



## **Hidden in Plain Sight: Florida's Special Districts**

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*This is an executive summary of research by the LeRoy Collins Institute on special districts and community development districts in Florida. It was written by Dr. Carol S. Weissert, Director of the LeRoy Collins Institute. Research for this summary was conducted by Sarah Ayers, Dr. Robert Eger, and Dr. Joe Vonasek, consultants to the Institute. \* The data shown here and in the related reports are for FY 2011-12.*

Florida's independent special districts—like those in other states—exist in a bit of a shadow world. Before major reforms in the 1980's, this shadow world was dark and mysterious. The reforms included an articulated state policy and implementing law providing for disclosure and accountability and providing that authority for independent districts must be by or pursuant to general law and dependent districts must meet minimum general law requirements. But, the shadow world still exists.

Independent districts are special-purpose governmental units created by or pursuant to state general law to serve special purposes ranging from mosquito abatement to children's welfare. What they have in common is that they operate largely outside the public eye. Some special district officials are elected—usually at the end of the ballot where citizens may ignore them or guess for their choice. Most special district officials are not on the ballot, but citizens may find mention of the district on their TRIM statement which shows where their property taxes (and, as applicable, assessments) go. In both cases, it is likely that citizens promptly forget about them until the next election or TRIM statement.

But special districts play an important role in providing services to citizens of Florida. When residents or landowners want new services or higher levels of service, they can petition to form special districts to provide those special services. This is the key to understanding special districts: They provide specific services ... special purposes...within well-defined boundaries.

\* Carol Weissert is LeRoy Collins Eminent Scholar and Professor of Political Science at Florida State University. Sarah Ayers is an MBA student at FSU. Dr. Eger is Associate Professor of Accounting & Budgeting at the Naval Postgraduate School, Monterey CA; Vonasek is assistant professor, department of political science, Auburn University.

To manage these special purposes, their boards retain staff. To fund those services they can use a variety of mechanisms: they can tax property, they can issue bonds, and they can impose and levy assessments and impose service charges and fees. The question then is one of accountability. Do property owners hold special districts accountable for the taxes, assessments, charges, or fees that they impose, levy and arrange to collect?<sup>1</sup>

A second issue is the financial viability of special districts in Florida. Many special districts are associated with residential development which has been adversely affected by the recent economic downturn and which in turn caused stressed and even defaulting districts. If the districts has had financial trouble—and well over one-third of Community Development Districts (CDDs) are in some type of financial distress<sup>2</sup>, what does that mean to counties, cities and the citizens they represent all of which are also affected adversely by the downturn?

One of the reasons for the major reforms of the 1980s in Florida was to use only the general law determinations by the Legislature to ensure that any fragmentation, duplication and proliferation of local governments would not be “needless” because the general-law-determination by the Legislature served a legitimate, needed and expressed legislative purpose. Therefore, the inquiry here is whether establishment by ordinance or rule implementing a general law is in turn a process that is abused resulting in needless districts notwithstanding the general law determination of serving the needed public purpose.

This executive summary provides an overview of two studies conducted by the LeRoy Collins Institute. One is an in-depth assessment of the formation, operation and financial status of Florida’s special districts. The entire report, entitled “Piecing Together the Governing Puzzle: An Exploration of Florida’s Special Districts” is available at: <http://collinsinstitute.fsu.edu>. The second report, focused on CDDs, “Florida CDDs: Financial and Accountability Issues” is also available on the Collins website, as well as a District and CDD History prepared by Ken van Assenderp, attorney and Collins Institute board member..

Our key findings include:

- Independent special districts in Florida, notwithstanding the reforms, still operate under a confusing and often contradictory set of laws, though created and chartered by or pursuant to state general law, with different levels of government establishing the districts. As an example, both the state executive branch and the local government executive branch can establish the state-law-created-and-chartered community development districts (CDDs) on property. Given the different levels of government responsible for establishing CDDs, a question is raised as to how such establishment of CDD avoids needless fragmentation, duplication and proliferation in the provision of services in light of the confusing use of the establishment process.
- There is a lack of uniformity in the composition of governing boards where methods of appointment and number of seats vary. Voting can be on the basis of one person/one vote (CDDs) or vote of the electorate living within the special district boundaries. Note that, legally, and as a practical matter, voting for the initial board members must be by the

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<sup>1</sup>However some argue that CDD residents have a higher knowledge of districts and value them.

