

**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 Governmental Oversight and Accountability

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BILL: SB 1624

INTRODUCER: Senator Albritton

SUBJECT: Special District Accountability

DATE: March 29, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2. <u>Ponder</u>	<u>McVane</u>	<u>GO</u>	<b>Pre-meeting</b>
3. _____	_____	<u>AP</u>	_____

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## **I. Summary:**

SB 1624 requires all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit<sup>1</sup> every 5 years beginning October 1, 2021, and October 1, 2022, respectively. The bill also requires the Office of Program Policy Analysis and Government Accountability to conduct performance audits of all independent mosquito control districts and soil and water conservation districts by September 30, 2023, and September 30, 2024, respectively.

The bill provides that the annual financial report and annual financial audit report of all special districts must separately specify the following information:

- The total number of people employed by the district;
- The amounts budgeted by the district for employee salaries and benefits; and
- Each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

The annual financial report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments must include the rate of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

The bill clarifies that the annual financial auditing report of a community redevelopment agency must be filed separately from the annual financial auditing report of the county or municipality that created the district.

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<sup>1</sup> A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The purpose of a performance audit is to provide objective information that may be used to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.

Special districts may experience increased costs in complying with the requirements of the bill.

The bill takes effect on October 1, 2021.

## II. Present Situation:

### Independent Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>2</sup> Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.<sup>3</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>4</sup> Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.<sup>5</sup>

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of governing body of a single county or municipality.<sup>6</sup> An “independent special district” is any district that is not a dependent special district.<sup>7</sup>

According to the Department of Economic Opportunity’s Special District Accountability Program Official List of Special Districts, as of March 3, 2021, the state had 1,785 special districts. There were 1,159 independent special districts and 626 dependent districts.

Special districts are governed generally by the Uniform Special District Accountability Act (Act).<sup>8</sup> The Act centralizes provisions governing special districts and applies such provisions to

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<sup>2</sup> See *Halifax Hospital Medical Center v. State of Fla.*, et al., 278 So. 3d 545, 547 (Fla. 2019).

<sup>3</sup> See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

<sup>4</sup> 2020 – 2022 Local Gov’t Formation Manual, p. 64, *available at*:

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last visited Mar. 1, 2021).

<sup>5</sup> The method of financing a district must be stated in its charter. Sections 189.02(4)(g) and 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2017-220, s. 6(6) of s. 3, Laws of Fla. (Sunbridge Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), 388.221 (mosquito control), ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

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

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

<sup>8</sup> Section 189.01, F.S. Also see ch. 190 (community development districts), ch. 191 (independent special fire control districts), ch. 298 (water control districts), ch. 388 (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).

the formation,<sup>9</sup> governance,<sup>10</sup> administration,<sup>11</sup> supervision,<sup>12</sup> merger,<sup>13</sup> and dissolution<sup>14</sup> of special districts, unless otherwise expressly provided in law.<sup>15</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>16</sup>

### ***Independent Special Fire Control Districts***

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.<sup>17</sup> As of March 1, 2021, there were 64 active independent special fire control districts.<sup>18</sup>

The Independent Special Fire Control District Act (Act)<sup>19</sup> provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.<sup>20</sup> The Act controls over more specific provisions in any special act or general law of local application creating a fire control district’s charter,<sup>21</sup> requires every fire control district be governed by a five-member board,<sup>22</sup> and provides:

- General powers;<sup>23</sup>
- Special powers;<sup>24</sup>
- Authority and procedures for the assessment and collection of ad valorem taxes;<sup>25</sup>
- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;<sup>26</sup> and
- Issuance of district bonds and evidence of debt.<sup>27</sup>

<sup>9</sup> See ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).

<sup>10</sup> See s. 189.0311, F.S. (charter requirements for independent special districts).

<sup>11</sup> See s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).

<sup>12</sup> See s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).

<sup>13</sup> Sections 189.071 and 189.074, F.S.

<sup>14</sup> Sections 189.071 and 189.072, F.S.

<sup>15</sup> See, e.g., s. 190.004, F.S. (Ch. 190, F.S. as “sole authorization” for creation of community development districts).

<sup>16</sup> See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

<sup>17</sup> Section 191.003(5), F.S.

<sup>18</sup> Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” *available at*: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 25, 2021).

