



Local Administration & Veterans Affairs Subcommittee

**Tuesday, March 9, 2021
9:30 AM – 11:30 AM
Sumner Hall (404 HOB)**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Local Administration & Veterans Affairs Subcommittee

Start Date and Time: Tuesday, March 09, 2021 09:30 am

End Date and Time: Tuesday, March 09, 2021 11:30 am

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 883 County and Municipal Code Enforcement by Overdorf

HB 1103 Special District Accountability by Maggard

This meeting will be live-streamed on <https://thefloridachannel.org/>. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts

NOTICE FINALIZED on 03/05/2021 3:50PM by Rundles.Victoria

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 883 County and Municipal Code Enforcement

SPONSOR(S): Overdorf

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 60

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee		Darden	Miller
2) Public Integrity & Elections Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Code enforcement is a function of local government intended to enhance the economy and quality of life of counties and municipalities by protecting the health, safety, and welfare of the community. Four areas of Florida law create mechanisms counties and cities may utilize for code and ordinance enforcement. Under each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance, but possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.

The bill amends the county and municipal code enforcement statutes to prohibit code inspectors and code enforcement officers from initiating an investigation or enforcement proceeding for an alleged code violation based upon an anonymous complaint. The bill requires each person reporting a potential violation of a code or ordinance to provide his or her the name and address to the governing body of the county or municipality before an investigation occurs.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County and Municipal Code Enforcement

Code enforcement is a function of local government intended to enhance the economy and quality of life of counties and municipalities by protecting the health, safety, and welfare of the community.¹ Four areas of Florida law create mechanisms counties and cities may utilize for code and ordinance enforcement.² Under each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance, but possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.³

Code Enforcement Boards Act

The Local Government Code Enforcement Boards Act⁴ allows each county and municipality to create local government code enforcement boards by ordinance.⁵ A code enforcement board is an administrative board composed of members appointed by the governing body of a county or municipality with the authority to hold hearings and impose administrative fines and other non-criminal penalties for violations of the jurisdiction's codes or ordinances. Each code enforcement board has seven members, except that a county or municipality with fewer than 5,000 residents may elect to appoint a board of five members. The governing body of the county or municipality may also appoint up to two alternate members to serve in the absence of other board members.

Members of a code enforcement board must be residents of the specific municipality or county creating the board. The members must include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor, if possible.⁶

Code enforcement boards have the power to:

- Adopt hearing rules;
- Subpoena alleged violators, witnesses, and evidence to attend board hearings;
- Take testimony under oath; and
- Issue orders with the force of law commanding steps necessary to bring a violation into compliance.⁷

Code enforcement proceedings are initiated by code inspectors.⁸ The process generally begins with a code inspector notifying the alleged violator of the specific violation, giving a reasonable period of time to correct the violation.⁹ If the violation is not corrected within the time period specified in the notice, the code inspector informs the enforcement board and requests a hearing. The code enforcement board schedules the hearing and must provide written notice, by certified mail or personal service, to the

¹ S. 162.02, F.S.

² Ch. 125, Part II, F.S. (county self-government), Ch. 162, Part I, F.S. (Local Government Code Enforcement Boards Act), Ch. 162 Part II (supplemental procedures for county or municipal code or ordinance enforcement procedures), and s. 166.0415, F.S. (city ordinance enforcement).

³ See ss. 125.69(4)(i), 162.13, 162.21(8), and 166.0415(7), F.S.

⁴ Ch. 162, Part I, F.S.

⁵ S. 162.05(1), F.S.

⁶ S. 162.05(2), F.S.

⁷ S. 162.08, F.S.

⁸ S. 162.06(1), F.S. A "code inspector" is "any authorized agent or employee of the county or municipality whose duty it is to assure code compliance." S. 164.04(2), F.S.

⁹ S. 162.06(2), F.S.

alleged violator.¹⁰ A time period for corrective action is not required if the violation is a repeat violation, presents a serious threat to public health, safety and welfare, or the violation is irreparable or irreversible in nature.¹¹

In each matter heard before a code enforcement board, the case is presented and testimony is taken from both the code inspector and alleged violator.¹² At the conclusion of the hearing, the board issues findings of fact and provides an order stating the relief granted.¹³ The board may include a notice that repairs must be completed by a specified date and fine the violator for each day the order has not been complied with after the completion date or each day or that a repeat violation occurs.¹⁴ All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order.¹⁵

As an alternative to a code enforcement board, the act allows counties and municipalities to adopt a code enforcement system giving code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of the local government's codes or ordinances.¹⁶ Each of these methods may be used at the local governments' discretion, but a local government may choose any method to enforce codes and ordinances.¹⁷

Local governments may enforce violations of codes and ordinances without establishing a code enforcement board.¹⁸ Local governments may designate employees or agents as code enforcement officers authorized to enforce the local government's codes or ordinances.¹⁹

A code enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person violated a duly enacted code or ordinance.²⁰ Prior to issuing a citation, a code enforcement officer must provide notice to the person that the person of the alleged violation of a code or ordinance and provide a reasonable time period, of no more than 30 days, within which the person must correct the violation.²¹ If, upon personal investigation, a code enforcement officer finds the violation was not corrected within the time period, the officer may issue a civil citation.

Counties and municipalities choosing to enforce codes or ordinances under the provisions of Part II must enact an ordinance establishing the code enforcement procedures.²² The ordinance, among other requirements, must provide procedures for code enforcement officers to issue citations.