<sup>2</sup> See, Community Development Districts: Financial and Accountability Issues, LeRoy Collins Institute. Tallahassee Florida. February 2014.

landowner because the proposed land on which the CDD is to manage the provision of infrastructure is raw uninhabited property.

- Most independent districts issue bonds (85 percent) and 14 percent rely on ad valorem taxes. CDDs overwhelmingly issue only revenue bonds amortized not by taxes but rather by assessments.
- CDDs were the fastest growing special district in Florida until 2008. From 2004 through 2007 there were some 77 new CDDs established annually; in 2008, 25 new CDDs were established. Following 2008, after the breakdown of the housing market in the state, CDD growth abated to single digits annually.
- Well over 200 CDDs have experienced at least some type of fiscal distress. The state's definition of financial distress is not consistent and clear.
- Oversight for CDDs is shared by seven state agencies and court rulings concerning CDD bankruptcies have been contradictory.

## Why Do We Care?

A skeptic might wonder why, given many more pressing problems facing local governments and state officials, that special districts are worthy of in-depth analysis. In fact, academics have recognized the special nature of special districts and potential accountability problems since the 1950s.<sup>3</sup> All states empower special districts to provide specific services. Academics have focused on issues of efficiency, accountability, and administration. Indeed, OPPAGA examined special districts in 1995, raising many of the issues discussed in the Collins Institute analysis<sup>4</sup>. In the 1980s, Florida enacted precedent-setting reform of district policy and law. So why now?

- The reforms of the 1980s remain major, progressive, and important but are not understood and are not implemented efficaciously. The use of independent special purpose districts that meet the needs and that serve the special purpose identified expressly by their respective general laws must be managed effectively with more expressed clarification of such existing but currently ineffective requirements including oversight, use of reports, and requirements for disclosure and accountability. (A 2014 law reorganized and renumbered provisions in Chapter 189 F.S. but did not change the substantive and policy discussions in the Collins Institute reports.)
- The dramatic fall of Florida's housing market had a similarly dramatic effect on community development districts. Our work highlights this impact—particularly but not uniquely felt by newly formed special districts. Anecdotally, stories of residents forced to live in barely livable housing developments have surfaced as some districts have failed to meet their payments and obligations to residents. One of our interests is whether this is a one-time or problem of more long-lasting nature.
- In July 2012, amendments to 165 F.S. changed the “Formation of Municipalities Act” allowing the conversion for some types of special districts into municipalities if they met certain statutory requirements. These amendments do not require notification of either the respective county or any other municipalities nor do they require legislative review.

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<sup>3</sup> See, for example, Berry, Christopher R. Berry. 2009. *Imperfect Union: Representation and Taxation in Multilevel Governments*. Cambridge University Press; John C. Bollens, 1957. *Special District Governments in the United States*. University of California Press; Kathryn A. Foster. 1997. *The Political Economy of Special-Purpose Government*. Georgetown University Press; and Megan Mullin. 2009. *Governing the Tap*. Massachusetts Institute of Technology Press.

<sup>4</sup> Office of Program Policy Analysis and Governmental Accountability. 1995. *Review of the Independent Special Districts That Provide Infrastructure and Services to the Public*.

The impact on this law is not yet clear. Our evaluation infers that 533 CDD might be eligible to convert themselves to a municipality without legislative review if they meet certain statutory requirements. Such a conversion might change the organization's liabilities, in particular its debt liabilities.

CDDs already were and still are required by their general law charter to hold a referendum when certain thresholds are met on whether to incorporate, and if it passes, then the laws of municipal incorporation would be followed. Further, even if the land area ultimately is so incorporated, the CDD still remains fully viable. Therefore, under this provision there is no conversion because the state-law single specialized purpose of the CDD remains regardless of whether it is located in an incorporated or unincorporated area.

Under law, special districts are tasked with serving “a public purpose with accountability to the public and general-purpose local governments.” This seems to directly contradict the often confusing set of laws, the number of establishing and implementing documents available, and the completeness of the financial reporting. Although they may not be “hidden” from the constituents they serve, and notwithstanding the reforms of the 1980s, they still can be considered veiled, with complicated statutory laws, incomplete financial reporting, and limited reporting of their creating documents. This observed outcome limits the potential for concerned constituents to understand the purpose and services provided by special districts and the relationship between the service provided by special districts and services provide by general purpose governments.

