual with a disability, the person must be eligible for receipt of the public benefit with or without a reasonable modification.<sup>60</sup>

If the need is obvious or upon request,<sup>61</sup> a public entity must:

- 1) Make reasonable modifications to its rules, policies, or practices;
- 2) Remove architectural, communication, or transportation barriers; or

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<sup>45</sup> S. 189.067(1)(a), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> S. 189.067(2), F.S.

<sup>48</sup> Ss. 189.067(2) and 189.0651, F.S.

<sup>49</sup> Ss. 189.067(2) and 189.0652, F.S.

<sup>50</sup> S. 112.63, F.S.

<sup>51</sup> S. 11.40(2)(b), F.S.

<sup>52</sup> S. 189.067(3), F.S.

<sup>53</sup> S. 189.067(4), F.S.

<sup>54</sup> *Kornblau v. Dade Cnty.*, 86 F.3d 193 (11th Cir. 1996) (holding disabled individual was not entitled to parking space in private employee parking lot closest to county government services building).

<sup>55</sup> 42 U.S.C. s. 12201(b).

<sup>56</sup> 42 U.S.C. s. 12201(h).

<sup>57</sup> A person is a 'qualified' individual with a disability with respect to licensing if he or she, with or without reasonable modifications, 'meets the essential requirements' for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. s. 12131(2). *See also Fla. Bar v. Clement*, 662 So. 2d 690, 700 (Fla. 1995), as amended (November 28, 1995).

<sup>58</sup> 42 U.S.C. s. 12132.

<sup>59</sup> 42 U.S.C. s. 12131(1)

<sup>60</sup> 42 U.S.C. s. 12131(2)

<sup>61</sup> *See McCullum v. Orlando Reg'l Healthcare*, No. 6:11-cv-1387-Orl-31GJK, 2013 WL 1212860, at \*4 (M.D.Fla.2013); *see also Smith v. Rainey*, 747 F. Supp. 2d 1327, 1338 (M.D.Fla.2010).

- 3) Provide auxiliary aids and services when necessary to accommodate an individual with a disability.<sup>62</sup>

A public entity must provide auxiliary aids and services in a timely manner and in an accessible format, and must protect the privacy and independence of the individual.<sup>63</sup> An accommodation or modification that fundamentally alters the nature of the activity, service, or program, or that causes the public entity an undue financial or administrative burden is not reasonable or necessary.<sup>64</sup>

#### *Private Entities*

Title III prohibits certain private entities<sup>65</sup> from discriminating against an individual on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. A private entity may provide a different or separate benefit if necessary to effectively provide benefits.<sup>66</sup>

A private entity must make reasonable modifications to its policies, practices, or procedures, or take any steps necessary to ensure individuals are not denied services, segregated or otherwise treated differently due to the absence of an aid or service. A modification or step that will fundamentally alter the nature of the product or service, or pose a direct danger to others is not required. When readily achievable,<sup>67</sup> a private entity must

- 1) Remove any existing architectural, structural communication, or transportation barrier; or
- 2) Offer access to its product or service through alternative methods.<sup>68</sup>

#### *Federal Regulations*

The Department of Justice (DOJ) is responsible for administering Title II and Title III.<sup>69</sup> In 2010, DOJ took the position that internet website access fell within the scope of the ADA, even in the absence of explicit language. Therefore, public entities communicating through web-based applications or otherwise providing internet services must ensure that individuals with disabilities have equal access to such services or information unless it would alter the nature of the product or cause the entity an undue burden. To date, DOJ has promulgated no regulations on this issue.<sup>70</sup>

From December 2006 to June 2007, the Civil Rights Division of DOJ released a Best Practices Tool Kit for State and Local Governments.<sup>71</sup> Chapter 5 addresses web accessibility under Title II. DOJ provides suggestions for how governments may design their websites and recommends referencing the Worldwide Web Consortium's (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0), an internationally accepted resource, for conformance standards. State and local governments are not required to use the Tool Kit. However, DOJ intends to provide a reasonable approach to achieve compliance through the Tool Kit. For documents posted online, DOJ suggests governments posting documents online in Portable Document Format (PDF), or other image-based format, also post a version in Rich Text Format (RTF), or other text-based format, to allow compatibility with assistive technologies. The Tool Kit includes a checklist to help local governments assess the accessibility of their websites.

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<sup>62</sup> See 42 U.S.C. s. 12131(2).

<sup>63</sup> 28 C.F.R. s. 35.160(b).

<sup>64</sup> See *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603 (1999).

<sup>65</sup> A private entity is defined as any entity other than a public entity. 42 U.S.C. s. 12181 (6). Private entities that own, lease, or operate places of public accommodation fall under Title III.

<sup>66</sup> See 42 U.S.C. s. 12182.

<sup>67</sup> Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. 42 U.S.C. s. 12181(9).

<sup>68</sup> 42 U.S.C. s. 12182. See also *A.L. by & through D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270 (11th Cir. 2018)(holding that the Defendant's blanket accommodation for all cognitively disabled theme park guests was not per se ADA violation).