A violation of a county or municipal code or an ordinance enforced under Part II is a civil infraction and carries a maximum civil penalty of \$500. Part II further allows counties and municipalities to enforce

¹⁰ Ss. 162.06(2), 162.12(1), F.S. The code enforcement board may also provide additional notice by publication in a newspaper of general circulation in the county or posting on the property where the alleged violation occurred and on the front door of the courthouse or main county governmental center (for a county) or primary municipal government office (for a municipality). Ss. 162.06(2), 162.12(2), F.S.

¹¹ S. 162.06(3)-(4), F.S.

¹² S. 162.07(2)-(3), F.S.

¹³ S. 162.07(4), F.S.

¹⁴ S. 162.09(1), F.S. Such fines may not exceed \$250 per day for a first violation and may not exceed \$500 per day for a repeat violation. However, a county or municipality having a population equal to or greater than 50,000 may pass an ordinance to increase the fine thresholds if approved by a majority plus one vote.

¹⁵ S. 162.11, F.S.

¹⁶ S. 162.03, F.S.

¹⁷ The Attorney General has opined that "once a municipality has adopted the procedures of ch. 162, F.S., to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes." Op. Att'y Gen. 2000-53 (2000). A local government may, however, maintain a ch. 162, F.S., code enforcement board and still decide to enforce a particular violation by bringing a charge in county court, or any other means provided by law. *Goodman v. County Court in Broward County, Fla.* 711 So.2d 587 (Fla. 4th DCA 1998).

¹⁸ Ch. 162, Part II, F.S.

¹⁹ S. 162.21(2), F.S. Employees or agents that may be designated as code enforcement officers include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors.

²⁰ S. 162.21(3)(a), F.S.

²¹ S. 162.21(3)(b), F.S.

²² S. 162.21(5), F.S.

code violations by filing a civil action in the county or circuit court, in the absence of a magistrate or code enforcement board.²³

Enforcement of County Ordinance Violations

Counties are authorized to prosecute violations of county ordinances in the same manner as misdemeanors.²⁴ The action is prosecuted in county court and is punishable by a fine up to \$500, imprisonment up to 60 days, or both.²⁵ The statute also allows counties to designate code enforcement officers, who may investigate violations of codes and ordinances and issue civil citations.²⁶

Enforcement of Municipal Ordinance Violations

Municipalities may enforce their ordinances and codes using code inspectors.²⁷ Municipalities may designate code enforcement officers authorized to investigate alleged violations of municipal codes or ordinances and initiate enforcement proceedings by issuing a citation and notice to the alleged violator.

Anonymous and Identified Complaints

A code enforcement investigation usually begins with a complaint or tip from the public - typically by phone or online form - or by a code enforcement officer personally observing an alleged violation while performing his or her duties.²⁸ As procedures for collecting complaints are not specified by state law, local governments have adopted a variety of rules and regulations for collecting complaints. Many jurisdictions allow for the anonymous submission of complaints, while some require the complainant to provide identifying information.²⁹ Code inspectors accept information initially provided in the complaints and may investigate the allegations made.

Any document made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Legislature.³⁰ Any information given by a complainant to the local government, including name, address, and contact information, is public record except where an exemption would otherwise apply.³¹

Effect of Proposed Changes

The bill amends the county and municipal code enforcement statutes to prohibit code inspectors and code enforcement officers from initiating an investigation or enforcement proceeding for an alleged code violation based upon an anonymous complaint. The bill requires each person reporting a potential violation of a code or ordinance to provide his or her the name and address to the governing body of the county or municipality before an investigation occurs.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.69, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the county before an investigation may occur.

²³ S. 162.30, F.S.

²⁴ S. 125.69(4), F.S.

²⁵ S. 125.69(1), F.S.

²⁶ This process for code enforcement is similar to that authorized by s. 162.21, F.S.

²⁷ S. 166.0415, F.S. The statute functionally is identical to s. 162.21, F.S.

²⁸ Anthony A. Velardi, *The Law: Got a code violation? Here's how the process works*, *The Ledger*, May 18, 2017, available at <https://www.theledger.com/news/20170518/law-got-code-violation-heres-how-process-works> (last accessed Mar. 2, 2021).

²⁹ *E.g.*, Collier County code enforcement regulations to require that a name and phone number must be provided along with a complaint "unless the concern is an emergency that immediately threatens the public health and safety or could cause catastrophic consequences." Collier County, Report a Code Violation, <https://www.colliercountyfl.gov/your-government/divisions-a-e/code-enforcement/report-a-code-violation> (last accessed Mar. 2, 2021).

³⁰ See generally, s. 119.01(1), F.S., the Public Records Act. "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency." See also Office of Attorney Gen., *Open Government – The "Sunshine" Law*, <https://myfloridalegal.com/pages.nsf/Main/DC0B20B7DC22B7418525791B006A54E4> (last accessed Mar. 2, 2021).

³¹ See ss. 119.071(4) and (5), F.S.

