

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1103 Special District Accountability

**SPONSOR(S):** Local Administration & Veterans Affairs Subcommittee, Maggard

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	17 Y, 0 N, As CS	Darden	Miller
2) Public Integrity & Elections Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Special districts are used to provide a variety of local services and are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law. There are two types of special districts: independent special districts and dependent special districts. Special districts are governed generally by the Uniform Special District Accountability Act (Act), which centralizes provisions governing special districts and applies to the formation, governance, administration, supervision, merger, and dissolution of special districts, unless otherwise expressly provided in law.

A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The purpose of a performance audit is to provide objective information that may be used by to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.

The bill requires all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit every five years beginning October 1, 2021, and October 1, 2022, respectively. It also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct performance audits of all independent mosquito control districts and soil and water conservation districts by September 30, 2023, and September 30, 2024, respectively.

The bill requires the annual financial report and annual financial audit report of all special districts to specify separately the total number of people employed by the district, the amount the district budgets for employee salaries and benefits, and each construction project approved by the district to begin after October 1 of the fiscal year and the amount budgeted for the project. It also requires the annual financial report and annual financial audit report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rate of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

Finally, the bill clarifies that the annual financial auditing report of a community redevelopment agency must be filed separately from the annual financial auditing report of the county or municipality that created the district.

The bill may have a fiscal impact on special districts associated with the requirement to report additional information in the annual financial report and the annual financial audit report and will have a fiscal impact on OPPAGA, independent special fire control districts, and hospitals districts associated with the requirement to conduct a performance audit.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Independent Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>1</sup> Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.<sup>2</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>3</sup> Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.<sup>4</sup>

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of governing body of a single county or municipality.<sup>5</sup> An “independent special district” is any district that is not a dependent special district.<sup>6</sup>

According to the Department of Economic Opportunity’s Special District Accountability Program Official List of Special Districts, as of March 3, 2021, the state had 1,785 special districts. There were 1,159 independent special districts and 626 dependent districts.

Special districts are governed generally by the Uniform Special District Accountability Act (Act).<sup>7</sup> The Act centralizes provisions governing special districts and applies to the formation,<sup>8</sup> governance,<sup>9</sup> administration,<sup>10</sup> supervision,<sup>11</sup> merger,<sup>12</sup> and dissolution<sup>13</sup> of special districts, unless otherwise expressly provided in law.<sup>14</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>15</sup>

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<sup>1</sup> See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

<sup>2</sup> See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

<sup>3</sup> 2020 – 2022 *Local Gov’t Formation Manual*, p. 64, available at

<https://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&Committeeld=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last visited Mar. 1, 2021).

<sup>4</sup> The method of financing a district must be stated in its charter. Ss. 189.02(4)(g), 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2017-220, s. 6(6) of s. 3, Laws of Fla. (Sunbridge Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), 388.221 (mosquito control), ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

<sup>5</sup> S. 189.012(2), F.S.

<sup>6</sup> S. 189.012(3), F.S.

<sup>7</sup> S. 189.01, F.S., *but see* ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts), ch. 298, F.S. (water control districts), ch. 388, F.S. (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).

<sup>8</sup> See ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).

<sup>9</sup> See s. 189.0311, F.S. (charter requirements for independent special districts).

<sup>10</sup> See s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).

<sup>11</sup> See s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).

<sup>12</sup> Ss. 189.071 and 189.074, F.S.

<sup>13</sup> Ss. 189.071 and 189.072, F.S.

<sup>14</sup> See, e.g., s. 190.004, F.S. (Ch. 190, F.S. as “sole authorization” for creation of community development districts).

<sup>15</sup> See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

## *Independent Special Fire Control Districts*

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.<sup>16</sup> As of March 1, 2021, there were 64 active independent special fire control districts.<sup>17</sup>

The Independent Special Fire Control District Act<sup>18</sup> provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.<sup>19</sup> The Act controls over more specific provisions in any special act or general law of local application creating a fire control district's charter,<sup>20</sup> requires every fire control district be governed by a five-member board,<sup>21</sup> and provides:

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

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.<sup>27</sup> A district also may levy non-ad valorem assessments.<sup>28</sup> The district board may adopt a schedule of reasonable fees for services performed.<sup>29</sup> Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.<sup>30</sup>

## *Hospital Districts*

Hospital districts are a type of independent special district specializing in the provision of health care services. As of March 1, 2021, there are 27 active hospital districts: 24 that directly operate health care facilities and three that provide oversight for facilities leased by local governments to private sector entities.<sup>31</sup> The charters of hospital districts generally possess a set of core features: a board appointed by the Governor; the authority to build and operate hospitals; the power of eminent domain; the ability to issue bonds payable from ad valorem taxes; the use of ad valorem tax revenue for operating and

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<sup>16</sup> S. 191.003(5), F.S.