Are special districts the most important intergovernmental problem facing Florida today? No. Are they a potential problem that should be studied and recommendations considered? In our view, the answer is yes. Can they become useful innovative mechanisms for future needs? Yes. We are not alone in our assessment of the importance of special districts. In January 2012, Governor Rick Scott issued an executive order directing a comprehensive study of special districts in Florida to examine their efficiency, fiscal accountability and transparency of operation to the public. The reports are available at: <http://www.flspecialdistrictreview.state.fl.us/>.

## **An Overview of Florida's Special Districts**

In 2012, there were 1,007 independent districts in Florida (fifteen are inactive). They provide 55 different types of service ranging from mosquito districts to children's services, community development to hospital districts. The seats of 826 special districts are filled by elections, 148 governing boards are appointed, 23 are filled through a mixture of appointed and elected seats and 5 are congruent with local governing authority. Another five governing boards are filled by other methods.

The most common special district is the Community Development District. There are 579 CDDs established under and as created and chartered by F.S. 190. Only four are inactive. Most of the CDDs (526) were established through adoption of local ordinances. Fire Control districts are interesting because they are a mixture of dependent and independent districts: 54 are independent and 10 are dependent.

Other frequently found special districts deal with drainage and water control, soil and water conservation, hospitals, recreational facilities, housing, mosquito control, libraries, water/wastewater, airports, and waterways. In addition, there are special districts in Florida dealing with children’s services, downtown development, expressways and bridges, libraries, regional transportation and port facilities. Chart 1 provides the number of special districts by category.

Chart 1: Independent Special Districts by Category

CDDs	579
Drainage/Water Control	74
Soil and Water Conservation	59
Fire Control and Rescue	54
Health Care/Hospital	29
Housing Authority	26
Water/sewer/water management	18
Mosquito Control	15
Libraries	15
Recreational Facilities	14
Airport/Aviation	11
Other	113
Total	1007

Source: State of Florida, Department of Economic Opportunity, Special District Information Program

Special districts can be within one county or multi-county. Most are within one county but some 70 serve jurisdictions with more than one county. The average special district serves 1.7 counties.

### **Creation and Dissolution**

There are several statutes that govern special districts.

- Chapter 187 which is a major reform statement, first enacted in 1985, of state policy on districts. That policy ties them to state general law standards and procedures and that do not over burden other governments and their taxpayers, preventing proliferation of independent districts which do not meet their standards. It lays out the goals and policies of the state’s comprehensive plan authorizes both independent and dependent special districts as a means of providing inter-local cooperation, uniformity of standards, methods for providing infrastructure, and greater efficiency in providing governmental services. This reform in expressed policy is a demarcation from the past and a major policy shift. However, its implementation as a state policy, while real, is not complete.
- Chapter 189, first enacted in 1989, is the seminal law to implement the state policy, tying districts to general law. It defines and requires dependent districts created after 1989 to be only by county or city ordinance that meets important general law requirements set forth in Chapter 189, Florida Statutes. It defines and required independent districts created after 1989 to meet expressed uniform minimum requirements set forth in Chapter 189, Florida Statutes. Cities and counties can create dependent special districts (which are not the subject of this analysis). This law provides for uniform operation, exercise of power, and procedure for termination of an independent special district by general law. It

requires every independent special district to register and report its financial and other activities. The governing boards of independent districts are elected by their district's electors either by popular vote or by one-acre/one vote.<sup>5</sup> Generally independent districts can be dissolved by the same procedures as they were created. If a special district is declared inactive by the state Department of Economic Opportunity, its property or assets are subject to legal process for payment of any debts. After the debts are paid, the remainder of the assets or property goes to the county or municipality where it is located. However, this law contains some internal inconsistencies that promote needless confusion and fragmentation.

- Chapter 190 is the legal and historic precursor to 187 and 189. It covers the most common type of special district in the state—community development districts (CDDs). CDD have five-member elected boards and can plan and provide public improvements and community facilities and services. They are able to assess ad valorem taxes, non-ad valorem assessments, and enforce their payment. CDD boards are elected initially by landowners using one-acre/one vote format; elections are held every two years. When enough qualified electors move into meet transition thresholds, the boards are composed of electors elected by electors. CDDs may be dissolved and all the CDD services transferred to a general purpose local government along with assumption and guarantee of the CDD debt related to services provided to that local government's citizenry.
- Chapter 191 deals with establishing special fire control districts. They are created by the legislature to provide for fire suppression, emergency medical and rescue services and relative activities. They generally have a board of five members who are elected in nonpartisan elections and serve four year terms
- Other state law provides for the establishment and related creation implementation of independent special districts for children's services (F.S. 125.901), county health and mental health special districts (F.S. 154.331), recreation districts (F.S. 418.22) and soil and water conservation (F.S. 582.44).