- Section 2: Amends s. 162.06, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the county or municipality before an investigation may occur.
- Section 3: Amends s. 162.13, F.S., conforming legislative intent to changes made by the bill.
- Section 4: Amends s. 162.21, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the county or municipality before an investigation may occur.
- Section 5: Amends s. 166.0415, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the municipality before an investigation may occur.
- Section 6: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At line 53, the bill requires information to be provided to “the governing body of the respective board of county commissioners.” This appears to be redundant, as the board of county commissioners is the governing body of a county.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to county and municipal code
3 enforcement; amending s. 125.69, F.S.; prohibiting
4 code inspectors designated by boards of county
5 commissioners from initiating investigations of
6 potential violations of codes and ordinances by way of
7 anonymous complaints; requiring persons who report
8 potential violations of codes and ordinances to
9 provide specified information to the board before an
10 investigation occurs; providing construction; amending
11 s. 162.06, F.S.; prohibiting code inspectors from
12 initiating enforcement proceedings for potential
13 violations of codes and ordinances by way of anonymous
14 complaints; requiring persons who report potential
15 violations of codes and ordinances to provide
16 specified information to the respective local
17 government before an investigation occurs; amending s.
18 162.13, F.S.; providing construction; amending s.
19 162.21, F.S.; prohibiting code enforcement officers
20 from initiating investigations of potential violations
21 of codes and ordinances by way of anonymous
22 complaints; requiring persons who report potential
23 violations of codes and ordinances to provide
24 specified information to the respective local
25 government before an investigation occurs; providing

26 construction; amending s. 166.0415, F.S.; prohibiting
27 code inspectors designated by governing bodies of
28 municipalities from initiating investigations of
29 potential violations of codes and ordinances by way of
30 anonymous complaints; requiring persons who report
31 potential violations of codes and ordinances to
32 provide specified information to the governing body
33 before an investigation occurs; providing
34 construction; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Subsection (4) of section 125.69, Florida
39 Statutes, is amended to read:

40 125.69 Penalties; enforcement by code inspectors.—

41 (4) (a) The board of county commissioners of each county
42 may designate its agents or employees as code inspectors whose
43 duty it is to assure code compliance. Any person designated as a
44 code inspector may issue citations for violations of county
45 codes and ordinances, respectively, or subsequent amendments
46 thereto, when such code inspector has actual knowledge that a
47 violation has been committed.

48 (b) A person designated as a code inspector may not
49 initiate an investigation of a potential violation of a duly
50 enacted code or ordinance by way of an anonymous complaint. A

51 person who reports a potential violation of a code or an
52 ordinance must provide his or her name and address to the
53 governing body of the respective board of county commissioners
54 before an investigation occurs.

55 (c)~~(a)~~ Prior to issuing a citation, a code inspector shall
56 provide notice to the violator that the violator has committed a
57 violation of a code or ordinance and shall establish a
58 reasonable time period within which the violator must correct
59 the violation. Such time period shall be no more than 30 days.
60 If, upon personal investigation, a code inspector finds that the
61 violator has not corrected the violation within the time period,
62 a code inspector may issue a citation to the violator. A code
63 inspector does not have to provide the violator with a
64 reasonable time period to correct the violation prior to issuing
65 a citation and may immediately issue a citation if the code
66 inspector has reason to believe that the violation presents a
67 serious threat to the public health, safety, or welfare, or if
68 the violation is irreparable or irreversible.

69 (d)~~(b)~~ A citation issued by a code inspector shall state
70 the date and time of issuance, name and address of the person in
71 violation, date of the violation, section of the codes or
72 ordinances, or subsequent amendments thereto, violated, name of
73 the code inspector, and date and time when the violator shall
74 appear in county court.

75 (e)~~(c)~~ If a repeat violation is found subsequent to the

76 issuance of a citation, the code inspector is not required to
77 give the violator a reasonable time to correct the violation and
78 may immediately issue a citation. For purposes of this
79 subsection, the term "repeat violation" means a violation of a
80 provision of a code or ordinance by a person who has previously
81 been found to have violated the same provision within 5 years
82 prior to the violation, notwithstanding the violations occurred
83 at different locations.

84 (f)~~(d)~~ If the owner of property which is subject to an
85 enforcement proceeding before county court transfers ownership
86 of such property between the time the initial citation or
87 citations are issued and the date the violator has been summoned
88 to appear in county court, such owner shall:

89 1. Disclose, in writing, the existence and the nature of
90 the proceeding to the prospective transferee.

91 2. Deliver to the prospective transferee a copy of the
92 pleadings, notices, and other materials relating to the county
93 court proceeding received by the transferor.

94 3. Disclose, in writing, to the prospective transferee
95 that the new owner will be responsible for compliance with the
96 applicable code and with orders issued in the county court
97 proceeding.

98 4. File a notice with the code enforcement official of the
99 transfer of the property, with the identity and address of the
100 new owner and copies of the disclosures made to the new owner,

101 within 5 days after the date of the transfer.

102
103 A failure to make the disclosure described in subparagraphs 1.,
104 2., and 3. before the transfer creates a rebuttable presumption
105 of fraud. If the property is transferred before the date the
106 violator has been summoned to appear in county court, the
107 proceeding shall not be dismissed but the new owner will be
108 substituted as the party of record and thereafter provided a
109 reasonable period of time to correct the violation before the
110 continuation of proceedings in county court.

111 (g)~~(e)~~ If the code inspector has reason to believe a
112 violation or the condition causing the violation presents a
113 serious threat to the public health, safety, and welfare or if
114 the violation is irreparable or irreversible in nature, or if
115 after attempts under this section to bring a repeat violation
116 into compliance with a provision of a code or ordinance prove
117 unsuccessful, the local governing body may make all reasonable
118 repairs which are required to bring the property into compliance
119 and charge the owner with the reasonable cost of the repairs
120 along with the fine imposed pursuant to this section. Making
121 such repairs does not create a continuing obligation on the part
122 of the local governing body to make further repairs or to
123 maintain the property and does not create any liability against
124 the local governing body for any damages to the property if such
125 repairs were completed in good faith.

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126 (h)~~(f)~~ Nothing in this subsection shall be construed to
127 authorize any person designated as a code inspector to perform
128 any function or duties of a law enforcement officer other than
129 as specified in this subsection. A code inspector shall not make
130 physical arrests or take any person into custody and shall be
131 exempt from requirements relating to the Special Risk Class of
132 the Florida Retirement System, bonding, and the Criminal Justice
133 Standards and Training Commission, as defined and provided by
134 general law.

