

**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.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1568  
 INTRODUCER: Senator Negron  
 SUBJECT: Special Districts  
 DATE: February 26, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	<b>Pre-meeting</b>
2.			EE	
3.			FT	
4.			WPSC	
5.				
6.				

**I. Summary:**

This bill requires a referendum be held when an active independent special district goes through a merger or dissolution. This section preempts any special acts to the contrary. The bill specifies how property and debt is to be distributed upon the merger or dissolution of an independent special district.

This bill substantially amends section 189.4042 of the Florida Statutes.

**II. Present Situation:**

**Special Districts**

Section 189.403(1), F.S., provides that a special district is “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.” Special districts are limited-purpose units of local government. Their property tax millage is limited by general law and subject to referendum approval by the affected electorate.<sup>1</sup> Special districts are subject to the same restrictions on credit,<sup>2</sup> bonding,<sup>3</sup> elections,<sup>4</sup> public records and meetings,<sup>5</sup> as are counties, municipalities, and school districts.<sup>6</sup>

<sup>1</sup> Art. VII, § 9, Fla. Const.  
<sup>2</sup> Art. VII, § 10, Fla. Const.  
<sup>3</sup> Art. VII, § 12, Fla. Const.  
<sup>4</sup> Art. VI, § 6, Fla. Const.  
<sup>5</sup> Art. I, § 24, Fla. Const.  
<sup>6</sup> Art. VII, § 8, Fla. Const.

Special districts operate within a limited geographical area and have a governing board with policy-making powers. A special district does not include: a school district, community college, municipal service taxing or benefit unit (MSTU/MSBU), or a board providing electrical service that is a political subdivision of a municipality or part of a municipality.

All special districts serve a public purpose and are to be held accountable to the public, local general-purpose governments, and state agencies. Special districts are subject to financial reporting requirements, which are an essential element of the law.

For financial reporting and other purposes, special districts are classified as either dependent or independent. A district is usually dependent if a single county or single municipality:

- has an identical governing board,
- appoints the governing board,
- may remove governing board members at will during unexpired terms,
- approves the budget, or
- may veto the budget.

Otherwise, the district is an independent district. Independent districts can sometimes occupy multiple counties. Florida currently has 1,011 independent districts and 614 dependent districts. Special districts include the five water management districts, community development districts, community redevelopment districts, drainage and water control districts, housing authorities, fire control and rescue, and soil and water conservation districts,<sup>7</sup> as well as districts that provide a variety of governmental services pertaining to airports, the arts, beach restoration, expressways and bridges, health care, housing, juvenile welfare, libraries, mosquito control, and transportation.

Section 189.4042, F.S., specifies the procedures for merger or dissolution of a special district. The merger or dissolution of an independent special district may be affected:

- only by the Legislature unless otherwise provided by general law if the district was created by special act;
- by publishing a notice pursuant to s. 189.4044, F.S., if the special district is inactive; or
- by the same procedure used to enact the independent special district.

### **Special Laws**

The Florida Constitution provides that:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.<sup>8</sup>

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<sup>7</sup> DEPARTMENT OF COMMUNITY AFFAIRS, OFFICIAL LIST OF SPECIAL DISTRICTS ONLINE, *available at*, [www.floridaspecialdistricts.org](http://www.floridaspecialdistricts.org).

<sup>8</sup> Section X, Art III, Fla. Const.

A special law is one relating to, or designed to operate on, particular persons or things, or one that purports to operate on classified persons or things.<sup>9</sup> The Florida Constitution explicitly prohibits a number of different types of special acts.<sup>10</sup> The Legislature can enact general laws<sup>11</sup> or special laws to invalidate special laws. The general rule is that valid local or special laws relating to the powers and government of particular municipalities prevail, though they conflict with the general statutory law.<sup>12</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 189.4042, F.S., to change provisions relating to the merger or dissolution of independent special districts. The bill adds the requirement that local governments hold a referendum to merge or dissolve an independent special district in addition to the existing procedural requirements for dissolution or merger. The bill creates a statement that the dissolution and merger procedures in s. 189.4042(1), F.S., preempt any special act to the contrary.

The bill requires a government formed by merger of an existing independent special district or districts with another government to assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district or districts. The proposed charter shall provide for the determination of the proper allocation and the manner in which the debt shall be retired. The dissolution of an independent special district shall transfer the title to all property owned by the preexisting independent special district to the county government, which shall also assume all indebtedness of the preexisting independent special district, unless otherwise provided in the dissolution plan.

**Section 2** of the bill provides an effective date.

### IV. Constitutional Issues:

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

To the extent this bill requires counties or municipalities to expend funds to hold referenda, the provisions of Section 18(a) of Article VII of the Florida Constitution may apply. If the bill is determined to have more than an insignificant fiscal impact, then none of the constitutional exceptions or exemptions apply. Therefore, the bill would require a two-thirds vote of the membership of each house of the Legislature and a finding of important state interest.

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<sup>9</sup> *Lawnwood Medical Center, Inc. v. Seeger*, 990 So. 2d 503 (Fla. 2008); *Bryan v. State*, 753 So. 2d 1244 (Fla. 2000); *Department of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989); *Village of Wellington v. Palm Beach County*, 941 So. 2d 595 (Fla. Dist. Ct. App. 4th Dist. 2006), review denied, 954 So. 2d 29 (Fla. 2007); *Village of Tequesta v. Loxahatchee River Environmental Control Dist.*, 714 So. 2d 1100 (Fla. Dist. Ct. App. 4th Dist. 1998).

<sup>10</sup> Section X, Art. III, Fla. Const.

<sup>11</sup> *City of St. Petersburg v. Siebold*, 48 So.2d 291 (Fla. 1950) (holding that a general act may operate to repeal repugnant local or special laws, though containing no general repealing clause, where the Legislature's intent to repeal all conflicting local or special laws is made plain by the terms and purposes of the general act).

<sup>12</sup> *Ferguson v. McDonald*, 66 Fla. 494 (Fla. 1913).

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill requires local governments to hold referenda to merge or dissolve a special district. The Department of Community Affairs has expressed concern that rather than dissolve through a referendum, local governments may simply abandon the special district. When that happens, the special district becomes inactive and the Department of Community Affairs, the Auditor General, and the Department of Financial Services are required to go through several processes to try to bring the special district in line with its reporting requirements before it can declare the special district inactive and dissolve it. If this happens, these agencies may see an increased workload.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The newly created s. 189.4042(4), F.S., passes on property and debt of an independent special district to “the county government.” Independent special districts may span more than one county. It is unclear what the procedure would be when this is the case.

This bill creates general law that requires independent special districts created by special act to be dissolved or merged by both the Legislature and a referendum. Special acts generally prevail over inconsistent general laws. This bill, however, states that s. 189.4042(1), F.S. preempts any special act to the contrary. This phrase will apply to special acts already in existence when this bill takes effect and will probably not prevent later inconsistent special acts from again superseding the general law.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial 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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