

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1103 Special District Accountability

SPONSOR(S): State Affairs Committee; Public Integrity & Elections Committee; Local Administration & Veterans Affairs Subcommittee; Maggard and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 1624

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1103 passed the House on April 21, 2021, and subsequently passed the Senate on April 27, 2021.

Special districts are used to provide a variety of local services and are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law. There are two types of special districts: independent special districts and dependent special districts. Special districts are governed generally by the Uniform Special District Accountability Act (Act), which centralizes provisions governing special districts and applies to the formation, governance, administration, supervision, merger, and dissolution of special districts, unless otherwise expressly provided in law.

The bill 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 undergo a performance review every five years beginning October 1, 2022, and October 1, 2023, respectively. The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to conduct performance reviews of those fire control districts located in rural areas of opportunity. The bill also requires OPPAGA to conduct performance reviews of all independent mosquito control districts and soil and water conservation districts by September 30, 2023, and September 30, 2024, respectively.

The bill requires the annual financial report and annual financial audit report of all special districts to specify separately the total number of employees and independent contractors compensated by the district, the amount of compensation earned or awarded to employees and independent contractors, and each construction project with a total cost of at least \$65,000 approved by the district to begin on or after October 1 of the fiscal year being reported and the total expenditures for the project. Those special districts that amend their annual budgets are required to file a budget variance report. The bill also requires the annual financial report and annual financial audit report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to 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.

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

The bill may have a fiscal impact on special districts associated with the requirement to report additional information in the annual financial report and the annual financial audit report and will have a fiscal impact on OPPAGA, independent special fire control districts, and hospitals districts associated with the requirement to conduct a performance review.

The bill was approved by the Governor on June 29, 2021, ch. 2021-226, L.O.F., and will become effective on October 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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.¹ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.² 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.³ Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.⁴

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.⁵ An “independent special district” is any district that is not a dependent special district.⁶

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).⁷ The Act centralizes provisions governing special districts and applies to the formation,⁸ governance,⁹ administration,¹⁰ supervision,¹¹ merger,¹² and dissolution¹³ of special districts, unless otherwise expressly provided in law.¹⁴ The Act requires notice and publication of tentative budgets and final budgets.¹⁵ Certain budget amendments are allowed up to 60 days following the end of the fiscal year.¹⁶

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

¹ See *Halifax Hospital Medical Center v. State of Fla.*, et al., 278 So. 3d 545, 547 (Fla. 2019).

² See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

³ 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).

⁴ The method of financing a district must be stated in its charter. Ss. 189.02(4)(g), 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).

⁵ S. 189.012(2), F.S.

⁶ S. 189.012(3), F.S.

⁷ S. 189.01, F.S., but see ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts), ch. 298, F.S. (water control districts), ch. 388, F.S. (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).

⁸ See ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).

⁹ See s. 189.0311, F.S. (charter requirements for independent special districts).

¹⁰ See s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).

¹¹ See s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).

¹² Ss. 189.071 and 189.074, F.S.

¹³ Ss. 189.071 and 189.072, F.S.

¹⁴ See, e.g., s. 190.004, F.S. (Ch. 190, F.S. as “sole authorization” for creation of community development districts).

¹⁵ S. 189.016(4), F.S.

¹⁶ S. 189.016(6), F.S.

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.¹⁷

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.¹⁸ As of April 26, 2021, there were 54 active independent special fire control districts.¹⁹

The Independent Special Fire Control District Act²⁰ 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.²¹ The Act controls over more specific provisions in any special act or general law of local application creating a fire control district's charter,²² requires every fire control district be governed by a five-member board,²³ and provides:

- General powers;²⁴
- Special powers;²⁵
- Authority and procedures for the assessment and collection of ad valorem taxes;²⁶
- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;²⁷ and
- Issuance of district bonds and evidence of debt.²⁸

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.²⁹ A district also may levy non-ad valorem assessments.³⁰ The district board may adopt a schedule of reasonable fees for services performed.³¹ 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.³²

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

¹⁷ See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

¹⁸ S. 191.003(5), F.S.

¹⁹ Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited April 26, 2021). Additionally, there are 10 active dependent fire control districts.

²⁰ Ch. 191, F.S.

²¹ S. 191.002, F.S.

²² S. 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.

²³ S. 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).

²⁴ S. 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).

