

# Introduction to Special Districts

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# Introduction to Special Districts

## General Information About Special Districts\*

- ▶ Special Districts have existed in Florida for over 190 years.
- ▶ They are referenced in the Florida Constitution. Art. VII, Sec. 9(a).
- ▶ Every parcel in Florida is covered by at least one special district.
- ▶ Some special districts are large and operate in multiple counties.
- ▶ Other special districts serve small neighborhoods using all volunteer staff.
- ▶ Many special districts operate with very little funding (less than \$3,000 per year) or no funding at all.
- ▶ Not all special districts have taxing authority.
- ▶ The top 10 most common special districts - 1) community development; 2) community redevelopment; 3) housing authorities; 4) drainage and water control; 5) fire control and rescue; 6) soil and water conservation; 7) neighborhood enhancement; 8) health facilities; 9) hospitals; 10) neighborhood improvement.



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Out of over 1,600 special districts in the State, there are currently 25 airport authority special districts in Florida:

- ▶ Bartow Municipal Airport Development Authority
- ▶ Boca Raton Airport Authority
- ▶ Carrabelle Port & Airport Authority
- ▶ Charlotte County Airport Authority
- ▶ City of Naples Airport Authority
- ▶ Collier County Airport Authority
- ▶ Dunnellon Airport Authority
- ▶ Gainesville-Alachua County Regional Airport Authority
- ▶ Greater Orlando Airport Authority
- ▶ Hillsborough County Aviation Authority
- ▶ Jacksonville Aviation Authority
- ▶ Keystone Airport Authority
- ▶ Lake Wales Airport Authority
- ▶ Lee County Port Authority
- ▶ Marianna Municipal Airport Development Authority
- ▶ Melbourne Airport Authority
- ▶ Panama City-Bay County Airport & Industrial District
- ▶ Quincy-Gadsden Airport Authority
- ▶ Sanford Airport Authority
- ▶ Sarasota-Manatee County Airport Authority
- ▶ St. Augustine-St. Johns County Airport Authority
- ▶ Titusville-Cocoa Airport District
- ▶ Tri-County Airport Authority
- ▶ West Orange Airport Authority



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# Introduction to Special Districts

## Common Revenue Sources for Special Districts\*

- Non Ad Valorem
- Ad Valorem
- Tax Increment Financing
- User Fees
- Federal Government
- State Government
- Local Government
- County
- Municipality
- Grants
- Investments
- Bond Issuer Fees
- Tolls
- Donations
- Sales and Leases
- Private Enterprise
- Sales Surtax
- None

# Introduction to Special Districts

## Definition of Special District\*

A special district is a unit of local government created for a special purpose, as opposed to a general purpose, that has jurisdiction to operate within a limited geographic boundary, and is created by:

- general law,
- special act,
- local ordinance, or
- rule of the Governor and Cabinet.

A special district can be either a dependent or independent special district.

# Introduction to Special Districts

## Dependent and Independent Special Districts\*

A special district is dependent if a single county or municipality has one or more of the following powers:

- ▶ Authority to designate all of its own governing body members to also serve as the governing body for the special district
- ▶ Authority to appoint all members to the special districts' governing body
- ▶ Authority to remove any governing body member at will during unexpired terms
- ▶ Authority to approve or veto the special district's budget.

An independent district is one that does not have any dependent characteristics.

Boca Raton Airport Authority is an independent special district.

# Introduction to Special Districts

## Special District Powers

General purpose governments like counties and municipalities have general police powers and, therefore greater authority to act than special districts.

- ▶ Sec. 125.01(1), Florida Statutes grants counties “the power to carry on county government. . . . To the extent not inconsistent with general or special law.”
- ▶ Likewise, sec. 166.021(1), Florida Statutes, grants municipalities the ability to “exercise any power for municipal purposes, except when expressly prohibited by law.”

By contrast, special districts only have the power that is expressly or necessarily impliedly granted to them through their enabling legislation and general laws.

*Board of Com’rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 532 (Fla. 4th DCA 2007 ).

