

# **INTERGOVERNMENTAL RELATIONS AND INTERLOCAL AGREEMENTS IN FLORIDA**

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**A Presentation to the  
Florida Association of Special Districts  
Certified District Officials Program  
January 28, 2010**

**Caldwell Pacetti Edwards Schoech & Viator LLP, Attorneys at Law  
One Clearlake Centre, Suite 600  
250 South Australian Avenue  
West Palm Beach, Florida 33401  
Phone: 561-655-0620 Facsimile: 561-655-3775  
[www.caldwellpacetti.com](http://www.caldwellpacetti.com)**

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# Our goals for today

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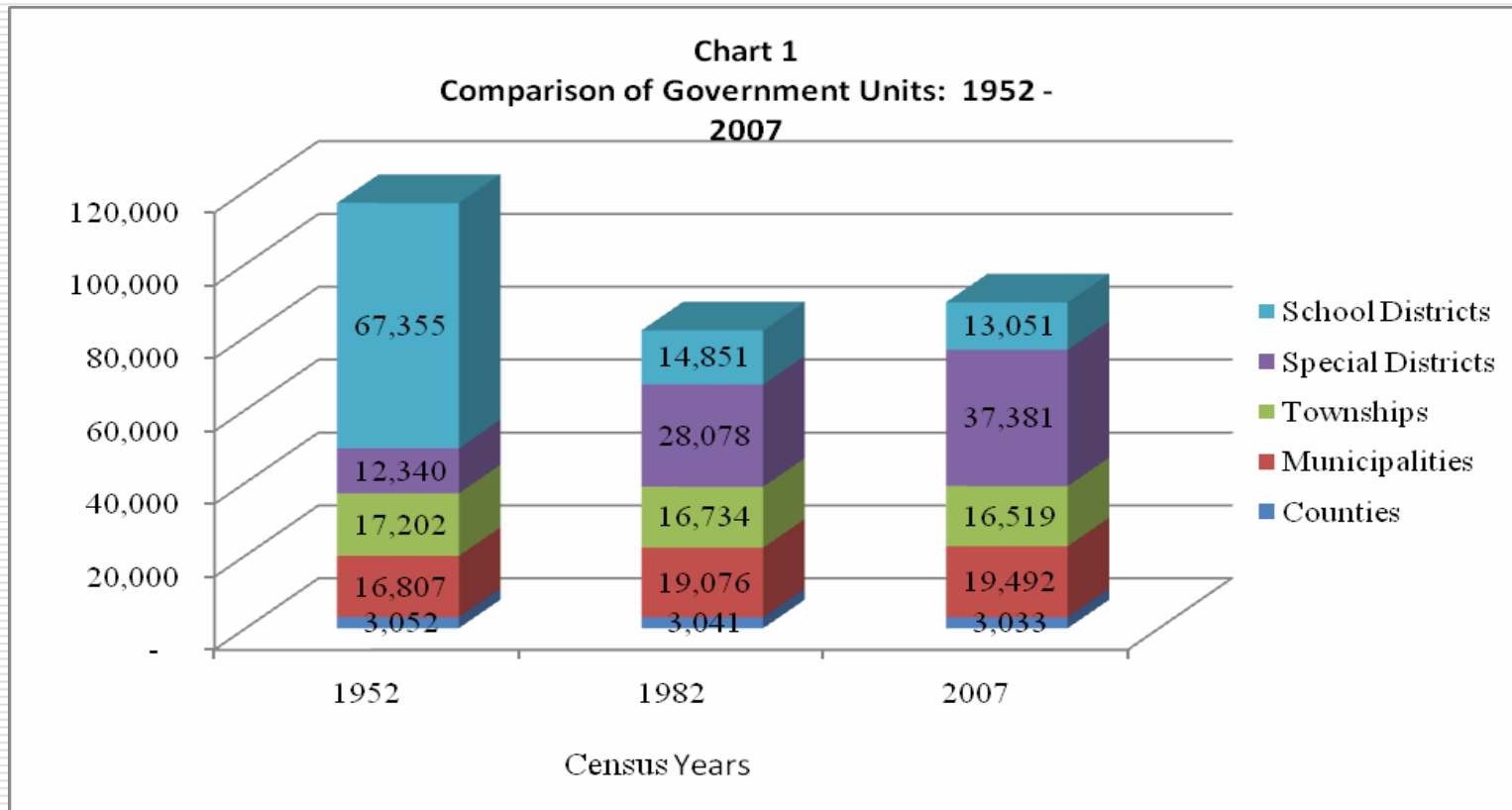
- ❑ **Part 1:** Survey the structure of government in Florida
- ❑ **Part 2:** Examine the role of special districts in Florida government
- ❑ **Part 3:** Explore the factors that promote intergovernmental cooperation and conflict resolution
- ❑ **Part 4:** Review some typical tools to achieve intergovernmental cooperation (MOUs, ILAs, etc.)

# **Special districts: The “Big Putdowns”**

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## **“Quasi-Government” or “Shadow Government”**

# Special districts and American local government, trends – 1952-2007



Source: U.S Census Bureau & FLCIR (2009)