²⁵ S. 191.008, F.S.

²⁶ Ss. 191.006(14) and 191.009(1), F.S.

²⁷ Ss. 191.006(11) and (15); 191.009(2), (3), and (4); and 191.011, F.S.

²⁸ S. 191.012, F.S.

²⁹ S. 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.")

³⁰ S. 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.

³¹ S. 191.009(3), F.S.

³² S. 191.009(4), F.S.

entities.³³ 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.³⁴

Mosquito Control Districts

Mosquito control districts (MCDs) are created to protect health and safety, improve quality of life, promote economic development, and to allow for the enjoyment of natural attractions of the state by reducing the number of insects that transmit disease within their boundaries.³⁵ As of March 1, 2021, there are 18 mosquito control districts: 15 independent and three dependent districts.³⁶

A MCD may contain part or all of a county or municipality.³⁷ The creation of new independent MCDs has been prohibited since July 1, 1980.³⁸ 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.³⁹

Mosquito control districts are authorized to levy ad valorem taxes not exceeding 10 mills on real and personal property.⁴⁰ 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.⁴¹

Soil and Water Conservation Districts

The stated purpose of soil and water conservation districts (S&WC) 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.⁴² All S&WC are created by DACS upon petition by landowners in the proposed district.⁴³ DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.⁴⁴ As of March 1, 2021, there are 56 active districts.⁴⁵

³³ 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).

³⁴ Florida TaxWatch, *Florida's Fragmented Hospital Taxing District System in Need of Reexamination*, Briefings (Feb. 2009), available at <https://floridatxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination> (last visited Mar. 1, 2021).

³⁵ Ss. 388.0101 and 388.011(5), F.S.

³⁶ 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).

³⁷ S. 388.021(1), F.S.

³⁸ S. 388.021(2), F.S.

³⁹ Ss. 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 BOCC. The health department must also submit to the BOCC itemized monthly statements of expenses incurred in carrying out the control program in the county.

⁴⁰ S. 388.221(1), F.S.

⁴¹ S. 388.341, F.S. The reports must detail activities and accomplishments as maybe required by DACS.

⁴² S. 582.021(4), F.S.

⁴³ Ss. 582.10-582.15, F.S.

⁴⁴ S. 582.055(3), F.S.

⁴⁵ 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).

Beginning in 1937,⁴⁶ S&WC initially were established to encourage cooperation between governments and local landowners concerning local conservation needs.⁴⁷ The authority of S&WC 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,⁴⁸ the Department of Economic Opportunity,⁴⁹ and water management districts.⁵⁰ Due to this jurisdictional overlap, S&WC today primarily focus on working with partners to provide funding and technical support to aid local landowners in conservation efforts.⁵¹

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 nine months of the completion of its fiscal year.⁵² If a district fails to file a completed annual financial report within the required period, DFS must notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity.⁵³

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.⁵⁴ 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 three years.⁵⁵ The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.⁵⁶ 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 nine months after the end of the fiscal year.⁵⁷

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.⁵⁸ The audit report must accompany the annual financial report of the county or municipality that created the district.⁵⁹

Rural Area of Opportunity

A Rural Area of Opportunity (RAO) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a

⁴⁶ See ch. 18144, s. 2, Laws of Florida (1937). Originally the districts were called Soil Conservation Districts.

⁴⁷ 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 (last visited Mar. 1, 2021).

⁴⁸ See, e.g., ch. 408, F.S.

⁴⁹ See, e.g., ch. 380, F.S.

⁵⁰ See, e.g., ch. 373, F.S.

⁵¹ 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.

⁵² 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 nine months after the completion of the fiscal year. S. 218.32(1)(d), F.S.

⁵³ S. 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. S. 218.32(1)(d) F.S.

⁵⁴ S. 218.39(1), F.S.

⁵⁵ S. 218.39(1)(h), F.S.

⁵⁶ S. 218.39(2)-(7), F.S. See ch. 10.550, Local Governmental Entity Audits (9-30-2019), at https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Mar. 1, 2020).

⁵⁷ S. 218.39(7), F.S.

⁵⁸ S. 163.387(8)(a), F.S.

⁵⁹ S. 163.387(8)(c), F.S.

natural disaster, or severe or chronic distress.⁶⁰ The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.