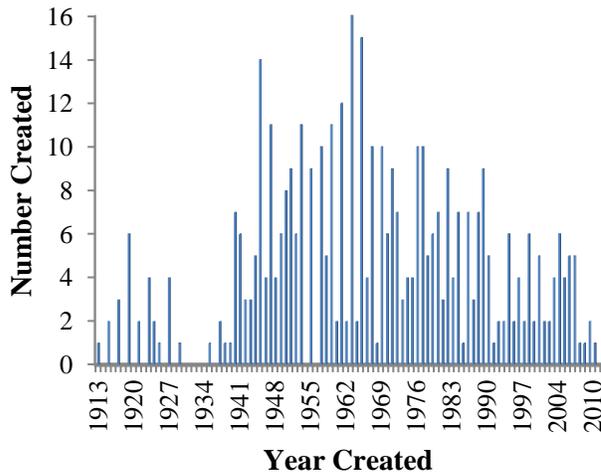
## **Growth in Special Districts**

Chart 2 shows the growth in independent special districts in Florida. The first special district was established in 1913. The largest spike was in 1963. In the 2000s the growth in new independent districts slowed to 2-5 each year and fell below that after 2008. Chart 3 shows the trends in new CDDs. The 2000s saw dramatic growth in CDDs and then a similarly dramatic fall beginning in 2008 reflecting downward trends in the housing market.

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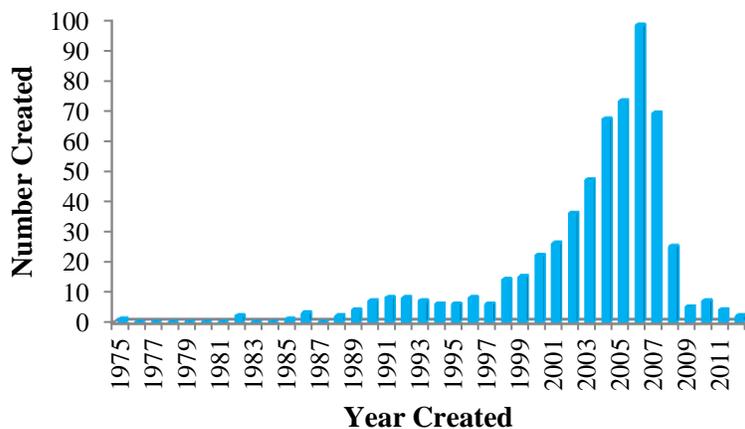
<sup>5</sup> Applies for those created by and pursuant to state law and established or implemented pursuant to state law after 1989.

**Chart 2: Independent Districts Created or Established by Year in Florida**



Source: State of Florida, Department of Economic Opportunity, Special District Information Program

**Chart 3: CDDs Established by Year in Florida**



Source: State of Florida, Department of Economic Opportunity, Special District Information Program

### Financing Special Districts

Chart 4 examines the revenue sources for independent districts in general and CDDs and Fire districts specifically. The chart illustrates the variance among types of districts. CDDs use bonds and assessments extensively. Fire districts rely more heavily on ad valorem taxes (property taxes) and to a lesser extend for bond issuance. Special districts in general have a more varied array of revenue sources—using intergovernmental funds (from federal and state government), and fees in addition to bonds, assessments and property taxes.

**Chart 4: Revenue Sources Special Districts, CDDs and Fire Districts**

	All Special Districts	CDDs	Fire Districts
Bond issuance	85%	100%	54%
Ad Valorem Taxes	14%	<1%	78%
Other assessments	69%	98%	19%
Other	4%	3%	17%

Source: State of Florida, Department of Economic Opportunity, Special District Information Program

### Financial Performance

Special district financial viability varies by type of district, however, all types struggled throughout the 2007-2010 time period. All districts show fiscal improvement by 2010, although fiscal recovery has been slow. The overall fiscal health of CDDs appears to be marginal to poor primarily because of the Great Recession's housing value decline and in light of the normal accounting of major infrastructure assets depreciating as amortizing assessments remained unchanged.