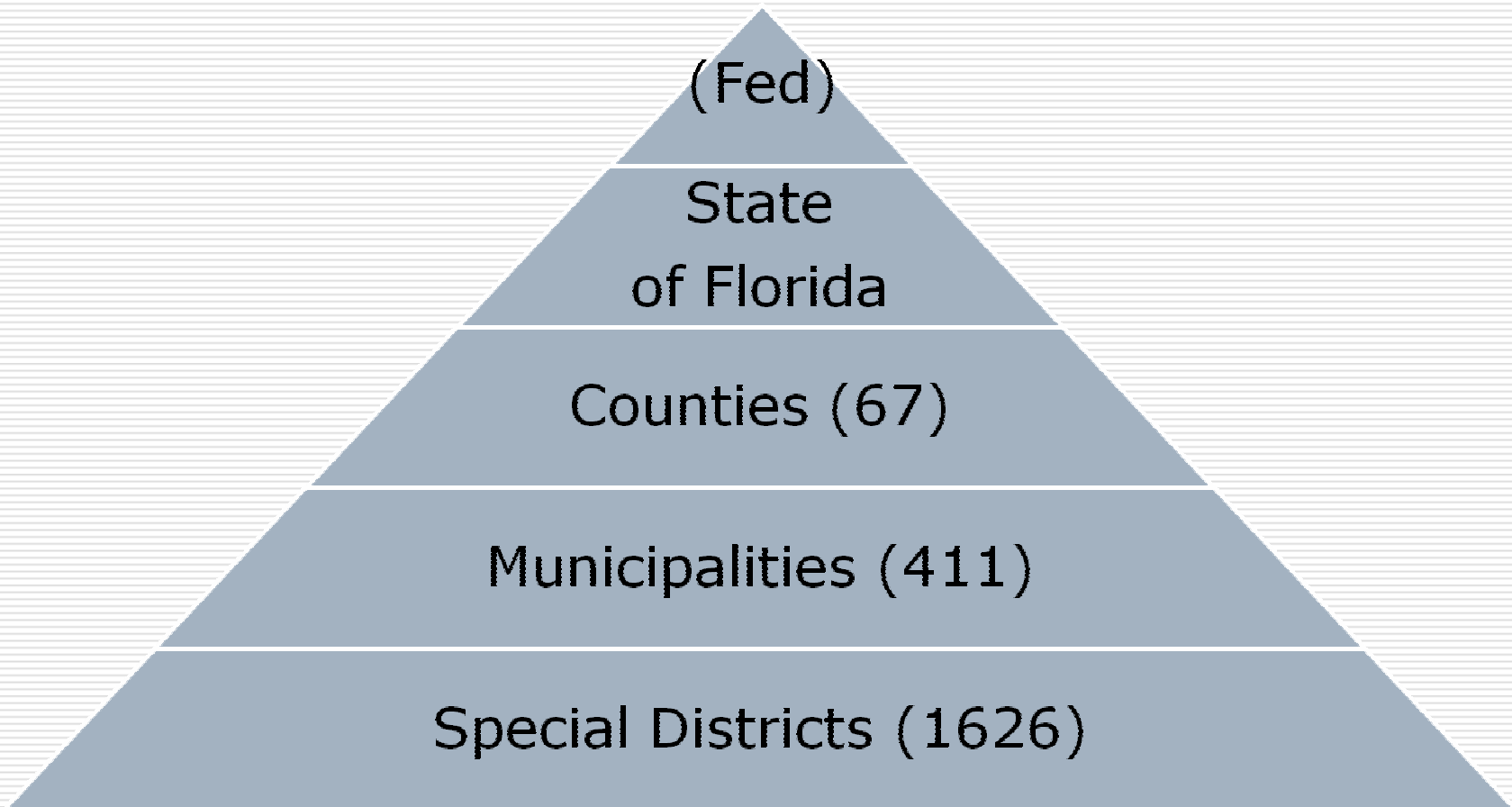
# Part 1

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# GOVERNMENT IN FLORIDA

# Government in Florida

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# What does government do?

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**IN A REPUBLIC, GOVERNMENT EXERCISES ANY  
POWER THE PEOPLE AUTHORIZE**

- Tax
- Acquire And Dispose Of Property
- Execute Contracts
- Borrow Money/Incur Debt/Pledge Credit
- Condemn Property/Eminent Domain
- Create/Abolish/Reorganize Local Governments
- Exercise The “Police Power”

# Federalism

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## U.S.A. IS A FEDERAL REPUBLIC

- ❑ **POWER IS SHARED** between the national and state governments
- ❑ **FEDERAL POWER IS LIMITED** to matters specifically identified in the US Constitution
- ❑ **STATES HAVE POWERS** independent of national government (“sovereignty”)



# Federal limits on the power of state (& local) governments

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## U. S. CONSTITUTION

- ❑ **BILL OF RIGHTS (1789)**
  - Amendments 1-10
  - 10<sup>th</sup> Amendment
    - ❑ “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”
- ❑ **“CIVIL WAR” AMENDMENTS (1865-1870)**
  - 13<sup>th</sup> Amendment (Slavery & indentured servitude abolished)
  - 14<sup>th</sup> Amendment (Rights of citizenship/equal protection/due process of law)
  - 15<sup>th</sup> Amendment (Race no bar to voting)
- ❑ **24<sup>th</sup> AMENDMENT (Poll tax abolished--1964)**
- ❑ **26<sup>th</sup> AMENDMENT (Voting age set at 18--1971)**

# The source of state powers

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People

State Constitution

Common Law

# The state constitution (1968)

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## THREE BRANCHES OF GOVERNMENT (s. 2, Art. II)

- **LEGISLATIVE** (the power to **MAKE LAW**, subject to approval by the Governor (ss. 1 & 8, Art. III), vested in the **Legislature**)
  - “General Laws” & “General Laws of Special Application”
  - “Special Laws” (s. 11, Art III -- 21 prohibitions)
- **EXECUTIVE** (the power to **EXECUTE THE LAW**; vested in the **Governor & Cabinet**) (ss. 1& 4, Art. IV). Florida is unique.
  - Cabinet: Governor, Attorney General, CFO, & Commissioner of Agriculture (1998)
    - State Board of Administration
    - Trustees of the Internal Improvement Trust
    - Department of Law Enforcement
- **JUDICIAL** (the power to **DEFINE THE LAW**; vested in the **Courts**) (s. 1, Art V)

# Local government: counties

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- ❑ Counties are required by the Constitution (s. 1, Art. VIII)
- ❑ A county is a ***political subdivision of the state***. It is not a “corporation”
- ❑ May be created, abolished or changed by the Legislature
- ❑ 67 counties
- ❑ Counties may provide services to municipalities and special districts by contract (ss. 125.01(p) & 163.01, F.S.)