135 (i)~~(g)~~ The provisions of this subsection shall not apply
136 to the enforcement pursuant to ss. 553.79 and 553.80 of the
137 Florida Building Code adopted pursuant to s. 553.73 as applied
138 to construction, provided that a building permit is either not
139 required or has been issued by the county.

140 (j)~~(h)~~ The provisions of this subsection may be used by a
141 county in lieu of the provisions of part II of chapter 162.

142 (k)~~(i)~~ The provisions of this subsection are additional or
143 supplemental means of enforcing county codes and ordinances.
144 Except as provided in paragraphs (b) and (j) ~~paragraph (h)~~,
145 nothing in this subsection shall prohibit a county from
146 enforcing its codes or ordinances by any other means.

147 Section 2. Subsection (1) of section 162.06, Florida
148 Statutes, is amended to read:

149 162.06 Enforcement procedure.—

150 (1) (a) It shall be the duty of the code inspector to

151 initiate enforcement proceedings of the various codes; however,
152 no member of a board shall have the power to initiate such
153 enforcement proceedings.

154 (b) A code inspector may not initiate enforcement
155 proceedings for a potential violation of a duly enacted code or
156 ordinance by way of an anonymous complaint. A person who reports
157 a potential violation of a code or an ordinance must provide his
158 or her name and address to the respective local government
159 before an enforcement proceeding may occur.

160 Section 3. Section 162.13, Florida Statutes, is amended to
161 read:

162 162.13 Provisions of act supplemental.—It is the
163 legislative intent of ss. 162.01-162.12 to provide an additional
164 or supplemental means of obtaining compliance with local codes.
165 Except as provided in s. 162.06(1)(b), nothing contained in ss.
166 162.01-162.12 shall prohibit a local governing body from
167 enforcing its codes by any other means.

168 Section 4. Present paragraphs (b) and (c) of subsection
169 (3) of section 162.21, Florida Statutes, are redesignated as
170 paragraphs (c) and (d), respectively, a new paragraph (b) is
171 added to that subsection, and subsection (8) of that section is
172 amended, to read:

173 162.21 Enforcement of county or municipal codes or
174 ordinances; penalties.—

175 (3)

176 (b) A code enforcement officer may not initiate an
177 investigation of a potential violation of a duly enacted code or
178 ordinance by way of an anonymous complaint. A person who reports
179 a potential violation of a code or an ordinance must provide his
180 or her name and address to the respective local government
181 before an investigation may occur.

182 (8) The provisions of this section are additional and
183 supplemental means of enforcing county or municipal codes or
184 ordinances and may be used for the enforcement of any code or
185 ordinance, or for the enforcement of all codes and ordinances.
186 Except as provided in paragraph (3) (b), nothing contained in
187 this section shall prohibit a county or municipality from
188 enforcing its codes or ordinances by any other means.

189 Section 5. Subsections (1) and (7) of section 166.0415,
190 Florida Statutes, are amended to read:

191 166.0415 Enforcement by code inspectors; citations.—

192 (1) (a) The governing body of each municipality may
193 designate its agents or employees as code inspectors whose duty
194 it is to assure code compliance. Any person designated as a code
195 inspector may issue citations for violations of municipal codes
196 and ordinances, respectively, or subsequent amendments thereto,
197 when such code inspector has actual knowledge that a violation
198 has been committed.

199 (b) A person designated as a code inspector may not
200 initiate an investigation of a potential violation of a duly

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201 enacted code or ordinance by way of an anonymous complaint. A
202 person who reports a potential violation of a code or an
203 ordinance must provide his or her name and address to the
204 governing body of the municipality before an investigation
205 occurs.

206 (7) The provisions of this section are additional or
207 supplemental means of enforcing municipal codes and ordinances.
208 Except as provided in paragraph (1)(b) and subsection (6),
209 nothing in this section shall prohibit a municipality from
210 enforcing its codes or ordinances by any other means.

211 Section 6. This act shall take effect July 1, 2021.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 883 (2021)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

Committee/Subcommittee hearing bill: Local Administration &
Veterans Affairs Subcommittee
Representative Overdorf offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:
Section 1. Subsection (4) of section 125.69, Florida
Statutes, is amended to read:

125.69 Penalties; enforcement by code inspectors.—

(4) (a) The board of county commissioners of each county
may designate its agents or employees as code inspectors whose
duty it is to assure code compliance. Any person designated as a
code inspector may issue citations for violations of county
codes and ordinances, respectively, or subsequent amendments
thereto, when such code inspector has actual knowledge that a
violation has been committed.

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17 (b) A person designated as a code inspector may not
18 initiate an investigation of a potential violation of a duly
19 enacted code or ordinance by way of an anonymous complaint. A
20 person who reports a potential violation of a code or an
21 ordinance must provide his or her name and address to the
22 respective board of county commissioners before an investigation
23 occurs. This paragraph does not apply if the person designated
24 as a code inspector has reason to believe that the violation
25 presents an imminent threat to public health, safety, or welfare
26 or imminent destruction of habitat or sensitive resources.

27 (c)~~(a)~~ Prior to issuing a citation, a code inspector shall
28 provide notice to the violator that the violator has committed a
29 violation of a code or ordinance and shall establish a
30 reasonable time period within which the violator must correct
31 the violation. Such time period shall be no more than 30 days.
32 If, upon personal investigation, a code inspector finds that the
33 violator has not corrected the violation within the time period,
34 a code inspector may issue a citation to the violator. A code
35 inspector does not have to provide the violator with a
36 reasonable time period to correct the violation prior to issuing
37 a citation and may immediately issue a citation if the code
38 inspector has reason to believe that the violation presents a
39 serious threat to the public health, safety, or welfare, or if
40 the violation is irreparable or irreversible.