# Introduction to Special Districts

## Laws Governing Special Districts

- ▶ Creation document / charter / statutory authority
- ▶ Up to seven constitutional provisions (e.g., pledging credit, bond financing, taxes)
- ▶ More than 30 laws of a general nature (e.g., (Ch. 119) the Public Records Act, (Ch. 286) The Sunshine Law, financial reporting, (Ch. 112) Ethics Law, elections)
- ▶ Chapter 189, Florida Statutes - the Uniform Special District Accountability Act (e.g., general provisions, basic accountability, financial reporting, enforcement)



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# Introduction to Special Districts

## Open Government Laws for Special Districts

- ▶ The Sunshine Law requires that any gathering (formal or casual) of two or more members of the same governing body to discuss some matter on which foreseeable action will be taken by the governing body must be open to the public unless the Legislature has created an exemption from the Sunshine Law for that meeting.
- ▶ The Sunshine Law applies to discussions, deliberations and formal actions taken by the board regardless of whether the matter has been scheduled for a vote or whether there is a quorum present.
- ▶ Members of a board may not conduct private discussions about board business via email, telephone, text messaging, Facebook or any other form of communication. Members may not use a third party as a conduit for such communications.



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## Open Government Laws for Special Districts

- ▶ If a decision does not meet the requirements of the Sunshine Law it is *void ab initio*, meaning “to be treated as invalid from the outset.”
- ▶ Under certain conditions, decisions that do not initially meet the Sunshine Law requirements may be “cured” by a new hearing that fully complies with the Sunshine Law requirements.



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## Open Government Laws for Special Districts

- ▶ The Sunshine Law also requires that boards provide reasonable public notice of their meetings. Additional notice requirements exist in Chapter 189, Florida Statutes.
- ▶ Section 286.0105, Florida Statutes, requires that the notice include a statement that anyone wanting to appeal an official decision made on any subject at the meeting must have a verbatim record of the meeting that includes the testimony and evidence on which the appeal is based (does not apply to tax increase notices in section 200.065(3), Florida Statutes, method of fixing millage).

# Introduction to Special Districts

## Open Government Laws for Special Districts

Chapter 189 requires each special district's governing body to:

- ▶ File quarterly, semiannually, or annually a schedule of its regular meetings that includes the date, time, and location with the local governing authority or authorities.
- ▶ Publish the schedule of regular meetings in the legal notices and classified advertisements section of a newspaper that meets the following criteria:
  - ▶ It is of general or paid circulation in the county or counties in which the special district is located.
  - ▶ It is a community newspaper of general interest and readership, as opposed to limited subject matter.
  - ▶ It is published at least five days a week, unless the only newspaper in the county is published fewer than five days a week.



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## Open Government Laws for Special Districts

Chapter 189 requires each special district's governing body to post the following meeting materials on the Special District's Official Website:

- ▶ The schedule of regular meetings.
- ▶ The following items, at least seven days before each meeting or workshop, and maintained on the website for at least one year:
  - ▶ The agenda of the event.
  - ▶ Any meeting materials that are available in electronic format, excluding confidential and exempt information.



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## Open Government Laws for Special Districts

### Penalties for Sunshine Law Violations

- ▶ **Noncriminal Infraction** - A public officer who violates the Sunshine Law may be subject to a noncriminal infraction punishable by a fine up to \$500.
- ▶ **Criminal Penalty** - A knowing violation is a second degree misdemeanor, punishable by a prison term up to 60 days and/or a fine up to \$500.
- ▶ **Civil Action** - A citizen may apply to a circuit court for an injunction to enforce the Sunshine Law. If the court finds that the Sunshine Law was violated, attorney's fees are assessed against the special district. Fees may also be assessed against governing body members. However, if the governing body seeks advice from its attorney and follows the advice, attorney's fees will not be assessed.
- ▶ **Removal From Office** - When a method for removal from office is not otherwise provided by the Florida Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his or her official duties. If convicted, the officer may be removed from office by the Governor.