# County powers & “home rule”

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## □ CHARTER COUNTIES

- “Home Rule” by Constitution – “all powers of local self-government not inconsistent with general law or with law approved by vote of the electors”
- In 2009, 20 of Florida’s 67 counties had “charters”
- Charter may be more restrictive than General Law

## □ NON-CHARTER COUNTIES

- have “Home Rule” by statute. All those powers of self-government provided by general or special state law. General law (Ch. 125) is expansive
- Charter is established by vote of the electors at a special election (s. 1, Art. VIII, Fla Const)

- **Miami-Dade, Duval, Monroe & Hillsborough Counties** are granted “municipal” powers (“metropolitan entities”) (s. 6, Art VIII, Fla Const)

# Comparing “charter” and “non-charter” counties

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## NON-CHARTER

- ❑ **County structure specified in State Constitution and general law.** Only amending the State Constitution or State law can change structure.
- ❑ Powers prescribed by the State Legislature.
- ❑ No provision for initiative, referendum, or recall.
- ❑ Administrative Code not required
- ❑ Cannot levy a utility tax in the unincorporated area.
- ❑ **County ordinances do not supersede municipal**

## CHARTER

- ❑ **County structure specified in a charter approved by the electorate.** Structure can be tailored to meet local needs.
- ❑ All powers of self-government not inconsistent with the Constitution or State law.
- ❑ Charter may:
  - ❑ provide for initiative, referendum and recall.
  - ❑ require an Administrative Code
  - ❑ provide for levy of a “municipal utility tax” in the unincorporated area.
  - ❑ May provide that county ordinances supersede municipal

Source: Fla Assn of Counties 2008

# Local government: municipalities

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- ❑ A political and corporate body established by general or special law (ss. 2 or 6, Article VIII, Florida Const.)
- ❑ A municipality is:
  - a political subdivision of the state
  - a “municipal corporation” with an individual “charter”
- ❑ Cities, towns and villages
- ❑ **Created by petition of the people**
- ❑ In 2009, Florida had 411 municipalities

# Municipal powers & “home rule”

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- ❑ “Municipalities shall have **GOVERNMENTAL, CORPORATE, AND PROPRIETARY POWERS** to enable them to conduct municipal **GOVERNMENT**, perform municipal **FUNCTIONS**, and render municipal **SERVICES**, and may exercise any power for municipal purposes except as otherwise provided by law.” (s. 2, Art. VIII, Fla. Const. & s. 166.021, F.S., “Municipal Home Rule Powers Act”)
- ❑ “**Municipal purpose**” = any activity or power that may be exercised by the state or its political subdivisions
- ❑ May legislate on any issue not expressly prohibited by general or special law:
  - **Annexation, merger, and exercise of extraterritorial power**
  - Any subject expressly **preempted** by general law or Fla. Const.
  - Any subject expressly **prohibited** by Fla. Const.
  - Any subject preempted to a **county charter**



# Part 2

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## **SPECIAL DISTRICTS IN FLORIDA**

# What is a “special district”?

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## 2009 FLORIDA STATUTES Title I. CONSTRUCTION OF STATUTES CHAPTER 1. DEFINITIONS

1.01 **Definitions.**--In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:

- (8) **The words "public body," "body politic," or "political subdivision" include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.**

# What is a “special district”?

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“...a local unit of **SPECIAL PURPOSE**, as opposed to general-purpose, **GOVERNMENT** within a **LIMITED BOUNDARY**, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by **SPECIALIZED FUNCTIONS AND RELATED PRESCRIBED POWERS**. For the purpose of s. 196.199 [exemption from real property taxes], special districts shall be treated as municipalities...” (s. 189.403, F.S.)  
(See also s. 191.003(5), F.S.)

# What is NOT a special district?

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- General purpose governments (counties & municipalities)
- School districts
- Community college districts
- Indian reservations (s. 285.17, F.S.)
- County municipal service taxing or benefit units [MSTUs/MSBUs] (s.125.01(q), F.S.) – county infrastructure & service financing mechanisms
- Electrical service boards that are political subdivisions of a municipality (“GUA”)
- Special assessment areas (Ch. 170, F.S.) (municipal equivalent of an MSBU)
- Advisory boards and commissions

# Special Districts in the Florida Constitution of 1968

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- ❑ Special districts are created to serve “special purposes”
- ❑ Special districts are not considered “fundamental” or indispensable local governmental entities, like counties or municipalities
- ❑ Special districts are recognized in a number of ways:
  - Subject to public records law & Sunshine Act (s. 24, Art. I)
  - May be created by special act (s. 11, Art. III)
  - May receive state funds (s. 8, Art. VII)
  - May be authorized to assess ad valorem taxes (s. 9, Art. VII)
  - May pledge credit (for public purposes only) (s. 10, Art. VII)
  - May issue bonds (s. 12, Art. VII)
  - May transfer powers (s. 4, Art. VIII)
  - “Grandfathering” of pre-1968 taxing authority (s. 2, Art. XII)

# What do special districts do?

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- 1626 special districts in Florida (12-30-09)
  - California: 2300
  - New York: 9500 (7000 dependent)
  - Washington: 1700 (300 school districts)
  - Oregon: 950
  - South Carolina: 500
- 62 functional categories

# Special districts—counties with the most

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<u>County</u>	<u>10/08</u>	<u>11/09</u>
<input type="checkbox"/> Hillsborough	136	138
<input type="checkbox"/> Miami-Dade	101	103
<input type="checkbox"/> Lee	98	98
<input type="checkbox"/> Palm Beach	93	93
<input type="checkbox"/> Broward	91	92
<input type="checkbox"/> Manatee	75	74

# What do special districts do?

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## THE “TOP 10” FUNCTIONS OF SPECIAL DISTRICTS IN FLORIDA

- ❑ **COMMUNITY DEVELOPMENT** (CDDs) – 579 (100% independent)
- ❑ Community redevelopment (CRAs) – 201 (100% dependent)
- ❑ **DRAINAGE & WATER CONTROL** (“298s”) – 94 (82% independent – 77)
- ❑ Housing authorities – 93 (28% independent – 26)
- ❑ **FIRE CONTROL & RESCUE** (Ch. 191, F.S.) – 67 (84% independent – 56)
- ❑ Soil & water conservation – 63 (89% independent – 56)
- ❑ Subdivision maintenance – 54 (**100% dependent** -- 48 in Hillsborough County)
- ❑ Neighborhood improvement (Ch. 163, Part IV, F.S) – 33 (100% dependent)
- ❑ Libraries – 32 (44% independent – 14)
- ❑ Health Facilities – 31 (97% dependent – 30)



# “Independent” vs. “Dependent”

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## **Dependent Districts have one or more one of the following characteristics:**

- Governing body is identical to governing body of a county or a municipality
- Governing body is appointed by a county or a municipality
- Governing body members may be removed at will by a county or a municipality
- Its budget requires approval by a county or a municipality
- Its budget can be vetoed by a county or a municipality

## **Independent Districts have none of these characteristics or are multi-county**

# Creation of dependent special districts

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- Who?
  - Legislature
  - County or municipality (ss. 298.01 & 189.4041, F.S.)
- How?
  - Special act
  - County or municipal ordinance
- Where?
  - County: anywhere in its boundary, with consent if in a municipality
  - Municipality: anywhere in its boundary
- Why?
  - Any appropriate public purpose

# What does “independent” mean?

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## INDEPENDENT FROM WHOM?