Amendment No.

41 (d)~~(b)~~ A citation issued by a code inspector shall state
42 the date and time of issuance, name and address of the person in
43 violation, date of the violation, section of the codes or
44 ordinances, or subsequent amendments thereto, violated, name of
45 the code inspector, and date and time when the violator shall
46 appear in county court.

47 (e)~~(c)~~ If a repeat violation is found subsequent to the
48 issuance of a citation, the code inspector is not required to
49 give the violator a reasonable time to correct the violation and
50 may immediately issue a citation. For purposes of this
51 subsection, the term "repeat violation" means a violation of a
52 provision of a code or ordinance by a person who has previously
53 been found to have violated the same provision within 5 years
54 prior to the violation, notwithstanding the violations occurred
55 at different locations.

56 (f)~~(d)~~ If the owner of property which is subject to an
57 enforcement proceeding before county court transfers ownership
58 of such property between the time the initial citation or
59 citations are issued and the date the violator has been summoned
60 to appear in county court, such owner shall:

61 1. Disclose, in writing, the existence and the nature of
62 the proceeding to the prospective transferee.

63 2. Deliver to the prospective transferee a copy of the
64 pleadings, notices, and other materials relating to the county
65 court proceeding received by the transferor.

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66 3. Disclose, in writing, to the prospective transferee
67 that the new owner will be responsible for compliance with the
68 applicable code and with orders issued in the county court
69 proceeding.

70 4. File a notice with the code enforcement official of the
71 transfer of the property, with the identity and address of the
72 new owner and copies of the disclosures made to the new owner,
73 within 5 days after the date of the transfer.

74
75 A failure to make the disclosure described in subparagraphs 1.,
76 2., and 3. before the transfer creates a rebuttable presumption
77 of fraud. If the property is transferred before the date the
78 violator has been summoned to appear in county court, the
79 proceeding shall not be dismissed but the new owner will be
80 substituted as the party of record and thereafter provided a
81 reasonable period of time to correct the violation before the
82 continuation of proceedings in county court.

83 ~~(g)(e)~~ If the code inspector has reason to believe a
84 violation or the condition causing the violation presents a
85 serious threat to the public health, safety, and welfare or if
86 the violation is irreparable or irreversible in nature, or if
87 after attempts under this section to bring a repeat violation
88 into compliance with a provision of a code or ordinance prove
89 unsuccessful, the local governing body may make all reasonable
90 repairs which are required to bring the property into compliance

Amendment No.

91 and charge the owner with the reasonable cost of the repairs
92 along with the fine imposed pursuant to this section. Making
93 such repairs does not create a continuing obligation on the part
94 of the local governing body to make further repairs or to
95 maintain the property and does not create any liability against
96 the local governing body for any damages to the property if such
97 repairs were completed in good faith.

98 (h)~~(f)~~ Nothing in this subsection shall be construed to
99 authorize any person designated as a code inspector to perform
100 any function or duties of a law enforcement officer other than
101 as specified in this subsection. A code inspector shall not make
102 physical arrests or take any person into custody and shall be
103 exempt from requirements relating to the Special Risk Class of
104 the Florida Retirement System, bonding, and the Criminal Justice
105 Standards and Training Commission, as defined and provided by
106 general law.

107 (i)~~(g)~~ The provisions of this subsection shall not apply
108 to the enforcement pursuant to ss. 553.79 and 553.80 of the
109 Florida Building Code adopted pursuant to s. 553.73 as applied
110 to construction, provided that a building permit is either not
111 required or has been issued by the county.

112 (j)~~(h)~~ The provisions of this subsection may be used by a
113 county in lieu of the provisions of part II of chapter 162.

114 (k)~~(i)~~ The provisions of this subsection are additional or
115 supplemental means of enforcing county codes and ordinances.

Amendment No.

116 Except as provided in paragraphs (b) and (j) ~~paragraph (h)~~,
117 nothing in this subsection shall prohibit a county from
118 enforcing its codes or ordinances by any other means.

119 Section 2. Subsection (1) of section 162.06, Florida
120 Statutes, is amended to read:

121 162.06 Enforcement procedure.—

122 (1)(a) It shall be the duty of the code inspector to
123 initiate enforcement proceedings of the various codes; however,
124 no member of a board shall have the power to initiate such
125 enforcement proceedings.

126 (b) A code inspector may not initiate enforcement
127 proceedings for a potential violation of a duly enacted code or
128 ordinance by way of an anonymous complaint. A person who reports
129 a potential violation of a code or an ordinance must provide his
130 or her name and address to the respective local government
131 before an enforcement proceeding may occur. This paragraph does
132 not apply if the person designated as a code inspector has
133 reason to believe that the violation presents an imminent threat
134 to public health, safety, or welfare or imminent destruction of
135 habitat or sensitive resources.

136 Section 3. Section 162.13, Florida Statutes, is amended to
137 read:

138 162.13 Provisions of act supplemental.—It is the
139 legislative intent of ss. 162.01-162.12 to provide an additional
140 or supplemental means of obtaining compliance with local codes.

Amendment No.

141 Except as provided in s. 162.06(1)(b), nothing contained in ss.
142 162.01-162.12 shall prohibit a local governing body from
143 enforcing its codes by any other means.