In the financial performance analysis, we employed a sampling technique that provides representation of all special districts in Florida. We stratified special districts based on their statutory creation, and within each stratum, we randomly selected districts for a total of 96. We were able to obtain financial information from 74 of those 96. While a few of these jurisdictions were established after 2007, most were not included due to failure to report all the data used in the analysis. Data are from the Department of Economic Opportunity, Special District Information Program and from the jurisdictions' audited financial statements.

We examined CDDs, fire districts and independent districts under 189 F.S. using a variety of fiscal measures: cash on hand, net assets, the ratio of assets to liabilities, the ratio of liabilities to total assets and cash and investments compared to current liabilities, and budgetary variance measures. We find that:

- End-of-year cash on hand has been declining for the average CDD over the time period, an indicator that cash to pay for annual financial liabilities is eroding.

### Average Cash on Hand at End of Year in Current Dollars

	2007	2008	2009	2010
CDDs	\$530,427	\$361,771	\$346,344	\$294,011
Fire Districts	\$1,656,788	\$2,268,032	\$2,389,565	\$1,954,344

Source: State of Florida, Department of Economic Opportunity, Special District Information Program

- At least 50 percent of CDDs are in balance sheet insolvency over the time period. Negative net assets are indicative of financial distress. In our sample we found that in 2008, 2009 and 2010, there were negative net assets as measured by total assets subtracted by total liabilities. In contrast, fire districts did not have negative net assets.
- We find that CDDs and fire districts have low or negative values of unrestricted net asset ratios (measured by the amount of unrestricted spendable equity in relation to annual operating expenses). If low, the organization has little unrestricted spendable equity available to meet temporary cash shortages, an emergency or a deficit situation

- in the future. CDDs had negative ratios for each of the years and fire districts had low positive ratios.
- For each year analyzed, the average fire district and CDD had actual revenues below budgeted revenues.
  - We note that for all years, with the exception of 2009's average fire district, actual average expenditures are lower than budgeted expenditures for all the special district types in our analysis.

The impact of these financial findings is troubling but mediated in part by understanding their determinants. Florida's housing market was so adversely affected in the Great Recession, the financial difficulties of CDDs—based on that housing—are not surprising. It will be incumbent on us and others to continue to monitor the financial situation when Florida's housing market is a more stable footing. The importance of the economic situation is highlighted by the comparison of CDDs to other special districts such as fire districts which are more financially stable. (However, as noted above, there are also some red flags for fire districts as well.) It is also unclear of the impact of the CDDs' financial situation on the citizenry. While there are indirect effects of stalled developments and homeowners dealing with possible defaults, there are few direct effects since the investors are carrying the primary burden for financial losses.

## **Conclusion**

As part of a broader research agenda on state-local relationships in Florida, the LeRoy Collins Institute has examined special districts generally and CDDs specifically. Like special districts in other states, Florida's districts are many and varied; they provide important services yet are often not well known among the citizenry. In our two reports on special districts and CDDs, we raise some issues of both accountability and financial viability. Regarding CDDs, oversight is shared among nine state agencies and key definitions of financial distress vary to the point that it is difficult to assess when or even whether there are problems. More generally, special districts operate within a number of different statutes and the formation and operation of governments is inconsistent and often unclear. A broader look at the financial conditions of a sample of districts shows some need for concern—especially for CDDs.

The major reforms of the 1980s remain important and progressive but must be implemented efficaciously. Notwithstanding the many stressed CDDs as a result of the decline in the economy and housing values, the existing law successfully prevented and prohibited any liability on municipal, county and state governments and their taxpayers. CDDs, created and chartered by one of the progressive reform statutes of the 1980s, Chapter 190, Florida Statutes, experienced structural concerns and inter-government relationship problems exposed as a result of the Great Recession that should be reformed in order to implement the existing expressed laws on disclosure and accountability.

The concerns about accountability are not new (OPPAGA raised them in 1995) nor are they unique to Florida. Nevertheless, we think that this analysis indicates that consideration of rewriting state laws to provide more clarity concerning the formation and operation of special districts is in order. We hope that this work—and the governor's office analysis of special districts that is underway—will provide impetus for reform. Special districts are an important governmental entity in Florida—too important to be so poorly defined and overseen by state officials.