<sup>17</sup> Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

<sup>18</sup> Ch. 191, F.S.

<sup>19</sup> S. 191.002, F.S.

<sup>20</sup> S. 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section.

<sup>21</sup> S. 191.005(1)(a), F.S. (fire control district may continue to be governed by a three-member board if authorized by special act adopted in or after 1997).

<sup>22</sup> S. 191.006, F.S. (e.g. the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain).

<sup>23</sup> S. 191.008, F.S.

<sup>24</sup> Ss. 191.006(14) and 191.009(1), F.S.

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

<sup>26</sup> S. 191.012, F.S.

<sup>27</sup> S. 191.009(1), F.S. *But see* art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage "authorized by law approved by vote of the electors.")

<sup>28</sup> S. 191.009(2), F.S. If the district levies a non-ad valorem assessment to fund emergency medical and transport services, the district is prohibited from levying an ad valorem tax to fund those services.

<sup>29</sup> S. 191.009(3), F.S.

<sup>30</sup> S. 191.009(4), F.S.

<sup>31</sup> Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

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

### *Mosquito Control Districts*

Mosquito control districts (MCDs) are created to protect health and safety, improve quality of life, promote economic development, and to allow for the enjoyment of natural attractions of the state by reducing the number of insects that transmit disease within their boundaries.<sup>33</sup> As of March 1, 2021, there are 18 mosquito control districts: 15 independent and three dependent districts.<sup>34</sup>

A MCD may contain part or all of a county or municipality.<sup>35</sup> The creation of new independent MCDs has been prohibited since July 1, 1980.<sup>36</sup> In counties without a district, the board of county commissioners may exercise all the rights, powers, and duties authorized by statute for a MCD or may direct the county health department to do so.<sup>37</sup>

Mosquito control districts are authorized to levy ad valorem taxes not exceeding 10 mills on real and personal property.<sup>38</sup> Each MCD or county participating in arthropod control under the statutes must submit to the Department of Agriculture and Consumer Services (DACS) a report for the preceding month of expenditures from all funds for arthropod control, within 30 days after the end of each month.<sup>39</sup>

### *Soil and Water Conservation Districts*

The stated purpose of soil and water conservation districts (S&WC) is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.<sup>40</sup> All S&WC are created by DACS upon petition by landowners in the proposed district.<sup>41</sup> DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.<sup>42</sup> As of March 1, 2021, there are 56 active districts.<sup>43</sup>

Beginning in 1937,<sup>44</sup> S&WC initially were established to encourage cooperation between governments and local landowners concerning local conservation needs.<sup>45</sup> The authority of S&WC now overlap significantly with other agencies created to manage and protect the state's land and water resources, such as the Department of Environmental Protection,<sup>46</sup> the Department of Economic Opportunity,<sup>47</sup> and

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<sup>32</sup> Florida TaxWatch, *Florida's Fragmented Hospital Taxing District System in Need of Reexamination*, Briefings (Feb. 2009), available at <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination> (last visited Mar. 1, 2021).

<sup>33</sup> Ss. 388.0101 and 388.011(5), F.S.

<sup>34</sup> Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

<sup>35</sup> S. 388.021(1), F.S.

<sup>36</sup> S. 388.021(2), F.S.

<sup>37</sup> Ss. 388.241 and 388.251, F.S. The county health department must keep the books and make all reports require under ch. 388, F.S., and all purchases, whether by bid or otherwise, must be made in accordance with the procedures allowed by the BOCC. The health department must also submit to the BOCC itemized monthly statements of expenses incurred in carrying out the control program in the county.

<sup>38</sup> S. 388.221(1), F.S.

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

<sup>40</sup> S. 582.02(4), F.S.

<sup>41</sup> Ss. 582.10-582.15, F.S.

<sup>42</sup> S. 582.055(3), F.S.

