

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB LGAS 16-01 Special District Accountability

**SPONSOR(S):** Local Government Affairs Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Local Government Affairs Subcommittee		Miller	Miller

### SUMMARY ANALYSIS

“Special Districts” are a type of limited local government created to perform specific services within a described geographic area. Sometimes called special taxing districts, most are created either by special act (independent special districts) or county or municipal ordinance (dependent special districts). The Special District Accountability Program in the Department of Economic Opportunity (DEO) is responsible for creating and maintaining a current list of all special districts in Florida, as provided in ch. 189, F.S., the Uniform Special District Accountability Act.

When a special district fails to meet certain statutory responsibilities, no longer functions, or informs DEO it is no longer active, DEO is required to follow the statutory process before declaring the district inactive. This includes documenting one or more statutory criteria for inactive status, publishing notice in the area of the district of DEO’s intent to declare the district inactive, and documenting the lack of any objection to declaring the district inactive. DEO is required to deliver written notice of the declaration of inactive status to specific authorities. If the district was created by special act, notice is delivered to the Speaker of the House, the President of the Senate, and the standing committees in each chamber responsible for special district oversight. If the district was created by local ordinance, notice is delivered to the governing body of the county or municipality that created the district. A special district declared inactive may not collect taxes, assessments, or fees while the declaration is in effect.

A special district declared inactive still exists until its legal authority is repealed by the creating entity. Currently, this means DEO continues to list active and inactive districts on the official list.

PCB LGAS 16-01 amends ch. 189, F.S., by excluding districts declared inactive from the official list of special districts. The PCB requires DEO to remove all districts declared inactive from the official list and place them on a separate listing exclusively for inactive districts. A district would be removed from the inactive list only if DEO declared it to have resumed active status, the district is merged with another entity of local government, or the district is dissolved.

The PCB also makes conforming technical changes to related statutes. Section 189.071(2), F.S., is amended to clarify its provisions on merger or dissolution of dependent districts created and operating under special law apply to *active* districts. Sections 189.071(3) and 189.072(3), F.S., each authorizing dissolution by special act if a district meets any of the statutory criteria for being declared inactive, are amended to remove the same redundant alternative phrase “or that has already been declared inactive.”

The PCB has a potential impact on DEO expenditures by requiring the creation and maintenance of a separate list for inactive districts. However, with the present flexibility in formatting and features already programmed into the Special District Accountability Program website, any additional expenses are likely minimal.

The PCB provides an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,<sup>1</sup> special act,<sup>2</sup> local ordinance,<sup>3</sup> or by rule of the Governor and Cabinet.<sup>4</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>5</sup> A special district may be "dependent"<sup>6</sup> or "independent."<sup>7</sup>

The Special District Accountability Program within the Department of Economic Opportunity (DEO) is responsible for maintaining and electronically publishing the official list of all special districts in Florida.<sup>8</sup> The official list currently reports all active special districts as well as those declared inactive by DEO.

Whether dependent or independent, when a special district no longer fully functions or fails to meet its statutory responsibilities, DEO is required to declare that district inactive by following a specified process.<sup>9</sup> DEO must first document the factual basis for declaring the district inactive.

A special district may be declared inactive if it meets one of six specific factors:

- The registered agent of the district, the chair of the district governing body, or the governing body of the appropriate local general-purpose government:
  - Provides DEO with written notice that the district has taken no action for 2 or more years.<sup>10</sup>
  - Provides DEO with written notice that the district has not had any members on its governing body or insufficient numbers to constitute a quorum for 2 or more years.<sup>11</sup>
  - Fails to respond to an inquiry from DEO within 21 days.<sup>12</sup>
- Following statutory procedure,<sup>13</sup> DEO determines the district failed to file specified reports,<sup>14</sup> including required financial reports.<sup>15</sup>

---

<sup>1</sup> Section 189.031(3), F.S.

<sup>2</sup> Id.

<sup>3</sup> Section 189.02(1), F.S.