144 Section 4. Present paragraphs (b) and (c) of subsection
145 (3) of section 162.21, Florida Statutes, are redesignated as
146 paragraphs (c) and (d), respectively, a new paragraph (b) is
147 added to that subsection, and subsection (8) of that section is
148 amended, to read:

149 162.21 Enforcement of county or municipal codes or
150 ordinances; penalties.—

151 (3)

152 (b) A code enforcement officer may not initiate an
153 investigation of a potential violation of a duly enacted code or
154 ordinance by way of an anonymous complaint. A person who reports
155 a potential violation of a code or an ordinance must provide his
156 or her name and address to the respective local government
157 before an investigation may occur. This paragraph does not apply
158 if the person designated as a code inspector has reason to
159 believe that the violation presents an imminent threat to public
160 health, safety, or welfare or imminent destruction of habitat or
161 sensitive resources.

162 (8) The provisions of this section are additional and
163 supplemental means of enforcing county or municipal codes or
164 ordinances and may be used for the enforcement of any code or
165 ordinance, or for the enforcement of all codes and ordinances.

Amendment No.

166 Except as provided in paragraph (3) (b), nothing contained in
167 this section shall prohibit a county or municipality from
168 enforcing its codes or ordinances by any other means.

169 Section 5. Subsections (1) and (7) of section 166.0415,
170 Florida Statutes, are amended to read:

171 166.0415 Enforcement by code inspectors; citations.—

172 (1) (a) The governing body of each municipality may
173 designate its agents or employees as code inspectors whose duty
174 it is to assure code compliance. Any person designated as a code
175 inspector may issue citations for violations of municipal codes
176 and ordinances, respectively, or subsequent amendments thereto,
177 when such code inspector has actual knowledge that a violation
178 has been committed.

179 (b) A person designated as a code inspector may not
180 initiate an investigation of a potential violation of a duly
181 enacted code or ordinance by way of an anonymous complaint. A
182 person who reports a potential violation of a code or an
183 ordinance must provide his or her name and address to the
184 governing body of the municipality before an investigation
185 occurs. This paragraph does not apply if the person designated
186 as a code inspector has reason to believe that the violation
187 presents an imminent threat to public health, safety, or welfare
188 or imminent destruction of habitat or sensitive resources.

189 (7) The provisions of this section are additional or
190 supplemental means of enforcing municipal codes and ordinances.

Amendment No.

191 Except as provided in paragraph (1)(b) and subsection (6),
192 nothing in this section shall prohibit a municipality from
193 enforcing its codes or ordinances by any other means.

194 Section 6. This act shall take effect July 1, 2021.
195

196 -----
197 **T I T L E A M E N D M E N T**

198 Remove everything before the enacting clause and insert:
199 An act relating to county and municipal code enforcement;
200 amending s. 125.69, F.S.; prohibiting code inspectors designated
201 by boards of county commissioners from initiating investigations
202 of potential violations of codes and ordinances by way of
203 anonymous complaints; requiring persons who report potential
204 violations of codes and ordinances to provide specified
205 information to the board before an investigation occurs;
206 providing an exception; providing construction; amending s.
207 162.06, F.S.; prohibiting code inspectors from initiating
208 enforcement proceedings for potential violations of codes and
209 ordinances by way of anonymous complaints; requiring persons who
210 report potential violations of codes and ordinances to provide
211 specified information to the respective local government before
212 an investigation occurs; providing an exception; amending s.
213 162.13, F.S.; providing construction; amending s. 162.21, F.S.;
214 prohibiting code enforcement officers from initiating
215 investigations of potential violations of codes and ordinances

COMMITTEE/SUBCOMMITTEE AMENDMENT

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216 | by way of anonymous complaints; requiring persons who report
217 | potential violations of codes and ordinances to provide
218 | specified information to the respective local government before
219 | an investigation occurs; providing an exception; providing
220 | construction; amending s. 166.0415, F.S.; prohibiting code
221 | inspectors designated by governing bodies of municipalities from
222 | initiating investigations of potential violations of codes and
223 | ordinances by way of anonymous complaints; requiring persons who
224 | report potential violations of codes and ordinances to provide
225 | specified information to the governing body before an
226 | investigation occurs; providing an exception; providing
227 | construction; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1103 Special District Accountability

SPONSOR(S): Maggard

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee		Darden	Miller
2) Public Integrity & Elections Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

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.

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 by to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.

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 audit every five years beginning October 1, 2021, and October 1, 2022, respectively. It also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) 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 requires the annual financial report and annual financial audit report of all special districts to specify separately the total number of people employed by the district, the amount the district budgets for employee salaries and benefits, and each construction project approved by the district to begin after October 1 of the fiscal year and the amount budgeted for the project. It also requires the annual financial 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 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.

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 audit.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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

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.¹⁵

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/loadaddoc.aspx?PublicationType=Committees&Committeeld=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 See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

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.¹⁶ As of March 1, 2021, there were 64 active independent special fire control districts.¹⁷

The Independent Special Fire Control District Act¹⁸ 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.¹⁹ The Act controls over more specific provisions in any special act or general law of local application creating a fire control district's charter,²⁰ requires every fire control district be governed by a five-member board,²¹ and provides:

- General powers;²²
- Special powers;²³
- Authority and procedures for the assessment and collection of ad valorem taxes;²⁴
- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;²⁵ and
- Issuance of district bonds and evidence of debt.²⁶

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.²⁷ A district also may levy non-ad valorem assessments.²⁸ The district board may adopt a schedule of reasonable fees for services performed.²⁹ 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.³⁰

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.³¹ 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

¹⁶ S. 191.003(5), F.S.

¹⁷ 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).

¹⁸ Ch. 191, F.S.

¹⁹ S. 191.002, F.S.