- General local purpose governments  
(counties & municipalities)
  - A special district is an autonomous local government
  - General purpose government’s millage limits
- The “residents”
  - CDDs are not HOAs, POAs or condo associations

# Just how “independent” are you?

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- State government oversight
  - General laws
    - Uniform charters (CDDs & Fire Districts)
  - Special acts
  - Reporting requirements
- Local government oversight
- Judicial oversight
  - Bond validation
- Electoral oversight
  - Landowners or electors
  - Legislative statements
- Bondholder oversight
  - Bond reporting covenants

# Powers, in general

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- ❑ **NO “HOME RULE”**
- ❑ **LIMITED “POLICE POWER”**
  - The authority to regulate private behavior to accomplish public goals
  - General purpose governments use “police power” to make rules and enforce them (e.g., zoning property, requiring business licenses, setting speed limits, etc.)
  - Special districts’ “police powers” arise from their proprietary or contractual powers – adopt rules to govern public use of district facilities and services
- ❑ **“TAX POWER”** is the authority to raise money to pay for projects and services
- ❑ **CONTRACT DEBT & PLEDGE CREDIT**
- ❑ **“SOVEREIGN IMMUNITY”** -- the “sovereign” can’t be sued
  - Limited by statute in “tort” cases to \$100,000/person or \$200,000 per incident (s. 768.28, F.S.)

# Powers, Florida laws

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- **GENERAL LAWS** (Not an exhaustive list)
  - **Ch. 189** (Special Districts in General)
  - **Ch. 190** (Community Development Districts)
  - **Ch. 191** (Independent Special Fire Control Districts)
    - s. 191.004, F.S. (Partial preemption of special acts enacted before 1997)
    - s. 191.006, F.S. (General Powers)
    - s. 191.008, F.S. (Special Powers)
  - **Ch. 298** (Water Control Districts)
    - s. 298.22, F.S. (Powers of Supervisors)
- **SPECIAL ACTS** (Enabling Legislation)

# Powers, special acts

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- 298s & fire districts created before 1997
- Establishes the District's boundaries
- Provides for election or appointment of governing body
- Defines the duties and powers of the governing body
- Assigns power to assess or tax
- May grant additional powers or restrict powers

# Powers of CDDs (Ch. 190, F.S.)

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- ❑ **UNIFORM CHARTER** for all CDDs (s. 190.002(3), F.S.)
- ❑ **GENERAL POWERS** (s. 190.011(1)-(16), F.S.):
  - **make and execute contracts** and other instruments necessary or convenient
  - **borrow money and accept gifts**; to apply for and use grants or loans of money or other property for any district purposes and **enter into agreements** required in connection therewith
  - **cooperate with, or contract with, other governmental agencies**
  - **exercise all of the powers necessary, convenient, incidental, or proper**
- ❑ **SPECIAL POWERS** (ss. 190.012(1)(h) & 189.4155, F.S.):
  - finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructure
  - any project, facility, or service required by a development approval, **interlocal agreement**, zoning condition, or permit issued by a general purpose government
  - provide **housing and housing assistance** for its low & moderate income employees



# Powers of independent fire control districts (Ch. 191, F.S.)

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## □ 191.006 GENERAL POWERS

- (e.g., corporate powers; pension or retirement plans; contract for professional services; To borrow money and accept gifts; to apply for grants; adopt resolutions and procedures; maintain an office; acquire real and personal property; hold, control, and acquire any public easement; lease any facility or property; borrow money and issue bonds; charge user and impact fees; exercise eminent domain; **cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper**; assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments; impose and foreclose non-ad valorem assessment liens; select any qualified public depository; provide adequate insurance; organize, participate in, and contribute monetarily to organizations or associations; provide housing or housing assistance for its low and moderate income employees)

## □ 191.008 SPECIAL POWERS

- (e.g., provide for fire suppression and prevention by establishing and maintaining fire stations and fire substations and acquiring and maintaining such firefighting and fire protection equipment; establish and maintain emergency medical and rescue response services; employ, train, and equip personnel; conduct public education; adopt and enforce fire safety standards and codes; conduct arson investigations; adopt hazardous material safety and emergency response plans; **contract with general purpose local government** for emergency management planning and services)

# Powers: transfer

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- ❑ **General Rule:** s. 4, Art. VIII, Fla Constitution:  
Specific functions or powers may be transferred by contract, subject to a “dual referendum” or by act of the Legislature
- ❑ **Court Interpretation:** When is a dual referendum required?
  - No general or special law; or
  - Regulation vs. services
  - Is relinquishment of authority over services total?

# Powers: extraterritorial exercise

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- ❑ **General rule:** Government unit must stay within its legislative boundaries
- ❑ **Exception: Unless** the Legislature gives specific authority.
  - **Examples:**
    - ❑ County may contract for services to a special district (ss. 125.0101, F.S. & 316.006, F.S. (traffic law enforcement)
    - ❑ Special district may contract to provide certain services outside its boundaries to a county (ss. 125.01 & 163.01, F.S. & AGO 84-40)
    - ❑ Interlocal Service Boundary Agreement (Ch. 171, Part II, F.S.), limited to certain identified services (AGO 09-38)
    - ❑ Authorizing Legislation grants extra-territorial power.
    - ❑ [Proprietary power]

# Creation: state policy

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## STATE COMPREHENSIVE PLAN (Ch. 187, F.S.)

Section 187.201 State Comprehensive Plan adopted.--The Legislature hereby adopts as the State Comprehensive Plan the following specific goals and policies:

- (20) GOVERNMENTAL EFFICIENCY.--
- (a) *Goal*.--Florida governments shall economically and efficiently provide the amount and quality of services required by the public.
- (b) *Policies*.--
  - 1. **Encourage greater cooperation** between, among, and within all levels of Florida government through the use of appropriate **interlocal agreements** and mutual participation for mutual benefit.
  - 2. **Allow the creation of independent special taxing districts** which have uniform general law standards and procedures and do not overburden other governments and their taxpayers while preventing the proliferation of independent special taxing districts which do not meet these standards.
  - 3. **Encourage the use of municipal services taxing units and other dependent special districts** to provide needed infrastructure where the fiscal capacity exists to support such an approach.

