



## TAXATION AND BUDGET REFORM COMMISSION

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### Staff Analysis and Economic Impact Statement

Measure: CP 51

REFERENCE:

ACTION:

Sponsor: Commissioner Riley

1. GPSC

Pre-meeting

Subject: Duration of Special Districts

2.  
3.

Date: March 5, 2008

#### I. Summary:

Constitutional Proposal 51 limits the duration of independent special districts to eleven years, except community development districts, that have the authority to levy an ad valorem tax or assessment and which are created after January 5, 2009. The districts, however, may be reauthorized by the voters for additional periods no more than eleven years as provided by law.

#### II. Present Situation:

##### *Special Districts Defined*

A special district is defined as a:

local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. . . . The term [special district] does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.<sup>1</sup>

Two categories of special districts exist; dependent and independent special districts. A dependent special district is a special district that is accountable to a local government as follows:

- (a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality;

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<sup>1</sup> Section 189.403(1), F.S.

- (b) All members of its governing body are appointed by the governing body of a single county or a single municipality;
- (c) During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality; and
- (d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.<sup>2</sup>

An independent special district is a “special district that is not a dependent special district. . . . A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.”<sup>3</sup>

Dependent special districts are subject to the 10 mill limit for county or municipal purposes in Article VII, section 9(b), Florida Constitution. Independent special districts may levy a “millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.”<sup>4</sup>

Independent special districts are an alternative method available for use by the private and public sectors to manage, own, operate, construct, and finance basic capital infrastructure, facilities, and services.<sup>5</sup>

### ***Uniform Special District Accountability Act of 1989***

In 1989, the Florida Legislature passed Chapter 189, Florida Statutes, “the Uniform Special District Accountability Act of 1989.” The Act establishes the general provisions for all special districts. The Act specifies procedures for the creation, operation, financial reporting, taxation/assessments, elections, definitions, compliance with general law provisions, (e.g., Government-in-the-Sunshine), and comprehensive planning of special districts.<sup>6</sup>

A Senate Staff Analysis from 1989 suggested that the Uniform Special District Accountability Act of 1989 was needed because:

- Special districts lacked uniformity in how they were created, operated, and held accountable for their acts; and
- Special districts generated “considerable revenue and substantial amounts in bonds.”<sup>7</sup>

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<sup>2</sup> Section 489.103(2), F.S.

<sup>3</sup> Section 489.103(3), F.S.

<sup>4</sup> Article VII, s. 9(b), Fla. Const.

<sup>5</sup> Section 189.402(4)(a), F.S.

<sup>6</sup> Florida Department of Community Affairs, Special District Handbook Online, Section 1-1, <http://www.floridaspecialdistricts.org/Handbook/1-1Introduction.cfm>.

<sup>7</sup> Florida Senate, Committee on Appropriations, Senate Staff Analysis and Economic Impact Statement for CS/CS/SB’s 566 and 764 (May 26, 1989)

Special districts may be created through a special act, by rule of the Governor and Cabinet, or through local ordinances.

***Special District Advantages - Reasons Special Districts Are Created***

The Department of Community Affairs has identified the following as advantages of or reasons to create special districts:

- Create a governing board of appointed or elected members who have the expertise to focus on the specific community needs and issues the special district is addressing;
- Generate money to pay for projected growth without putting an excessive burden on other taxpayers and governments, since only those who benefit from the special district's services are required to pay;
- Ensure accountability of public resources, since special districts are held to the same high standards as cities and counties;
- Protect property values by assuring property owners that their roads, water and sewer lines, and other essential facilities and services will continue to be maintained;
- Save money for affected citizens by selling tax-exempt bonds, purchasing essential goods and services tax-free, and participating in state programs and initiatives, such as state-term contracting;
- Maintain the financial integrity of the special district by limiting its liability to civil lawsuits and providing state assistance in the event of a financial emergency; and
- Recruit qualified employees by offering governmental employment benefits and incentives, such as possible participation in the Florida Retirement System. Any independent special district created under a special act or general law for the purpose of providing urban infrastructure or services may provide housing and housing assistance for its employed personnel whose total annual household income does not exceed 140 percent of the area median income, adjusted for family size.