<sup>19</sup> Chapter 191, F.S.

<sup>20</sup> Section 191.002, F.S.

<sup>21</sup> Section 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section.

<sup>22</sup> Section 191.005(1)(a), F.S. (fire control district may continue to be governed by a three-member board if authorized by special act adopted in or after 1997).

<sup>23</sup> Section 191.006, F.S. (e.g. the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain).

<sup>24</sup> Section 191.008, F.S.

<sup>25</sup> Sections 191.006(14) and 191.009(1), F.S.

<sup>26</sup> Sections 191.006(11) and (15), 191.009(2), (3), and (4), and 191.011, F.S.

<sup>27</sup> Section 191.012, F.S.

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.<sup>28</sup> A district also may levy non-ad valorem assessments.<sup>29</sup> The district board may adopt a schedule of reasonable fees for services performed.<sup>30</sup> Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.<sup>31</sup>

### ***Hospital Districts***

Hospital districts are a type of independent special district specializing in the provision of health care services. As of March 1, 2021, there are 27 active hospital districts: 24 that directly operate health care facilities and three that provide oversight for facilities leased by local governments to private sector entities.<sup>32</sup> The charters of hospital districts generally possess a set of core features: a board appointed by the Governor, the authority to build and operate hospitals, the power of eminent domain, the ability to issue bonds payable from ad valorem taxes, the use of ad valorem tax revenue for operating and maintaining hospitals, and providing that such facilities are established for the benefit of the indigent sick.<sup>33</sup>

### ***Mosquito Control Districts***

Mosquito control districts (MCDs) are created to protect health and safety, improve quality of life, promote economic development, and allow for the enjoyment of natural attractions of the state by reducing the number of insects that transmit disease within their boundaries.<sup>34</sup> As of March 1, 2021, there are 18 mosquito control districts: 15 independent and three dependent districts.<sup>35</sup>

A MCD may contain part or all of a county or municipality.<sup>36</sup> The creation of new independent MCDs has been prohibited since July 1, 1980.<sup>37</sup> In counties without a district, the board of county commissioners may exercise all the rights, powers, and duties authorized by statute for a MCD or may direct the county health department to do so.<sup>38</sup>

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<sup>28</sup> Section 191.009(1), F.S. *But see* art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage “authorized by law approved by vote of the electors.”)

<sup>29</sup> Section 191.009(2), F.S. If the district levies a non-ad valorem assessment to fund emergency medical and transport services, the district is prohibited from levying an ad valorem tax to fund those services.

<sup>30</sup> Section 191.009(3), F.S.

<sup>31</sup> Section 191.009(4), F.S.

<sup>32</sup> Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

<sup>33</sup> Florida TaxWatch, Florida’s Fragmented Hospital Taxing District System in Need of Reexamination, Briefings (Feb. 2009), available at: <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination> (last visited Mar. 1, 2021).

<sup>34</sup> Sections 388.0101 and 388.011(5), F.S.

<sup>35</sup> Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” available at: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

<sup>36</sup> Section 388.021(1), F.S.

<sup>37</sup> Section 388.021(2), F.S.

<sup>38</sup> Sections 388.241 and 388.251, F.S. The county health department must keep the books and make all reports require under ch. 388, F.S., and all purchases, whether by bid or otherwise, must be made in accordance with the procedures allowed by the

MCDs are authorized to levy ad valorem taxes not exceeding 10 mills on real and personal property.<sup>39</sup> Each MCD or county participating in arthropod control under the statutes must submit to the Department of Agriculture and Consumer Services (DACS) a report for the preceding month of expenditures from all funds for arthropod control within 30 days after the end of each month.<sup>40</sup>

### ***Soil and Water Conservation Districts***

The stated purpose of soil and water conservation districts (S&WCDs) is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.<sup>41</sup> All S&WCDs are created by the DACS upon petition by landowners in the proposed district.<sup>42</sup> The DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.<sup>43</sup> As of March 1, 2021, there are 56 active districts.<sup>44</sup>

Beginning in 1937,<sup>45</sup> S&WCDs were initially established to encourage cooperation between governments and local landowners concerning local conservation needs.<sup>46</sup> The authority of S&WCDs now overlap significantly with other agencies created to manage and protect the state's land and water resources, such as the Department of Environmental Protection,<sup>47</sup> the Department of Economic Opportunity,<sup>48</sup> and water management districts.<sup>49</sup> Due to this jurisdictional overlap, S&WCDs today primarily focus on working with partners to provide funding and technical support to aid local landowners in conservation efforts.<sup>50</sup>