<sup>4</sup> Section 190.005(1), F.S. *See, generally, s. 189.012(6), F.S.*

<sup>5</sup> *2015 – 2016 Local Gov't Formation Manual*, p. 67, at

<http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2836> (accessed 9/28/2015).

<sup>6</sup> Section 189.012(2), F.S. 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>7</sup> Section 189.012(3), F.S. A special district that is not a dependent district.

<sup>8</sup> Sections 189.061(1), 189.064(2), F.S. DEO maintains the current official list at

<https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (accessed 9/28/2015).

<sup>9</sup> Section 189.062(1), F.S. Prior to 2014, the former statute required DEO to document the existence of one of five criteria listed in paragraph (1)(a), publication and service under paragraph (1)(b) of a notice of intent to declare the district inactive, and the lack of any administrative appeal of the declaration within 21 days of that publication. Section 189.4044, F.S. (2013). In 2014, as ch. 189, F.S., was extensively revised and restructured, the word "or" was added at the end of s. 189.062(1)(a)6, F.S., apparently allowing DEO either to document one of the six criteria *or* publish notice of intent to declare inactive and find no appeal is filed. Chapter 2014-22, s. 24, Laws of Florida. During the 2015 regular legislative session, the Florida Senate passed CS/SB 1388, its version of a bill resolving technical issues stemming from the 2014 revisions, which would have amended s. 189.062(1)(a)6., F.S., by removing the word "or." CS/SB 1388 (2015), s. 11, at line 414 (bill did not pass the Legislature). DEO still uses the 3-step process as described in the 2013 statute.

<sup>10</sup> Section 189.062(1)(a)1., F.S.

<sup>11</sup> Section 189.062(1)(a)2., F.S.

<sup>12</sup> Section 189.062(1)(a)3., F.S.

<sup>13</sup> Section 189.067, F.S.

- For more than 1 year, no registered office or agent for the district was on file with DEO.<sup>16</sup>
- The governing body of the district unanimously adopts a resolution declaring the district inactive and provides documentation of the resolution to DEO.<sup>17</sup>

Once DEO determines which criterion applies to the district, notice of the proposed declaration of inactive status is published by DEO, the local general-purpose government for the area where the district is located, or the district itself.<sup>18</sup> The notice must state that any objections to declaring the district inactive must be filed with DEO pursuant to chapter 120, F.S.,<sup>19</sup> within 21 days after the publication date.<sup>20</sup> If no objection is filed within the 21 day period, DEO declares the district inactive.<sup>21</sup>

After declaring certain special districts as being inactive, DEO must send written notice of the declaration to the authorities which created the district. If the district was created by special act, DEO sends written notice to the Speaker of the House, the President of the Senate, and the standing committees in each chamber responsible for special district oversight.<sup>22</sup>

The property and assets of a special district declared inactive by DEO are first used to pay any debts of the district. Any remaining property or assets then escheat to the county or municipality in which the district was located. If the district's assets are insufficient to pay its outstanding debts, the local general-purpose government in which the district was located may assess and levy within the territory of the inactive district such taxes as necessary to pay the remaining debt.<sup>23</sup>

A district declared inactive may not collect taxes, fees, or assessments.<sup>24</sup> This prohibition continues until the declaration of invalidity is withdrawn or revoked by DEO<sup>25</sup> or invalidated in an administrative proceeding<sup>26</sup> or civil action<sup>27</sup> timely brought by the governing body of the special district.<sup>28</sup> Failure of the special district to challenge (or prevail against) the declaration of inactive status enables DEO to enforce the statute through a petition for enforcement in circuit court.<sup>29</sup>

Declaring a special district to be inactive does not dissolve the district or otherwise cease its legal existence. Subsequent action is required to repeal the legal authority creating the district, whether by the Legislature<sup>30</sup> or the entity that created the district.<sup>31</sup>

### **Effect of the Proposed Changes**

---

<sup>14</sup> Section 189.066, F.S.