<sup>69</sup> See 28 CFR parts 35 (Title II) and 36 (Title III).

<sup>70</sup> DOJ stated in its 2010 comments, "The Department expects to engage in rulemaking relating to website accessibility under the ADA in the near future." Department of Justice, *2010 Guidance and Section-by-Section Analysis (Attorney General's Comments)*, available at [https://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm#a35102](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35102) (last visited December 17, 2019).

<sup>71</sup> DOJ, ADA Best Practices Tool Kit for State and Local Governments, Chapter 5, available at <https://www.ada.gov/pcatoolkit/chap5toolkit.htm> (last visited December 17, 2019). The Tool Kit contains a notice that some chapters may not fully reflect the current ADA

## Section 508 of the Rehabilitation Act of 1973

Federal agency website accessibility is not regulated under the ADA but primarily under section 508 of the Rehabilitation Act of 1973 (Section 508).<sup>72</sup> Public entities are not required to follow these guidelines. However, Florida requires its state agencies, which includes the executive, legislative, and judicial branches, to follow Section 508 when providing public and employee access to electronic information and data.<sup>73</sup>

Under Section 508, when federal agencies develop, procure, maintain, or use electronic and information technology, they must give employees and members of the public with disabilities access to that information that is comparable to the access available to those without disabilities. The U.S. Access Board (Access Board) is responsible for developing federal accessibility standards.<sup>74</sup> The Access Board updated its rules in 2018 and currently incorporates the WCAG 2.0 into its regulation.<sup>75</sup>

W3C released a newer version in the WCAG 2.1 just after the Access Board updated its rules. Compliance with the newer standards will satisfy the WCAG 2.0.<sup>76</sup> The WCAG guidelines are primarily intended for Web content developers (page authors, site designers, etc.), Web authoring tool developers, Web accessibility evaluation tool developers, and others who want or need a standard for web accessibility, including for mobile accessibility.

### State Law

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies.<sup>77</sup> Executive, legislative, and judicial branches of state government must ensure that state employees with disabilities have access to and are provided with electronic information and data comparable to the access and use by state employees who do not have disabilities unless an undue burden would be imposed on the agency.<sup>78</sup> Similarly, individuals with disabilities who are members of the public must be provided with access to and use of electronic information and data comparable to that provided to nondisabled members of the public, unless an undue burden would be imposed on the agency.<sup>79</sup>

Each state agency must develop, procure, maintain, and use accessible electronic information and information technology in conformance with federal law,<sup>80</sup> absent an undue burden. If an agency claims compliance will impose an undue burden, it must provide proof an alternative method allows the individual to use the information and data.<sup>81</sup> The statute does not extend its requirements to local governments.<sup>82</sup>

### Case Law Involving Access to Electronic Information

Section 508 does not authorize a private, non-administrative right of action.<sup>83</sup> Individuals seeking to enforce Section 508 must file an administrative complaint with the offending federal agency.<sup>84</sup> However, Title II of the ADA validly abrogates state sovereign immunity under the Eleventh and Fourteenth Amendments to the U.S. Constitution, insofar as it creates a private cause of action for damages against a state for conduct that actually violates the Fourteenth Amendment.<sup>85</sup> The Eleventh

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<sup>72</sup> See 29 U.S.C. s. 794d, s. 508 of the Rehabilitation Act; 47 U.S.C. s. 255, and s. 255 of the Telecommunications Act. There is proposed legislation currently in the U.S. Congress that would research the best guidance for state and local governments providing website access. See H.R. 4099 (2019).

<sup>73</sup> See ss. 282.601-606, F.S.

<sup>74</sup> See 29 U.S.C. s. 794d; 36 CFR s. 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, <https://www.section508.gov/manage/laws-and-policies> (last visited December 17, 2019).

<sup>75</sup> See 36 CFR Parts 1193 and 1194, Appendix C to Part 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, <https://www.section508.gov/manage/laws-and-policies> (last visited December 17, 2019).

<sup>76</sup> Worldwide Web Consortium (W3C), *Abstract*, <http://www.w3.org/TR/2018/REC-WCAG21-20180605/> (last visited December 17, 2019).

<sup>77</sup> Ss. 282.601-606, F.S.

<sup>78</sup> S. 282.601(1), F.S.

<sup>79</sup> S. 282.601(2), F.S.

<sup>80</sup> Including Section 508 and 36 C.F.R. part 1194.

<sup>81</sup> S. 282, 603, F.S.

<sup>82</sup> See ch. 282, F.S.

<sup>83</sup> See 29 U.S.C. s. 794(d) and *Latham v. Brownlee*, 2005 WL 578149, at \*9 (W.D. Tex.2005).

<sup>84</sup> 29 U.S.C. s. 794(d).

<sup>85</sup> *U.S. v. Ga.*, 546 U.S. 151 (2006).