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## Open Government Laws for Special Districts

In addition to Open Meeting requirements, the District must comply with public records requirements in the “Public Records Act” Ch. 119, Fla. Stat.

- ▶ The Public Records Act applies to **agencies** - including all state and local governments, as well as to private entities “acting on the government’s behalf.”
- ▶ A **public record** is any record made or received in connection within official business.
- ▶ Whether something is made in connection with official business is determined by whether the record “perpetuates, formalizes, or communicates” knowledge of the agency.
- ▶ Can include written materials of all sorts (letters, maps, site plans, pictures, etc.); and electronic records of all sorts (scanned versions of the above, audio files like recorded phone messages, videos, posts on the Internet, etc.)
- ▶ It does not matter where the record is located (public computer, private device, etc.) What matters is the content of the material.



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## Open Government Laws for Special Districts

Just because records are kept by a contractor who is not an agency does not mean those records are not subject to production under the Public Records Law.

F.S. §119.0701 requires public contracts to include a contractual obligation that contractors:

1. Keep and main public records required by the public agency to perform the service.
2. Ensure that public records that are exempt...are not disclosed except as authorized by law...
3. Upon completion of the contract, transfer at no cost the records to the public agency or keep and maintain the records required by the public agency. This includes electronic records.

Requests for contractor records must be made directly to the public agency who must notify the contractor. The contractor then must provide the records to the agency within a reasonable period of time.



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## Open Government Laws for Special Districts

Within the “agency,” the person(s) responsible for maintaining and producing the document is the “custodian.”

- “Custodian of public records” means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee. Fla. Stat. § 119.011(5) (2016).
- F.S. §119.07(1)(a), Florida Statutes, provides that “**every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records or the custodian’s designee.**”
- These two requirements have been read together to mean that both the “custodian” and any person who has custody, defined as control and supervision over the document, have a legal responsibility to maintain and produce. *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4<sup>th</sup> DCA 1996); *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4<sup>th</sup> DCA 1998).

# Introduction to Special Districts

## Open Government Laws for Special Districts

### Drafts, Notes, and Personal Records:

- A record does not have to be the “final” version to be a public record. Therefore, drafts that have been used to formalize, perpetuate, and communicate public knowledge are public records. For example, a draft sent between individuals for review and comment is a public record.
- Notes not designed to formalize, perpetuate, and communicate public knowledge are not considered public records. An example is handwritten notes made by a lawyer right before an opening argument in court. *Shevin v. Byron, Harless, Schaffer, Reid & Assoc., Inc.*, 379 So.3d 633 (Fla. 1980).
- Personal records are not made in connection with official business and, therefore, are not public records even if they are maintained on a district computer or device. *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 3d DCA 2009).

# Introduction to Special Districts

## Open Government Laws for Special Districts

Exemptions and privileges can only be created by statute. Judges cannot create them, so they cannot be based on case law.

If a document is withheld on the grounds of an exemption or privilege, the statutory source of the exemption or privilege must be identified as the reason for withholding the document.

Exemptions are always construed in favor of production.

Difference between exempt and confidential:

- **Exempt** means the agency has the right to withhold the document. Such exemptions can be waived.
- **Confidential** means the agency is obligated to withhold the document. Confidentiality cannot be waived by disclosure.

*WFTV Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5<sup>th</sup> DCA 2004).

For some confidential material, it is a crime to produce the document.

# Introduction to Special Districts

## Open Government Laws for Special Districts

### Litigation

- There is no attorney-client privilege in written work product.
- There is a work-product privilege, F.S. 119.071(1)(d). It applies to records that meet the following:
  - Prepared by an agency attorney OR at the attorney's express direction
  - THAT reflect a mental impression, conclusion, litigation strategy, or legal theory.
  - Must be prepared *exclusively* for civil or criminal litigation or for adversarial administrative proceedings OR in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.
- Only lasts until the conclusion of the litigation or administrative proceeding.
- If you claim the work product privilege, you must identify the potential parties to the litigation/proceeding. F.S. 119.071(1)(d)(2).