# Creation: why?

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## □ **IMPROVED GOVERNANCE:**

- An appointed or elected Governing board with expertise
- Recruit qualified and expert employees
- Ensure better accountability of public resources

## □ **EFFICIENCY & COST-EFFECTIVENESS:**

- Focus on specific community needs and desired services saves money
- Link government costs directly to public benefits
- Maintain financial integrity; reduce risk; lower cost of credit

## □ **RELIEVE GENERAL PURPOSE GOVERNMENTS:**

- Allow municipalities and counties to focus on general government issues.
- Relieve local governments of certain debt obligations (10 mil debt cap).

## □ **PROTECT & ENHANCE PROPERTY VALUES**

# Creation: why not?

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- Proliferation** of governmental units
- Lack of accountability** -- low participation
- Unrepresentative** -- landowner voting
- Invisibility**
- Inefficiency**

# Creation: how?

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- ❑ **PRIOR TO 1980:** Order of Circuit Court for WCDs (Ch. 298)
- ❑ **GENERAL RULE:** “Except as otherwise authorized by general law, **only the Legislature may create independent special districts.**” (ss. 189.440(4) & 298.01, F.S.) – After July 1, 1980
- ❑ **A MUNICIPALITY:** CDDs (s. 190.005, F.S.)
- ❑ **A COUNTY:** Children’s Service Districts (s. 125.901, F.S.); health & mental health care districts (s. 154.331, F.S.); public hospital board (s. 155.05, F.S.); CDDs (s. 190.005, F.S.)
- ❑ **THE GOVERNOR AND CABINET:** CDDs of 1000 acres or more (s. 190.005(1), F.S.); regional water supply authority (s. 373.1962, F.S.)
- ❑ **A COMBINATION OF TWO OR MORE COUNTIES:** Regional jail (s. 950.001, F.S.),
- ❑ **A COMBINATION OF TWO OR MORE COUNTIES OR MUNICIPALITIES:** Regional water supply authority (s. 373.1962, F.S.)
- ❑ **A COMBINATION OF TWO OR MORE COUNTIES, MUNICIPALITIES OR OTHER POLITICAL SUBDIVISIONS:** Regional transportation authority (s. 163.567, F.S.)

# Termination: how?

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## **Merger**

- With a municipality or another special district (Ch. 165, F.S.)
- Fire districts – Must be ratified by the Legislature (s. 191.014, F.S.)

## **Dissolution**

- By special act of the Legislature
- By repeal of county/municipal ordinance
- By **incorporation** (CDDs) (s. 165.061, F.S.)

## **Declaration of inactive status** by DCA –

- Prelude to dissolution
- Criteria:
  - No governing board or no quorum for 2 or more years, or
  - Failure to respond to a DCA inquiry within 21 days