Amendment to the U.S. Constitution does not extend its immunity to units of local government that are subject to private claims for damages under the ADA without limitation to Fourteenth Amendment claims.<sup>86</sup>

To establish a claim under Title II, a plaintiff must establish he or she had a disability, was denied a public benefit or other discrimination, and the denial of benefits or discrimination was by reason of the plaintiff's disability.<sup>87</sup> A plaintiff has standing where there is an injury-in-fact, a causal connection between the asserted injury-in-fact and challenged action of the defendant, and the injury will be redressed by a favorable decision. Standing to seek injunctive relief also requires an allegation of facts giving rise to an inference that the plaintiff will suffer future discrimination by the defendant.<sup>88</sup>

The scope of public entities subject to Title II of the ADA includes state prisons,<sup>89</sup> universities,<sup>90</sup> courts,<sup>91</sup> and legislative chambers.<sup>92</sup> Additionally, states may be held accountable for discrimination by private entities that lease government-owned property.<sup>93</sup>

While currently there appears to be no Florida appellate court decision resolving a challenge to state agency website accessibility, there have been a number of federal cases in recent years. In *Nat'l Assn. of Deaf v. State*, hearing impaired individuals sued the Florida Senate and House of Representatives claiming the failure to put closed captions on live and archived videos of Florida legislative sessions violated the ADA.<sup>94</sup> The case survived a motion dismiss because the Court found the right to participate in the democratic process is a fundamental right that properly abrogates the state's Eleventh Amendment immunity.<sup>95</sup>

Local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. The case law is new and unsettled, but there are two emerging legal theories currently being used to determine if a case is viable. Some courts have relied on the standing analysis in Title III website access cases to resolve Title II cases.<sup>96</sup> Other courts have adopted a new Title II rubric based, in part, on the connection the plaintiff has with the defendant-government.<sup>97</sup>

The Title III standing analysis requires impeded access to a physical public accommodation in order to find a plaintiff has standing to bring suit.<sup>98</sup> The new three-factor standing analysis for Title II website access cases considers, in addition to totality of the relevant facts:

- (1) The plaintiff's connection with the defendant governmental entity;
- (2) The type of information that is inaccessible; and
- (3) The relation between the inaccessibility and the plaintiff's alleged future harm.<sup>99</sup>

Some governments argued that these cases are not ripe for adjudication because DOJ has not yet promulgated regulations. Courts have generally dismissed this argument, with one court emphasizing that DOJ has had eight years to comment further or promulgate rules on website accessibility compliance but failed to do so.<sup>100</sup>

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<sup>86</sup> *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).

<sup>87</sup> *Kornblau v. Dade Cnty.*, 86 F.3d 193 (11th Cir. 1996).

<sup>88</sup> *Shotz v. Cates*, 256 F.3d 1077 (11th Cir. 2001).

<sup>89</sup> *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998); *Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010).

<sup>90</sup> *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).

<sup>91</sup> *Tenn. v. Lane*, 541 U.S. 509 (2004).

<sup>92</sup> *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018).

<sup>93</sup> *See Haas v. Quest Recovery Servs., Inc.*, 549 U.S. 1163 (2007).

<sup>94</sup> *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018)(case is pending).

<sup>95</sup> "Order of Motion to Dismiss Based on Sovereign Immunity," *Id.* (June 18, 2018).

<sup>96</sup> *See Gil v. Broward Cnty.*, No. 18-60282-CIV, 2018 WL 4941108 (S.D. Fla. 2018)

<sup>97</sup> *See Price v. City of Ocala*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019)(reasoning Title III analysis is the wrong standard to apply to Title II website access cases because Title III requires a nexus between a physical place and the alleged violation), and *Gil v. City of Pensacola, Fla.*, 392 F. Supp. 3d 1493 (N.D. Fla. 2019).

<sup>98</sup> *See Gil v. Broward Cnty., Fla.*, 2018 WL 4941108 (S.D. Fla. 2018).

<sup>99</sup> *See Price v. City of Ocala, Fla.*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019).

<sup>100</sup> *See Open Access for All, Inc. v. Town of Juno Beach, Fla.*, "Order Denying Defendant's Motion to Dismiss," Case no. 9:19-CV-80518-ROSENBERG/REINHART, 2019 WL 3425090 (S.D. Fla. July 29, 2019)(case dismissed on other grounds August 15, 2019).



## Effect of Proposed Bill

The bill will allow special districts to post the most recent financial audit by providing a link to the report maintained on the Auditor General's website. The bill also removes the requirement for districts to post facility reports and meeting materials online, only requiring the district to post a meeting or event agenda.

### B. SECTION DIRECTORY:

Section 1. Amending s. 189.069, F.S., revising certain website reporting requirements for special districts.

Section 2. Providing an effective date of July 1, 2020.

## 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:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a negative impact on private companies maintaining special district websites due to local governments no longer needing companies to ensure ADA compliance status of the specific online documents.

### D. FISCAL COMMENTS:

There may be a positive financial impact on special districts that are no longer required to post and maintain certain meeting materials and documents online.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.