²⁰ 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.

²¹ 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).

²² 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).

²³ S. 191.008, F.S.

²⁴ Ss. 191.006(14) and 191.009(1), F.S.

²⁵ Ss. 191.006(11) and (15); 191.009(2), (3), and (4); and 191.011, F.S.

²⁶ S. 191.012, F.S.

²⁷ 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.")

²⁸ 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.

²⁹ S. 191.009(3), F.S.

³⁰ S. 191.009(4), F.S.

³¹ 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).

maintaining hospitals; and providing that such facilities are established for the benefit of the indigent sick.³²

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.³³ As of March 1, 2021, there are 18 mosquito control districts: 15 independent and three dependent districts.³⁴

A MCD may contain part or all of a county or municipality.³⁵ The creation of new independent MCDs has been prohibited since July 1, 1980.³⁶ 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.³⁷

Mosquito control districts are authorized to levy ad valorem taxes not exceeding 10 mills on real and personal property.³⁸ 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.³⁹

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.⁴⁰ All S&WC are created by DACS upon petition by landowners in the proposed district.⁴¹ DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.⁴² As of March 1, 2021, there are 56 active districts.⁴³

Beginning in 1937,⁴⁴ S&WC initially were established to encourage cooperation between governments and local landowners concerning local conservation needs.⁴⁵ 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,⁴⁶ the Department of Economic Opportunity,⁴⁷ and

³² 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).

³³ Ss. 388.0101 and 388.011(5), F.S.

³⁴ 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).

³⁵ S. 388.021(1), F.S.

³⁶ S. 388.021(2), F.S.

³⁷ 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.

³⁸ S. 388.221(1), F.S.

³⁹ S. 388.341, F.S. The reports must detail activities and accomplishments as may be required by DACS.

⁴⁰ S. 582.02(4), F.S.

⁴¹ Ss. 582.10-582.15, F.S.

⁴² S. 582.055(3), F.S.

⁴³ 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).

⁴⁴ See ch. 18144, s. 2, Laws of Florida (1937). Originally the districts were called Soil Conservation Districts.

⁴⁵ 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).

⁴⁶ See, e.g., ch. 408, F.S.

⁴⁷ See, e.g., ch. 380, F.S.

water management districts.⁴⁸ 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.⁴⁹

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.⁵⁰ 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.⁵¹

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.⁵² 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.⁵³ The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.⁵⁴ 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.⁵⁵

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.⁵⁶ The audit report must accompany the annual financial report of the county or municipality that created the district.⁵⁷

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.⁵⁸ 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;

⁴⁸ See, e.g., ch. 373, F.S.

⁴⁹ 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.

⁵⁰ 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.

⁵¹ 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.

⁵² S. 218.39(1), F.S.

⁵³ S. 218.39(1)(h), F.S.

⁵⁴ 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).

⁵⁵ S. 218.39(7), F.S.

⁵⁶ S. 163.387(8)(a), F.S.

⁵⁷ S. 163.387(8)(c), F.S.

⁵⁸ S. 11.45(1)(j), F.S.

- The program’s compliance with appropriate policies, rules, or laws; and
- Any other issues related to governmental entities as directed by the Legislative Auditing Committee.⁵⁹

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.⁶⁰ The Auditor General currently conducts a performance audit at least once every three years of the local government financial reporting system and the Department of Revenue’s administration of the ad valorem tax laws.⁶¹ A performance audit also must be conducted on any program associated with a proposed discretionary sales surtax levy.⁶²

Effect of Proposed Changes

Performance Audits

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 audit every five 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 five 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 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 audit conducted by 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. 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.
- By 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.⁶³

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 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 bill 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.

⁵⁹ S. 11.45(1)(j), F.S.

⁶⁰ 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).

⁶¹ S. 11.45(2)(g)-(h), F.S.

⁶² S. 212.055(11)(a), F.S.

⁶³ See notes 60, 61, *supra*, and related text.

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.

B. SECTION DIRECTORY:

Section 1: Creates s. 189.0695, F.S., requiring performance audits for specified types of independent special districts.

Section 2: Amends s. 218.32, F.S., requiring special districts to include additional data as part of their annual financial reports.

Section 3: Amends s. 218.39, F.S., clarifying annual audit reporting requirements for community redevelopment agencies and requiring additional data be included in the annual audit report by special districts.

Section 4: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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 audits.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

OPPAGA will incur expenditures related to conducting performance audits for independent mosquito control districts and soil and water conservation districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to special district accountability;
3 creating s. 189.0695, F.S.; providing a definition;
4 requiring certain independent special districts to
5 contract with an independent entity to conduct
6 performance audits; providing an exception; specifying
7 the frequency of such audits; requiring the Office of
8 Program Policy Analysis and Governmental
9 Accountability to conduct performance audits of
10 certain classifications of independent special
11 districts; providing criteria for contracting for such
12 audits; requiring the performance audits to be
13 reported by a time certain; amending s. 218.32, F.S.;
14 requiring additional information to be reported by
15 special districts in the annual report; amending s.
16 218.39, F.S.; requiring certain data be included in
17 financial audits of special districts; requiring
18 certain community redevelopment agencies to file
19 separate audited financial statements; conforming
20 provisions to changes made by the act; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 189.0695, Florida Statutes, is created

to read:

189.0695 Independent special districts; performance audits.—

(1) The term "performance audit" has the same meaning as in s. 11.45(1).

(2) (a) Each independent special district as described in paragraph (c) must contract with an independent entity to conduct a performance audit of the district. The Office of Program Policy Analysis and Government Accountability must generate a list of independent entities qualified to perform the performance audit and the independent special district must select an independent entity from the list. 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 applicable industry best practices.