The Governor may designate up to three RAO areas for five-year periods upon recommendation by the Rural and Economic Development Initiative (REDI).⁶¹ These areas receive priority assignments for REDI, and the designation allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives. Currently, there are three designated RAO areas:

- Northwest RAO, consisting of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, as well as the area within the city limits of Freeport and in Walton County north of the Choctawhatchee Bay and the intercoastal waterway;
- South Central RAO, consisting of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, as well as the municipalities of Pahokee, Belle Glade, and South Bay in Palm Beach County and Immokalee in Collier County; and
- North Central RAO, consisting of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.⁶²

Effect of Proposed Changes

Performance Reviews

The bill defines a “performance review” as an evaluation of an independent special district and its programs, activities, and functions, including:

- The purpose and goals as stated in the independent special district charter;
- The special district’s goals and objectives for each program and activity, the problem or need that the program or activity was designed to address, the expected benefits of each program and activity, and the performance measures and standards used by the special district to determine if the program or activity achieves the district’s goals and objectives.
- The delivery of services by the special district, including alternative methods of providing those services that would reduce costs and improve performance;
- A comparison of similar services provided by the county and municipal governments located wholly or partially within its boundaries, including similarities and differences in services, relative costs and efficiencies, and possible service consolidations;
- The revenues and costs of programs and activities of the special district, using data from the current year and the previous 3 fiscal years;
- The extent to which the special district’s goals and objectives have been achieved;
- Any performance measures and standards of the special district’s program and activities using data from the current year and the previous 3 fiscal years;
- Factors that have contributed to any failure to meet the special district’s performance measures and standards or achieve the district’s goals and objectives; and
- Recommendations for statutory or budgetary changes to improve the special district’s program operations, reduce costs, or reduce duplication.

The bill 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 review every five years beginning October 1, 2022, and October 1, 2023, respectively. All fire control districts not located within a RAO and all hospital districts must contract with an independent

⁶⁰ S. 288.0656(2)(d), F.S. A “rural community” is defined as any county with a population of 75,000 or fewer; any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; any municipality in a county that meets the aforementioned criteria; or any municipality or “unincorporated federal enterprise community” with a population of 25,000 or fewer and an employment base focused on traditional agriculture or resource-based industries located in a county not defined as rural and which suffers from three or more economic distress factors. S. 288.0656(2)(e), F.S.

⁶¹ S. 288.0656(7)(a), F.S.

⁶² Dept. of Economic Opportunity, *Rural Areas of Opportunity*, <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Apr. 8, 2021).

entity to conduct the performance review. The independent entity must have at least five years of experience conducting comparable reviews of organizations similar in size and function to the district under review, must conduct the review according to applicable industry best practices, and may not have any affiliation with or financial involvement in the reviewed district. The Office of Program Policy Analysis and Government Accountability (OPPAGA) must conduct a performance review of each fire control district located within a RAO. The bill provides that OPPAGA may contract as needed to complete the performance review. The completed performance review 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 nine 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.

The bill requires all independent mosquito control districts and soil and water conservation districts to undergo a performance review conducted by OPPAGA. The bill provides that OPPAGA may contract as needed to complete the reviews. OPPAGA must submit the performance reviews 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.
- By September 30, 2024, for soil and water conservation districts.

Annual Financial Report and Annual Financial Audit Report

The bill requires the annual financial report and annual financial audit report for all special districts to specify separately:

- The total number of district employees compensated in the last pay period of the fiscal year being reported;
- The total number of independent contractors who received non-employee compensation during the last month of the fiscal year being reported;
- All compensation earned by or awarded to employees, whether paid or accrued, regardless of contingency;
- All compensation earned by or awarded to non-employee independent contractors, whether paid or accrued, regardless of contingency;
- Each construction project with a total cost of at least \$65,000 approved by the district to begin after October 1 of the fiscal year being reported and the total expenditures for the project; and
- A budget variance report⁶³ showing how district spending compared to the original budget for the year.

The bill requires the annual financial report and annual financial audit 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.

The bill 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶³ A budget variance report sets out the difference between the budgeted amounts and actual expenses and revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may require expenditures by special districts to the extent additional staff may be necessary 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 expenditures related to the conduct of performance reviews.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

OPPAGA will incur expenditures related to conducting performance reviews for independent mosquito control districts, soil and water conservation districts, and independent fire control districts located within a RAO.