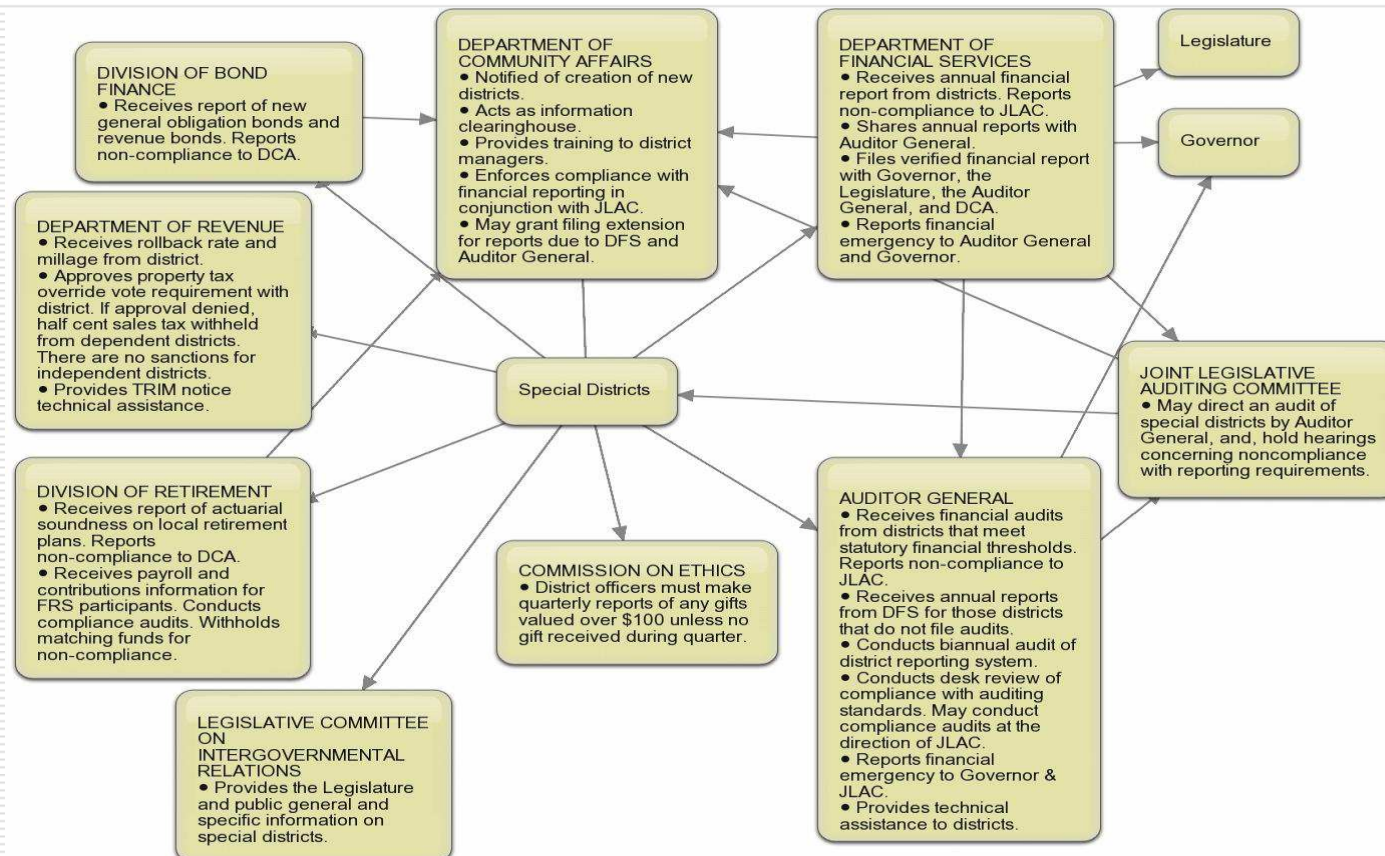


# State oversight: a brief history

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- ❑ **1968:** New Florida Constitution adopted.
- ❑ **1972:** Florida Commission on Local Government I – “Special districts have been ‘invisible government’; virtually unidentifiable.”
- ❑ **1970s:** Newspaper exposes reveal taxation and assessment abuses & waste of bond proceeds
- ❑ **1974:** “Formation of Local Governments Act” (Ch. 165, F.S) - - exclusive creation procedure for special districts
- ❑ **1978:** “New Communities Act” (CDDs)
- ❑ **1978:** State Board of Administration (Governor & Cabinet) asks Legislature to review special district creation and powers
- ❑ **1979:** Special districts required to report to and register with DCA
- ❑ **1980:** House Committee on Community Affairs recommends further restriction of special district formation, election reform & supervision of finances
- ❑ **1985-1987:** FACIR studies special district issues
- ❑ **1989: UNIFIED SPECIAL DISTRICT ACCOUNTABILITY ACT (Ch. 189, F.S.)**
- ❑ **1997:** “Independent Special Fire Control District Act” (Ch. 191, F.S.)

# State oversight: who?



Source: Fla House, Special District Whitepaper 2008

# State oversight: how?

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- ❑ **Annual noncompliance lists** to DCA by any state agency overseeing funds (s. 189.413. F.S.)
- ❑ **DCA technical assistance letter:** 60 days to comply & one 30-day extension
  - No response = “**final action**”
- ❑ **Financial emergencies (simplified):**
  - Auditor General notifies the Joint Legislative Auditing Committee (JLAC) & DCA
  - DCA gives district 30 days to respond with one 30-day time extension
  - If district fails to respond, DCA must either :
    - ❑ Declare the special district inactive for dissolution; or
    - ❑ Initiate Petition for Writ of Certiorari in Circuit Court in Tallahassee
      - Order to Show Cause to district
      - Writ of Certiorari requiring the district to file the report.
    - ❑ Appeal is to the District Court of Appeal in Tallahassee
    - ❑ Prevailing party gets its attorney fees and costs

# Local Oversight: who?

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- Local general purpose governments
  - Governing body
    - Public facilities report (ss. 189.415 & 191.013, F.S.)
    - Oversight report (s. 189.428, F.S.)
  - Clerk of Circuit Court (s.189.417, F.S.)
    - Designation of registered agent and office
    - Annual regular meeting schedule (Sunshine Act compliance)
  - County Supervisor of Elections
    - Mandatory for dependent districts
    - Discretionary for single-county independent districts
- Circuit Court & State Attorney
  - Bond validation – (Ch. 75, F.S.)
    - Mandatory for CDDs if bond = >5 years (s. 190.016(12), F.S.)
- Electors or landowners
- Bondholders
  - Bond reporting & continuing disclosure covenants

# Local oversight: how?

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- Authority: s. 189.428, F.S.
- Permissive, not required
- Who reviews?
  - County or municipality:
    - its own dependent special districts &
    - any independent special district located within its boundaries
  - County only:
    - special district boundaries outside municipal
      - Municipality may ask the county to review.
- What criteria? Specified in s. 189.428(54), F.S.
- Who gets the final report?
  - The government that created the district
  - May request that state modify charter or merge/dissolve the district.

# Local oversight: how?-- facilities reports

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## SPECIAL DISTRICT FACILITIES REPORTS

(ss. 189.415 & 191.013(2), F.S.).

- Initial report to local general purpose government within 1 year of creation
- Content:
  - Describe all existing public facilities owned, operated, or leased out.
  - Identify current capacity, service demands placed, location, & any proposed construction within the next five years.
- Adopted 298 water control plan & fire district's 5-year plan satisfy these requirements.
- Annual update thereafter

# Local oversight: how? – comprehensive planning

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## LOCAL GOVERNMENT COMPREHENSIVE PLANNING

(ss.189.415, 187.4155; Ch. 163, Part II; 191.013(2); 380.06, F.S.)

- ❑ Comply with local planning & zoning
- ❑ Construction or expansion of a public facility that affects the local government's adopted level of service (LOS) **must be consistent with the local government comprehensive plan.**
- ❑ Local government cannot use Comp Plan or DRI Development Order to require an independent special district to:
  - construct, expand, or perform a major alteration of any public facility, or
  - impair covenants and agreements relating to bonds

# **PART 3**

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## **INTER-GOVERNMENTAL COOPERATION**

**&**

## **CONFLICT RESOLUTION**



# Why be concerned about intergovernmental relations?

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- It's part of the job
- You have competition for service delivery
- It will improve your agency's function
  - staff need help
  - elected offices confer legitimacy & respect
  - elected officials can get access to power
  - improve efficient operations
  - obtain additional resources
- It will improve constituent service

# Board members' roles

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- Understand & articulate your community's needs
- Provide direction to district staff
- Build relationships with other leaders
- Involve necessary stakeholders
- Ensure administrative resources
- Marshal public support

# Why cooperate?

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- Some public needs do not recognize political boundaries
- Cost savings
- Improve levels of service or attain higher level of efficiency in provision of services
- Permit allocation of cost based on proportion of anticipated use
- Maintain local control
- Prevent/discourage assumption of services by state or federal governments –
- Avoid restructuring or adding governmental units to address problems or service demands
- Citizens expect it

# Sources of conflict

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- ❑ Conflict is inherent in federalism
- ❑ General purpose governments feel superior
- ❑ Expansion of “home rule” creates service competition
- ❑ Expansion of special district powers in high growth environments
  - “Drainage” districts become “Improvement” districts
  - Counties counter with MSTU/MSBU alternative.
- ❑ Competition for limited revenue/resources
- ❑ “Control” issues; fear of loss of local autonomy
- ❑ Lack of institutional memory
- ❑ Community character

# Sources encouraging cooperation

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- ❑ **Expanded legal authority**
- ❑ **Changing patterns of federal aid to local governments**
  - “Categorical grants” replaced “block grants”:
  - Nixon’s “New Federalism” (after 1978)
  - Federal share of local budgets declines from 15% in 1978 to 5% in 1988
  - Local governments increase reliance on local fees and assessments
- ❑ **Federal and state policies promote “regional solutions”**
- ❑ **Florida adopts pro-active growth management policies (after 1985)**
  - “Vertical integration” (i.e., “top-down”) (Ch. 163, Part II, F.S. 1985)
  - 1990s -- higher priority to intergovernmental coordination in growth mgt
  - New/revised laws encourage service cooperation
- ❑ **Rise of interest in alternative dispute resolution (ADR) techniques (1990s)**
- ❑ **Acceptance of long-range planning as a management tool**

# Options for cooperation

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Adapted from David Walker's  
"Snow White and the 17  
Dwarfs: From Metro  
Cooperation to Governance,"  
*National Civic Review*, Vol. 76,  
Issue 1 (1987).