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## Open Government Laws for Special Districts

The following penalties can be assessed for failure to comply with the Public Records Act:

- The District may be required to pay attorney fees if a civil action is filed against the District to enforce the public records law. There is no cap on fees.
- A public officer who knowingly violates the public records law is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree punishable by possible criminal penalties of a year in prison or a \$1,000 fine or both.

(Some courts have held that mere negligence will not be enough to be found guilty of a misdemeanor of the first degree).

- Even if a person is not convicted of a crime, the person could still be found guilty of a noncriminal infraction punishable by a fine not to exceed \$500.

# Introduction to Special Districts

## Ethics Laws for Special Districts

### Disclosures

Chapter 112, Florida Statutes sets forth the ethics requirements for public officials and employees, including those in special districts.

- ▶ Special district officers and specified employees must file financial disclosures on Form 1 by the time specified (30 days after employment or by July 1 each year thereafter), or face automatic fines of up to \$25/day up to \$1,500.
- ▶ Certain special district officers may be required to file quarterly client disclosures on Form 2.

# Introduction to Special Districts

## Ethics Laws for Special Districts

### Prohibited Relationships and Transactions

Special district local officers and employees are prohibited from:

- ▶ Doing business with that special district; and
- ▶ Entering into a conflicting employment or contractual relationship with any other special district local officer, employee, their spouse and/or their children.

Certain limited exemptions apply to these prohibitions, such as the following:

- ▶ The business is awarded under a system of sealed competitive bidding; and,
- ▶ The special district local officer has exerted no influence on bid negotiations or specifications; and,
- ▶ Disclosure is made, before or at the time of the submission of the bid, of the special district local officer's or employee's or his or her spouse's or child's interest and the nature of the intended business.



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## Ethics Laws for Special Districts

### Voting

A special district local officer must abstain from voting on the following measures:

- ▶ One that inures to his or her special private gain or loss.
- ▶ One that inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained.
- ▶ One that could result in special private gain or loss to a relative.
- ▶ One that could result in special private gain or loss to a business associate.
- ▶ Appointed special district local officers must disclose the nature of the conflict on the required form *before making any attempt to influence the decision*. If an appointed special district local officer intends to try to influence the decision before the meeting in which the vote will take place, the special district local officer first must complete this form, which must be immediately provided to the other governing body members of the special district and read publicly at the next meeting.



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# Introduction to Special Districts

## Ethics Laws for Special Districts

### Gift Law

- ▶ A "gift" is anything accepted by a person or on that person's behalf, whether directly or indirectly, for that person's benefit, and for which equal or greater consideration is not given within 90 days.
- ▶ A special district local officer or specified employee may accept a gift valued between \$25 and \$100, with certain exceptions.
- ▶ A special district local officer or specified employee may not directly or indirectly accept a gift worth more than \$100 from those previously listed. However, they may accept it on behalf of the special district. Then, the special district local officer or specified employee must promptly transfer the gift to the special district.

# Introduction to Special Districts

## Ethics Laws for Special Districts

Examples of reportable "gifts" include the following:

- ▶ Real property or its use
- ▶ Tangible or intangible personal property or its use
- ▶ Preferential rates or terms on transactions unavailable to others similarly situated
- ▶ Forgiveness of a debt
- ▶ Transportation (unless provided by an agency in relation to officially approved governmental business)
- ▶ Lodging or parking
- ▶ Food or beverage
- ▶ Dues, fees, and tickets
- ▶ Plants and flowers
- ▶ Personal services for which a fee is normally charged
- ▶ Any other goods or services with an attributable value



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## Ethics Laws for Special Districts

The definition of "gift" does not include the following:

- ▶ Salary, benefits, services, fees, commissions, gifts, or expenses associated with one's private employment, business, or service as an officer or director of a corporation or organization.
- ▶ Campaign contributions or expenditures pursuant to the election laws.
- ▶ An honorarium or honorarium expense.
- ▶ An award, plaque, certificate, etc., given in recognition of public, civic, charitable, or professional service.
- ▶ Honorary membership in a service or fraternal organization.
- ▶ The use of a public facility or public property provided by a governmental agency for a public purpose.
- ▶ Certain gifts from organizations which promote the exchange of ideas or the professional development of governmental officials and employees whose membership is primarily composed of elected or appointed public officials or staff, if the gift is to a member of the organization.
- ▶ Gifts from relatives.
- ▶ Gifts from certain governmental entities.
- ▶ Contributions or expenditures by a political party.