### **Local Government Financial Reports and Audits**

Florida law requires all units of local government, including special districts, to complete annual financial reports and annual financial audit reports. Each district must submit its annual financial report to the Department of Financial Services (DFS) within 9 months of the completion of its fiscal year.<sup>51</sup> If a district fails to file a completed annual financial report within the required

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Board of County Commissioners. The health department must also submit to the Board of County Commissioners itemized monthly statements of expenses incurred in carrying out the control program in the county.

<sup>39</sup> Section 388.221(1), F.S.

<sup>40</sup> Section 388.341, F.S. The reports must detail activities and accomplishments as may be required by the DACS.

<sup>41</sup> Section 582.02(4), F.S.

<sup>42</sup> Sections 582.10-582.15, F.S.

<sup>43</sup> Section 582.055(3), F.S.

<sup>44</sup> Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," *available at*: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

<sup>45</sup> See ch. 18144, s. 2, Laws of Florida (1937). Originally the districts were called Soil Conservation Districts.

<sup>46</sup> DACS Office of Agricultural Water Policy, Soil and Water Conservation District Supervisor Handbook 3, *available at*: [https://www.fdacs.gov/content/download/7357/file/Fswcd\\_Handbook\\_Final.pdf](https://www.fdacs.gov/content/download/7357/file/Fswcd_Handbook_Final.pdf) (last visited Mar. 1, 2021).

<sup>47</sup> See, e.g., ch. 408, F.S.

<sup>48</sup> See, e.g., ch. 380, F.S.

<sup>49</sup> See, e.g., ch. 373, F.S.

<sup>50</sup> The primary partners for soil and water conservation districts are the United States Department of Agriculture's Natural Resource Conservation Service, DACS's Office of Agricultural Water Policy, and county governments. DACS Office of Agricultural Water Policy, *supra* note 58.

<sup>51</sup> A district that is required to complete a financial audit report must submit both reports within 45 days of the completion of the audit report, but still no later than 9 months after the completion of the fiscal year. Section 218.32(1)(d), F.S.

period, the DFS must notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity.<sup>52</sup>

Special districts with revenues or total expenditures and expenses exceeding \$100,000 must have an annual financial audit prepared by an independent certified public accountant, unless the district has been notified before the start of the fiscal year that the Auditor General will conduct a financial audit for that year.<sup>53</sup> Special districts with revenues (or a total of expenditures and expenses) between \$50,000 and \$100,000 are required to conduct a financial audit every 3 years.<sup>54</sup> The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.<sup>55</sup> The audit report for a dependent special district may be included in the annual financial audit report of the county or municipality on which it is dependent. The audit report must be filed with the Auditor General within 45 days of its receipt by the district, but no later than 9 months after the end of the fiscal year.<sup>56</sup>

### ***Community Redevelopment Agency Auditing Requirements***

Each community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000 must have an annual financial audit prepared by an independent certified public accountant.<sup>57</sup> The audit report must accompany the annual financial report of the county or municipality that created the district.<sup>58</sup>

### **Performance Audits**

A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies.<sup>59</sup> This may include examining:

- The economy, efficiency, or effectiveness of the program;
- How a program is structured or designed to accomplish its goals and objectives;
- The adequacy of the program to meet the needs identified by the Legislature or local governing body;
- Whether alternative methods exist to deliver services provided by the program;
- The goals, objectives, and performance measures used by the agency to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies;
- The program's compliance with appropriate policies, rules, or laws; and

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<sup>52</sup> Section 218.32(1)(f), F.S. A special district required to have a financial audit conducted must file a copy of the audit report along with its annual financial report. Section 218.32(1)(d) F.S.

<sup>53</sup> Section 218.39(1), F.S.

<sup>54</sup> Section 218.39(1)(h), F.S.

<sup>55</sup> Section 218.39(2)-(7), F.S. See ch. 10.550, Local Governmental Entity Audits (9-30-2019), *available at*: [https://flauditor.gov/pages/pdf\\_files/10\\_550.pdf](https://flauditor.gov/pages/pdf_files/10_550.pdf) (last visited Mar. 1, 2020).