# Intergovernmental cooperation in Florida: the statutory framework

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## □ IMPORTANT STATUTES

- Florida Interlocal Cooperation Act of 1969 (s. 163.01, F.S.)
- Florida Governmental Conflict Resolution Act of 1999 (Ch. 164, F.S.)

## □ OTHER STATUTES

- Interlocal Service Boundary Agreement Act of 2006 (Ch. 171, Part II, F.S.)
- Councils of local public officials (1969)(s. 163.02, F.S.)
- Local Government Financial Technical Assistance Program (1999)(s. 163.05, F.S.)
- Government Efficiency & Accountability Reform Act (GEAR) of 1999 (s. 163.07, F.S.)
- Local Government Comprehensive Planning & Land Development Regulation (Growth Management) Act (ss. 163.3161-3217, F.S.)
- Municipal annexation compensation (s. 171.093, F.S.)

# **“Interlocal Cooperation Act of 1969” (s. 163.01, F.S.)**

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# **TO BE DISCUSSED LATER**



# “Florida Government Conflict Resolution Act” (Ch. 164, F.S.)

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- ❑ Special districts are included
- ❑ Can't be used in certain cases (e.g., comp plan challenges, assessment)
- ❑ The “initiating” governing body passes a resolution initiating the conflict resolution procedures
- ❑ Notification provided to the opposing governmental entity and other governmental entities that may influence the settlement or whose interests may be substantially affected by the resolution
- ❑ Step 1: Abatement of any litigation
- ❑ Step 2: Conflict assessment meeting – staff level
- ❑ Step 3: Joint public meeting – governing boards meet
- ❑ Step 4: Formal mediation – if mutually accepted
- ❑ Step 5: Back to litigation
- ❑ Attorney's fees may be awarded

# “Interlocal Service Boundary Agreement Act of 2006” (Ch. 171, Part II, F.S.)

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- ❑ Alternative to traditional municipal annexation
- ❑ Allows
  - non-contiguous municipal annexations
  - extraterritorial exercise of powers by counties and municipalities
  - Reassignment of service functions]
    - ❑ Fire/rescue remains with existing provider unless county & municipality agree
- ❑ May be initiated by a county, municipality or independent special district
  - adopt resolution that defines an area to be discussed and the issues to be negotiated
  - Independent special districts in the study area must be included
- ❑ May address “any issue concerning service delivery, fiscal responsibilities, or boundary adjustment” (e.g., fire & drainage)
- ❑ **Special district’s consent not required** unless agreement calls for dissolution or removes more than 10% of district’s tax base
  - District may seek compensation if annexed over objections
- ❑ Maximum 20 year term
- ❑ 6 month negotiation period

# “Councils of local public officials” (1969)(s. 163.02, F.S.)

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- ❑ Effectively superseded by §§186.501-513, F.S. (Florida Regional Planning Council Act of 1980), which does not include special districts
- ❑ Any two or more counties, municipalities, **special districts**, or other governmental subdivisions may, by resolution, agree to establish a council of local public officials (“COG”)
- ❑ Creates a not-for-profit corporation
- ❑ **Powers:**
  - Study any governmental problem deemed appropriate, including health, safety, welfare, education, economic conditions and area development;
  - Promote cooperative arrangements and coordinate action among its members; and
  - Recommend action
- ❑ Annual public report & audit

# “Government Efficiency & Accountability Reform Act (GEAR) of 1999” (s. 163.07, F.S.)

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- ❑ Allows counties and municipalities to develop a regional plan to deliver and finance local services
- ❑ Planning process is initiated by a resolution adopted by the county and by municipalities representing a majority of municipal population
  - Content of the plan and the planning process are specified in detail in the statute
- ❑ Appoints a commission to develop the plan
  - **Must include representatives of any affected special districts**
- ❑ Any merger/dissolution of special districts called for in the plan shall comply with Ch. 189, F.S.
- ❑ The plan must be approved by the electors in a county-wide referendum

# “Local Government Financial Technical Assistance Program” (1999)(s. 163.055, F.S.)

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- “The purpose of this section is to provide technical assistance to municipalities **and special districts** to enable them to implement workable solutions to financially related problems.”
- Establishes a technical assistance program managed by the CFO designed to:
  - Assist municipalities and **independent special districts** to develop alternative revenue sources
  - Provide assistance to municipalities and special districts in the areas of financial management, accounting, investing, budgeting, and debt issuance
  - Develop a needs assessment and priorities for assistance for those jurisdictions most in need
  - Provide financial emergency assistance upon direction from the Governor
- CFO to submit an **annual report to the LCIR**
- LCIR to conduct an annual performance review and report to Governor & Legislature by January 15 of each year.

**“Local Government Comprehensive Planning & Land Development Regulation (Growth Management) Act”**  
(ss. 163.3161-3217, F.S.) & Rule 9J-5.015, FAC

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**Intergovernmental Coordination Element  
of the Comprehensive Plan**

- ❑ Requires an **“inventory”** of all units of local government providing services, including independent special districts
- ❑ Vague requirements
- ❑ Binding if included in the Comp Plan
- ❑ **“Coordination”** is whatever the parties want it to be

# “Municipal Annexation Compensation” (s. 171.093, F.S.)

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- Applicability:
    - Independent special district with ad valorem taxation (except CDDs)
    - Municipality
      - annexes district area &
      - elects to provide same service
  - Interlocal agreement regarding transfer of services
  - If cannot agree,
    - special district will remain service provider for 4 years
    - Special district cannot incur >\$25,000 capita expense in annexed area
    - Interlocal agreement or circuit court
    - Special district boundary contracts
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## Intergovernmental cooperation: local initiatives

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- Charter counties: see charter
  - Miami-Dade restrictions on special district formation
  - Broward, Duval & Volusia Counties absorbed many special districts
- Palm Beach County Multi-Jurisdictional Issues Coordination Forum (ILA) (1993)