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# Introduction to Special Districts

## Ethics Laws for Special Districts

Prohibited Gifts include the following:

- ▶ Gifts valued at more than \$100 from a vendor, lobbyist or the partner, firm, or principal of a lobbyist.
- ▶ Gifts valued at more than \$100 from political committees.

Special district local officers and specified employees *may not solicit any gift*, including food or beverage, from the following:

- ▶ A political committee.
- ▶ A lobbyist who has lobbied that special district local officer's or specified employee's special district within the past 12 months.
- ▶ A partner, firm, employer, or principal of a lobbyist.
- ▶ A vendor.



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# Introduction to Special Districts

## Ethics Laws for Special Districts

Non-criminal penalties for special district officers and employees for ethics law violations:

- ▶ Impeachment
- ▶ Removal or suspension from office or employment
- ▶ Public censure, reprimand, demotion, or salary reduction
- ▶ A civil penalty up to \$10,000
- ▶ Restitution of pecuniary benefits they received



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## Ethics Ordinances in Palm Beach County

- ▶ Palm Beach County created the County Commission on Ethics by County ordinance on 9/22/2015.
- ▶ The commission has a 5 member board, appointed by various entities, such as FAU and the PBC League of Cities.
- ▶ The County Commission on Ethics reviews, offers advisory opinions, enforces the County's ordinances on Lobbying Registration, County Post-employment, and the Countywide Code of Ethics.
- ▶ The Commission also offers training and investigates complaints.
- ▶ The Commission on Ethics only has authority over "taxing districts" if the district enters a special inter-agency agreement and pays for such services.



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## Ethics Ordinances in Palm Beach County

- ▶ Palm Beach County has also created the Office of Inspector General whose purpose is to “to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies.”
- ▶ The Inspector General is authorized to enter into agreements with special districts to provide investigative services for a fee (based on 1/4 of 1% of contracts subject to the IG’s review).

# Introduction to Special Districts

## Special Districts Must Adopt a Budget\*

- ▶ Special districts required to hold a budget hearing pursuant to section 200.065, Florida Statutes, (fixing millage) or some other law must post the tentative budget on its official website at least two days before the budget hearing and keep it there for at least 45 days.
- ▶ Special districts must adopt by resolution an annual budget at a regular public meeting that:
  - ▶ Follows Generally Accepted Accounting Principles
  - ▶ Shows budgeted revenues and expenditures by organizational unit for each fund.
  - ▶ Shows budget details at least at the same level of detail required for the Annual Financial Report.
  - ▶ Is posted on its official website within 30 days after adoption and remains there for at least two years.
  - ▶ An officer of a special district may not expend or contract for expenditures except pursuant to the adopted budget.



# Introduction to Special Districts

## Accountability to Local Government\*

- ▶ Special districts are accountable to and must cooperate and coordinate their activities with the county or municipality in which the special district is located.
- ▶ Each special district must inform the appropriate county or municipality of its activities by filing the following:
  - ▶ Budget, Tax Levy, or financial information as requested.
  - ▶ Certain independent special districts Public Facilities Reports (certain independent special districts).
  - ▶ Registered Agent and Registered Office Information.
  - ▶ Regular Public Meeting Schedule.



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# Introduction to Special Districts

## Accountability to State Government\*

Special districts are also accountable to state government. To keep the public informed about its status and activities, each special district must file information and reports with state agencies, including the following:

- ▶ Registered agent and office information, creation documents, boundary maps, and an official website address (Florida Department of Economic Opportunity).
- ▶ An Annual Financial Report, which discloses annual revenues, expenditures, and debt (Florida Department of Financial Services).
- ▶ An Annual Financial Audit Report (when threshold is met) covering the results of a financial audit that was conducted and prepared by a licensed independent certified public accountant selected by an auditor selection committee (Florida Auditor General).
- ▶ If applicable, certain bond financing information (Florida Division of Bond Finance, State Board of Administration).
- ▶ If applicable, retirement plan reports (Florida Department of Management Services, Division of Retirement).