<sup>15</sup> Section 189.062(1)(a)4., F.S. *See, ss.* 189.016(9), 218.32, 218.39, F.S.

<sup>16</sup> Section 189.062(1)(a)5., F.S.

<sup>17</sup> Section 189.062(1)(a)6., F.S.

<sup>18</sup> Publication must be in a newspaper of general circulation in the county or municipality where the district is located and a copy sent by certified mail to the district's registered agent or chair of the district's governing body, if any.

<sup>19</sup> The Florida Administrative Procedure Act.

<sup>20</sup> Section 189.062(10)(b), F.S. The published notice also must include the name of the district, the law under which it was organized and operating, and a description of the district's territory.

<sup>21</sup> Section 189.062(1)(c), F.S.

<sup>22</sup> Section 189.062(3), F.S. The statute provides that the declaration of inactive status is sufficient notice under art. III, s. 10 of the Florida Constitution to authorize the repeal of special laws creating or amending the charter of the inactive district. This statute stands in lieu of the normal requirement for publication of notice of intent to file a local bill at least 30 days before introducing the bill in the Legislature, under s. 11.02, F.S.

<sup>23</sup> Section 189.062(2), F.S.

<sup>24</sup> Section 189.062(5), F.S.

<sup>25</sup> Section 189.062(5)(a), F.S.

<sup>26</sup> Section 189.062(5)(b)1., F.S. Administrative proceedings are conducted pursuant to s. 120.569, F.S.

<sup>27</sup> Section 189.062(5)(b)2., F.S. The action for declaratory and injunctive relief is brought under ch. 86, F.S.

<sup>28</sup> The special district must initiate the legal challenge within 30 days after the date the written notice of the department's declaration of inactive status is provided to the special district. Section 189.062(5)(b), F.S.

<sup>29</sup> Section 189.062(5)(c), F.S. The enforcement action is brought in the circuit court in and for Leon County.

<sup>30</sup> Sections 189.071(3), 189.072(3), F.S.

<sup>31</sup> Section 189.062(4), F.S. Unless otherwise provided by law or ordinance, dissolution of a special district transfers title to all district property to the local general-purpose government, which also must assume all debts of the dissolved district. Section 189.076(2), F.S.

The bill modifies the reporting duties of DEO in two ways. First, the bill excludes all districts declared inactive from the official list of special districts. Second, the bill requires DEO to create a separate list of all special districts declared inactive under s. 189.062, F.S. Districts are to remain on the inactive list until restored to active status, merged with another entity,<sup>32</sup> or dissolved.<sup>33</sup>

The bill also removes redundant language referring to whether a special district meets one of the criteria to be declared inactive or in fact has been declared inactive by DEO.

#### B. SECTION DIRECTORY:

- Section 1: Creates s. 189.061(7), F.S., requiring all districts declared inactive under s. 189.062, F.S., be excluded from the official list of special districts.
- Section 2: Creates s. 189.062(6), F.S., requiring DEO immediately remove districts declared inactive from the official list of special districts and to create a separate list of all districts declared inactive.
- Section 3: Makes clarifying changes to s. 189.071, F.S., that certain merger or dissolution actions pertain to an active special district and removing redundant language.
- Section 4: Makes clarifying change to s. 189.072(3), F.S., by removing redundant language.
- Section 5: Provides the effective date of the bill is July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None
2. Expenditures:  
None (see Fiscal Comments below)

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None
2. Expenditures:  
None

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

None

#### D. FISCAL COMMENTS:

DEO may have an increase in operating expenses to create and maintain a separate list of special districts declared inactive, however that increase appears to be inconsequential due to the present structure of reporting options for the official list currently used on the DEO website.

---

<sup>32</sup> Sections 189.071, 189.074, F.S.

<sup>33</sup> Sections 189.071, 189.072, F.S. The official declaration of inactive status does not repeal the legal authority creating the district or otherwise dissolve the special district.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

The bill does not appear to implicate the provisions of article VII, s. 18, Florida Constitution.

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires implementation through administrative rulemaking.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**