However, at least one commentator has opined that “[i]t is easier for a board of county commissioners to create a special district to provide a needed service than it is to gain approval for a tax increase. Also, some counties are not administratively capable of supplying the services.”<sup>8</sup>

***Special District Recommendations from the 1990-1992 Taxation and Budget Reform Commission***

The last Taxation and Budget Reform Commission (TBRC) made the following statutory recommendations to the Legislature regarding special districts:<sup>9</sup>

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<sup>8</sup> John M. Starling, *Special District Taxation*, 13 U. FLA. L. REV. 531, 532 (1960).

<sup>9</sup> Florida Taxation & Budget Reform Commission [1990-1992], *Florida's Fiscal Future: Balancing Need's & Taxes* 89 (undated report).

1. “The Legislature shall codify special and local laws and general laws of local application of the state relating to special districts only and provide for publication and distribution of the codification;”
2. The Legislature shall amend the Uniform Special District Accountability Act of 1989 to provide a decennial review of all special acts and general acts of local application relating to special districts which levy ad valorem taxes or fees. Further, the Legislature shall establish a process for special district review and initiation of legislative merger or dissolution; and
3. The Legislature shall establish special district review evaluation criteria.

The review criteria shall include, but not be limited to:

1. Does the special district activity still provide a needed service or activity?
2. Can the activity be performed more efficiently and effectively by a local general purpose government?
3. Is the local general purpose government willing to absorb the activity?
4. What is the financial condition of the special district?
5. Has the special district complied with the requirements of Chapter 189, Florida Statutes, known as the “Uniform Special District Accountability Act of 1989?”
6. Has the special district complied with statutory requirements for reporting?
7. How will the dissolution of a special district adversely affect contractual obligations?
8. Is there outstanding direct debt associated with the special district? Who will assume that debt if the special district is dissolved? Will bond covenants be violated?
9. What consequences to district taxpayers will result from the dissolution of a special district?

Section 189.428, Florida Statutes, authorizes local governments to conduct a review of independent districts similar to the review recommended by the last TBRC. However, the decision of whether or when to conduct a review is determined by local governments.

### ***Community Development Districts***

Community development districts (CDDs) are a type of independent special district authorized by ch. 190, F.S. The CDD structure is an alternate method to manage and finance urban community development services. The creation of a CDD requires the written consent “by all landowners whose real property is to be included in the district or documentation demonstrating that the petitioner [for the creation of a CDD] has control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the district.”<sup>10</sup>

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<sup>10</sup> Section 190.005(1)(a)2. F.S.

***Functions of Independent Special Districts***

Currently, 1,020 independent special districts, including 559 CDDs exist. The functions of the remaining districts address: affordable housing, airport/aviation, ambulance, animal control, aquatic plant control, arts, beach and shore, beautification, capital finance, children/welfare, civic center, community redevelopment, conservation and erosion, county development, distribution pipelines, downtown development, drainage and water control, economic development, education/research/training, educational facilities (higher), educational facilities benefit, emergency medical services, environmental protection, expressways and bridges, fire control and rescue, health care, health facilities, historic preservation, hospital, housing authority, housing finance, industrial development, information systems, infrastructure provision, inlet maintenance, juvenile welfare, library, lighting, market, mobile home parks, mosquito control, municipal services/improvements, navigation, neighborhood improvement, nursing home, parking, personnel, planning and zoning, port, recreation/parks, research and development, soil and water conservation, solid waste, sports, subdivision, transportation, utility, wastewater treatment, water management, water supply, and water and sewer.

**III. Effect of Proposed Changes:**

Constitutional Proposal 51 limits the duration of independent special districts to eleven years, except community development districts, that have the authority to levy an ad valorem tax or assessment and which are created after January 5, 2009. The districts, however, may be reauthorized by the voters for additional periods of no more than eleven years as provided by law.

If approved by the voters, this measure will take effect January 6, 2009, by operation of Article XI, subsection 5(e), Florida Constitution.

**IV. Constitutional Issues:****A. Constitutional or Legislative Matter:**

The Legislature has the authority to limit the duration of independent special districts by law.

**B. Other Constitutional Issues:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

This measure will require bonds issued by special districts to be repaid over shorter periods of time. As a result, property taxes and assessments may be higher, but for a shorter duration.

**B. Private Sector Impact:**

This measure may reduce the usefulness of the independent special district structure to finance capital improvement projects. Financing through other mechanisms may be more costly.

**C. Government Sector Impact:**

This measure may reduce the usefulness of the independent special district structure to finance capital improvement projects. As a result, local governments may be pressured to provide services through the local government itself, rather than an independent special district.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.