# Part 4

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## **INTERGOVERNMENTAL AGREEMENTS**

# Intergovernmental agreements: basic principles

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- ❑ **MUTUALITY OF BENEFIT:** All parties must benefit from the agreement
- ❑ **MUTUALITY OF POWERS:** All parties must possess the same authority to provide the service or facility. The agreement cannot confer powers not granted by law
- ❑ **NO TRANSFER OF SOVEREIGNTY:** Only ministerial/operational, not sovereign/legislative/discretionary, powers can be transferred
  - Examples of ministerial/operational: maintenance of traffic control devices, filling road potholes, canal maintenance
  - Examples of discretionary: code enforcement, issuance of permits
- ❑ **MUST BE IN WRITING**

# Intergovernmental agreements: best practices

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- Clarity of purpose and capability of measuring progress toward purpose
- Clearly designated responsibilities
- Adequate and secure funding
- Flexibility and contingencies
- Equity for all parties
- Implementation timelines and authority
- Enforceability of terms
- Dispute resolution procedures
- Efficiency/cost effectiveness
- Feasibility of objectives

# Intergovernmental agreements: informal “agreements”

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- ❑ Common before 1969
- ❑ “Paperless” or “handshake” agreements
- ❑ Not legally enforceable
- ❑ Advantages
  - Pragmatic solution to specific needs
  - Often accomplishes a local jurisdiction’s goals without complex fiscal and jurisdictional components
  - Most widely practiced approach to collaborative public service delivery nationally, based on anecdotal evidence
- ❑ Problems
  - Hard to sustain over time, given lack of formal structure
  - Very susceptible to shifts and changes in politics, personnel, and resources
  - Legal liability issues

# Intergovernmental agreements: memorandum of understanding (MOU)

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- Establishes general guidelines for locally coordinated efforts
- Usually addresses a specific issue(s)
- Not considered legally binding
- Less certain over long periods of time
- Unenforceable when one party fails to meet the specified guidelines

# Intergovernmental agreements: interlocal agreement (ILA)

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- ❑ Authority: (s. 163.01, F.S.)
- ❑ **Binding contract** that establishes specific roles and responsibilities between two or more local governmental entities
- ❑ Generally very specific & confined to a single locale
  - Examples: Provision of stormwater drainage facilities along a specified stretch of roadway
- ❑ Only 3 mandatory ILAs in Florida (none directly affect special districts)
  - Comprehensive planning/school concurrency (§ 163.3177(6)((h), F.S.)
  - Minority Business Enterprise (MBE) Certification (§§ 287.0943 and 287.09431, F.S.)
  - Formation of transportation MPOs (§ 339.175, F.S.)
- ❑ County authority: s. 125.01(1)(p), F.S.
- ❑ Municipal authority: “Home Rule” -- s. 166.021, F.S.
- ❑ May create “a separate legal or administrative entity” to administer the ILA
  - That entity may not tax, issue bonds or obligate principals in its own name

# Interlocal agreements: key components

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- **“Optional” elements (s. 163.01(5), F.S..)**
  - The purpose or power to be exercised and the method to accomplish purpose or manner to exercise power
  - Duration of agreement
  - Method for rescinding or terminating participation
  - The organization, composition, and nature of any separate legal or administrative entity created
  - The manner for providing financial support for purposes set forth
  - The method or formula for equitably providing for and allocating and financing capital and operating costs, including debt service
  - (Additional elements provided in statute)
- **Not effective until filed with the clerk of circuit court (including amendments)**

# Intergovernmental agreements: mutual aid agreement (MAG)

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- ❑ a/k/a/ “Interlocal Service Contract” (ISC)
- ❑ Formal agreement or contract between local governments for provision of services
  - California – extensive use
  - Florida -- generally for “emergency” situations
- ❑ Compare ILAs
  - MAGs/ISCs typically involve 2 or more local governments that are provided service by a single government over a wide service area
  - Less “binding”
- ❑ **Law Enforcement:** Only MAG/ISC mandated in Florida
  - s. 23.1225, F.S. (Law Enforcement, FDLE monitored)
- ❑ **Emergency Services:** Statewide Mutual Aid Agreement (Ch. 252, F.S.)



# Intergovernmental agreements: joint powers agreement

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- ❑ a/k/a “Joint Planning Agreement”
- ❑ Authorized by Growth Management Act (s. 163.3171, F.S.)
- ❑ Voluntary
- ❑ Used by **general purpose governments** to address growth management issues, such as coordinated provision of public services and joint exercise of land use regulations in boundary areas
- ❑ Sets standards or limitations on what actions can be taken by parties involved in regard to new development
- ❑ Recognizes that many services provided by local governments readily cross political boundaries and frequently cause interlocal disagreements and lawsuits

# Resources

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- ❑ [Florida Department of Community Affairs, Special District Information Program](#)
- ❑ [Florida Association of Special Districts](#)
- ❑ [Florida Legislature, Office of Program Policy Analysis & Government Accountability \(OPPAGA\)](#)

# Resources: Florida Legislative Committee on Intergovernmental Relations

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- Created in 1977 as the Advisory Council on Intergovernmental Relations and renamed the Florida Legislative Committee on Intergovernmental Relations (LCIR) in 1996, the Committee is statutorily authorized to do the following:
    - 1) Serve as a forum for the discussion and study of intergovernmental problems.
    - 2) Evaluate the interrelationships among local, regional, state, interstate, and federal agencies in the provision of public services and prepare studies and recommendations to improve organizational structure, operational efficiency, allocation of functional responsibility, and the delivery of service.
    - 3) Analyze the structure, functions, revenue requirements and fiscal policies of the state and its political subdivisions.
    - 4) Examine proposed and existing federal and state programs.
    - 5) Review the research and recommendations of national commissions studying local government relationships and problems.
    - 6) Analyze the fiscal impact of new state programs or amendments to existing programs on municipalities and counties. Section 11.70, F.S.(2006).
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# QUESTIONS?

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**FOR MORE INFORMATION,  
PLEASE CALL OR E-MAIL:**

**Caldwell Pacetti Edwards Schoech & Viator LLP**  
**One Clearlake Center**  
**250 S. Australian Ave., Ste. 600**  
**West Palm Beach, FL 33401**  
**(561) 655-0620**  
**[info@caldwellpacetti.com](mailto:info@caldwellpacetti.com)**