(b) The entity's final report of the performance audit must be filed with the governing board 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 district's fiscal year according to the schedule provided in paragraph (c). However, a performance audit of a district conducted by the Auditor General during the same fiscal year in which a performance audit is due pursuant to

51 paragraph (c) qualifies as that district's scheduled performance
52 audit under this section.

53 (c)1. Beginning October 1, 2021, and every 5 years
54 thereafter, each independent special fire control district as
55 defined in s. 191.003, must have a performance audit conducted.

56 2. Beginning October 1, 2022, and every 5 years
57 thereafter, each hospital licensed under chapter 395 which is
58 governed by the governing body of a special district as defined
59 in s. 189.012 or by the board of trustees of a public health
60 trust created under s. 154.07, must have a performance audit
61 conducted.

62 (3) The Office of Program Policy Analysis and Government
63 Accountability must conduct a performance audit of all
64 independent special districts within the classifications
65 described in paragraphs (a) and (b). The performance audit must
66 compare the services provided by each district examined with
67 similar services provided by the county and municipal
68 governments wholly or partially within the boundaries of the
69 district, expressly stating the similarities and differences,
70 and relative costs and efficiencies, between the services
71 provided by the district and those provided by the relevant
72 counties and municipalities. The Office of Program Policy
73 Analysis and Government Accountability shall submit the final
74 report of the performance audit to the President of the Senate
75 and the Speaker of the House of Representatives as follows:

76 (a) For all independent mosquito control districts as
77 defined in s. 388.011, no later than September 30, 2023.

78 (b) For all soil and water conservation districts as
79 defined in s. 582.01, no later than September 30, 2024.

80 Section 2. Paragraph (e) of subsection (1) of section
81 218.32, Florida Statutes, is amended to read:

82 218.32 Annual financial reports; local governmental
83 entities.—

84 (1)(e)1. Each local governmental entity that is not
85 required to provide for an audit under s. 218.39 must submit the
86 annual financial report to the department no later than 9 months
87 after the end of the fiscal year. The department shall consult
88 with the Auditor General in the development of the format of
89 annual financial reports submitted pursuant to this paragraph.
90 The format must include balance sheet information used by the
91 Auditor General pursuant to s. 11.45(7)(f). The department must
92 forward the financial information contained within the annual
93 financial reports to the Auditor General in electronic form.
94 This paragraph does not apply to housing authorities created
95 under chapter 421.

96 2. The annual financial report filed by a dependent
97 special district or an independent special district shall
98 specify separately:

99 a. The total number of district employees.

100 b. The amounts budgeted by the district for employee

101 salaries and the amounts budgeted for employee benefits.

102 c. Each construction project approved by the district to
103 begin after October 1 of the fiscal year being reported together
104 with the amount budgeted for such project.

105 3. The annual financial report of an independent special
106 district that imposes ad valorem taxes shall include the millage
107 rate or rates imposed by the district, the total amount of ad
108 valorem taxes collected by or on behalf of the district, and the
109 total amount of outstanding bonds issued by the district and the
110 terms of such bonds.

111 4. The annual financial report of an independent special
112 district that imposes non-ad valorem special assessments shall
113 include the rate or rates of such assessments imposed by the
114 district, the total amount of special assessments collected by
115 or on behalf of the district, and the total amount of
116 outstanding bonds issued by the district and the terms of such
117 bonds.

118 Section 3. Paragraph (h) of subsection (1) of section
119 218.39, Florida Statutes, is redesignated as paragraph (i), a
120 new paragraph (h) is added to that subsection, and subsection
121 (3) of that section is amended to read:

122 218.39 Annual financial audit reports.—

123 (1) If, by the first day in any fiscal year, a local
124 governmental entity, district school board, charter school, or
125 charter technical career center has not been notified that a

126 financial audit for that fiscal year will be performed by the
127 Auditor General, each of the following entities shall have an
128 annual financial audit of its accounts and records completed
129 within 9 months after the end of its fiscal year by an
130 independent certified public accountant retained by it and paid
131 from its public funds:

132 (h) As required by s. 163.387(8)(a), each community
133 redevelopment agency with revenues or a total of expenditures
134 and expenses in excess of \$100,000, as reported on the trust
135 fund financial statements.

136 (3)(a) A dependent special district, excluding a community
137 redevelopment agency with revenues or a total of expenditures
138 and expenses in excess of \$100,000, as reported on the trust
139 fund financial statements, may provide for an annual financial
140 audit by being included in the audit of the local governmental
141 entity upon which it is dependent. An independent special
142 district may not make provision for an annual financial audit by
143 being included in the audit of another local governmental
144 entity.

145 (b) A special district that is a component unit, as
146 defined by generally accepted accounting principles, of a local
147 governmental entity shall provide the local governmental entity,
148 within a reasonable time period as established by the local
149 governmental entity, with financial information necessary to
150 comply with this section. The failure of a component unit to

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151 provide this financial information must be noted in the annual
152 financial audit report of the local governmental entity.

153 (c) The financial audit of a dependent special district or
154 of an independent special district, or the financial audit of a
155 local governmental entity including the information of a
156 dependent special district as provided in paragraph (a) of this
157 subsection, shall separately include and specify the information
158 required in s. 218.32(1)(e)2.

159 Section 4. This act shall take effect October 1, 2021.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1103 (2021)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Local Administration &
2 Veterans Affairs Subcommittee
3 Representative Maggard offered the following:
4

5 **Amendment**

6 Remove line 158 and insert:
7 required in s. 218.32(1)(e)2.-4.