<sup>56</sup> Section 218.39(7), F.S.

<sup>57</sup> Section 163.387(8)(a), F.S.

<sup>58</sup> Section 163.387(8)(c), F.S.

<sup>59</sup> Section 11.45(1)(j), F.S.



- Any other issues related to governmental entities as directed by the Legislative Auditing Committee.<sup>60</sup>

The purpose of a performance audit is to provide objective information that may be used to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.<sup>61</sup> The Auditor General currently conducts a performance audit at least once every 3 years of the local government financial reporting system and the Department of Revenue's administration of the ad valorem tax laws.<sup>62</sup> A performance audit also must be conducted on any program associated with a proposed discretionary sales surtax levy.<sup>63</sup>

### **The Office of Program Policy Analysis and Government Accountability**

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is the research arm of the Legislature. The OPPAGA was created by the Legislature in 1994 to help improve the performance and accountability of state government. The OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. The OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.<sup>64</sup> The OPPAGA provides a variety of research services such as performance evaluations and policy reviews of government programs, research and technical assistance to legislators and legislative committees, and government program summaries containing descriptive and evaluative information on all major state programs.

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

### **Performance Audits (Section 1)**

The bill creates s. 189.0695, F.S., to require all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit every 5 years beginning October 1, 2021, and October 1, 2022, respectively. The performance audit must be conducted by a qualified independent entity from a list generated by the Office of Program Policy Analysis and Government Accountability (OPPAGA). To be included on the list, an entity must have at least 5 years of experience conducting performance audits, must conduct audits according to applicable auditing or evaluation standards of appropriate authoritative bodies, and must follow any relevant industry best practices. The audit report must be filed with the governing body of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than 9 months from the beginning of the fiscal year in which the report is due. If the Auditor General conducts a performance audit of a district in the same fiscal year, that report may be used to satisfy this requirement.

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<sup>60</sup> Section 11.45(1)(j), F.S.

<sup>61</sup> Gov't Auditing Standards, s. 1.21 (Gov't Accountability Office 2018). Rule 10.55(3) of the Auditor General incorporate the 2018 Government Auditing Standards adopted by the U.S. Government Accounting Office (2018 Yellow Book).

<sup>62</sup> Section 11.45(2)(g)-(h), F.S.

<sup>63</sup> Section 212.055(11)(a), F.S.

<sup>64</sup> The Office of Program Policy Analysis and Government Accountability, *See About OPPAGA*, available at <https://oppaga.fl.gov/About>, (last visited March 25, 2021).

The bill also requires all independent mosquito control districts and soil and water conservation districts to undergo a performance audit conducted by the OPPAGA. The performance audit must compare the services provided by each district with similar services provided by counties and municipalities, examining the similarities and differences as well as relative costs and efficiencies of services. The OPPAGA must submit the performance audits of the districts to the President of the Senate and the Speaker of the House of Representatives by:

- September 30, 2023, for independent mosquito control districts; and
- September 30, 2024, for soil and water conservation districts.

The bill defines the term “performance audit” as having the same meaning used in statutes concerning audits performed by the Auditor General.<sup>65</sup>

### **Annual Financial Report and Annual Financial Audit Report (Sections 2 & 3)**

Sections 2 and 3 amend ss. 218.32 and 218.39, F.S., respectively, to require the annual financial report and annual financial audit report for all special districts to separately specify the following information:

- The total number of people employed by the district;
- The amounts budgeted by the district for employee salaries and benefits; and
- Each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

Section 2 requires the annual financial report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rates of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

Section 3 revises requirements concerning annual financial audit reports to clarify that the annual financial audit report of a community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000 must be provided separately from the annual financial audit report of the county or municipality that created the district.

The bill takes effect October 1, 2021.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

### **B. Public Records/Open Meetings Issues:**

None.

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<sup>65</sup> See notes 60, 61, supra, and related text.



C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Special districts may experience workload increases and associated costs to comply with additional reporting requirements created by the bill.

Independent special fire control districts and hospitals governed by special districts or the board of trustees of a public health trust will incur increased costs related to the conduct of performance audits.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 218.32 and 218.39.

This bill creates section 189.0695 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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