# Introduction to Special Districts

## Public Deposits for Special Districts

Special districts with any deposit accounts in banks or savings associations must make those deposits according to [Chapter 280, Florida Statutes - Security For Public Deposits](#). By doing so, those special districts will be covered by Florida's Public Deposits Program, a statewide collateralization program that protects public deposits.



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# Introduction to Special Districts

## Special district oversight and enforcement

- ▶ The oversight - and when necessary enforcement - of special districts is very similar to the oversight and enforcement of counties and municipalities.
- ▶ The special district's governing body members are responsible for ensuring the special district complies with applicable laws and governs the special district according to its charter and enabling laws.
- ▶ Florida's open meeting and records laws enable citizens and the media to oversee and monitor special districts by reviewing public records and attending governing body meetings to observe the discussions, deliberations and formal actions.
- ▶ Citizens can contact their local state attorney's office for information concerning public record law violations and other violations.
- ▶ Citizens can file ethics related complaints with the State Commission on Ethics, which may investigate the complaints and issue fines if warranted.



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# Introduction to Special Districts

## Special district oversight and enforcement

- ▶ Licensed independent certified public accountants conducting required financial audits of special districts must report suspected illegal activity to the special district's governing body or the Florida Department of Law Enforcement.
- ▶ The Florida Auditor General's Office:
  - ▶ Performs desk audits on Annual Financial Audit Reports to make sure the audits comply with auditing standards and rules.
  - ▶ Tracks findings repeated for more than two years and reports them to the Joint Legislative Auditing Committee for possible further state action.
- ▶ The Joint Legislative Auditing Committee:
  - ▶ May investigate audit matters, use its powers of subpoena, and order a state audit by the Florida Auditor General.
  - ▶ May request the Department of Economic Opportunity to file a petition for enforcement with the circuit court or declare a special district inactive for dissolution when special districts fail to comply with certain financial reporting requirements.



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## Special district oversight and enforcement\*

- ▶ The Governor's Office monitors special districts and provides technical assistance when a special district meets one or more financial emergency conditions.
- ▶ The Governor may suspend or remove special district governing body members under certain circumstances.
- ▶ For BRAA, Ch. 2004-468, Laws of Fla., provides that the commission or council which appointed a member may remove that member from office if the member has committed an act of "misfeasance, malfeasance, or nonfeasance in office, or upon conviction of any crime." Nonfeasance includes failure to attend three consecutive regular meetings.



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# Introduction to Special Districts

## Special district oversight and enforcement\*

- ▶ Depending on how a special district was created, an appropriate oversight entity may:
  - ▶ Convene a public hearing when a special district fails to comply with certain financial reporting requirements.
  - ▶ Convene a general oversight review process of a special district to contribute to informed decision-making about the special district, including whether it should continue to exist. Examples of criteria to be considered during the review include:
    - ▶ The degree to which the special district's services are essential.
    - ▶ The extent of continuing need for the services.
    - ▶ Whether a less costly alternative method of delivering the services exists.
    - ▶ Whether the special district is meeting and discharging its responsibilities as required by its charter.
    - ▶ Whether the special district has complied with open public records and meeting requirements.

# Introduction to Special Districts

## Citations/References

- Slides annotated with an asterisks (\*) were either reproduced in whole or in part from, or relied on the information contained within “An Overview of Florida’s Special District,” by Jack Gaskins, Jr., Special District Accountability Program, Department of Economic Opportunity, November 2016.
- This Powerpoint Presentation also contains information from the “Florida Special Districts Handbook Online,” FloridaJobs.Org/Special District Handbook, Special Districts Accountability Program, Department of Economic Opportunity.



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