<sup>43</sup> Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

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

<sup>45</sup> DACS Office of Agricultural Water Policy, *Soil and Water Conservation District Supervisor Handbook 3*, available at [https://www.fdacs.gov/content/download/7357/file/Fswcd\\_Handbook\\_Final.pdf](https://www.fdacs.gov/content/download/7357/file/Fswcd_Handbook_Final.pdf) (last visited Mar. 1, 2021).

<sup>46</sup> See, e.g., ch. 408, F.S.

<sup>47</sup> See, e.g., ch. 380, F.S.

water management districts.<sup>48</sup> Due to this jurisdictional overlap, S&WC today primarily focus on working with partners to provide funding and technical support to aid local landowners in conservation efforts.<sup>49</sup>

### Local Government Financial Reports and Audits

Florida law requires all units of local government, including special districts, to complete annual financial reports and annual financial audit reports. Each district must submit its annual financial report to the Department of Financial Services (DFS) within nine months of the completion of its fiscal year.<sup>50</sup> If a district fails to file a completed annual financial report within the required period, DFS must notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity.<sup>51</sup>

Special districts with revenues or total expenditures and expenses exceeding \$100,000 must have an annual financial audit prepared by an independent certified public accountant, unless the district has been notified before the start of the fiscal year that the Auditor General will conduct a financial audit for that year.<sup>52</sup> Special districts with revenues (or a total of expenditures and expenses) between \$50,000 and \$100,000 are required to conduct a financial audit every three years.<sup>53</sup> The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.<sup>54</sup> The audit report for a dependent special district may be included in the annual financial audit report of the county or municipality on which it is dependent. The audit report must be filed with the Auditor General within 45 days of its receipt by the district, but no later than nine months after the end of the fiscal year.<sup>55</sup>

### *Community Redevelopment Agency Auditing Requirements*

Each community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000 must have an annual financial audit prepared by an independent certified public accountant.<sup>56</sup> The audit report must accompany the annual financial report of the county or municipality that created the district.<sup>57</sup>

### Performance Audits

A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies.<sup>58</sup> This may include examining:

- The economy, efficiency, or effectiveness of the program;
- How a program is structured or designed to accomplish its goals and objectives;
- The adequacy of the program to meet the needs identified by the Legislature or local governing body;
- Whether alternative methods exist to deliver services provided by the program;
- The goals, objectives, and performance measures used by the agency to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies;

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<sup>48</sup> See, e.g., ch. 373, F.S.

<sup>49</sup> The primary partners for soil and water conservation districts are the United States Department of Agriculture's Natural Resource Conservation Service, DACS's Office of Agricultural Water Policy, and county governments. DACS Office of Agricultural Water Policy, *supra* note 58.

<sup>50</sup> A district that is required to complete a financial audit report must submit both reports within 45 days of the completion of the audit report, but still no later than nine months after the completion of the fiscal year. S. 218.32(1)(d), F.S.

<sup>51</sup> S. 218.32(1)(f), F.S. A special district required to have a financial audit conducted must file a copy of the audit report along with its annual financial report. S. 218.32(1)(d) F.S.

<sup>52</sup> S. 218.39(1), F.S.

<sup>53</sup> S. 218.39(1)(h), F.S.

<sup>54</sup> S. 218.39(2)-(7), F.S. See ch. 10.550, Local Governmental Entity Audits (9-30-2019), at [https://flauditor.gov/pages/pdf\\_files/10\\_550.pdf](https://flauditor.gov/pages/pdf_files/10_550.pdf) (last visited Mar. 1, 2020).

<sup>55</sup> S. 218.39(7), F.S.

<sup>56</sup> S. 163.387(8)(a), F.S.

<sup>57</sup> S. 163.387(8)(c), F.S.

<sup>58</sup> S. 11.45(1)(j), F.S.

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

The purpose of a performance audit is to provide objective information that may be used to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.<sup>60</sup> The Auditor General currently conducts a performance audit at least once every three years of the local government financial reporting system and the Department of Revenue’s administration of the ad valorem tax laws.<sup>61</sup> A performance audit also must be conducted on any program associated with a proposed discretionary sales surtax levy.<sup>62</sup>

## **Effect of Proposed Changes**

### **Performance Audits**

The bill requires all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit every five years beginning October 1, 2021, and October 1, 2022, respectively. The performance audit must be conducted by a qualified independent entity from a list generated by the Office of Program Policy Analysis and Government Accountability (OPPAGA). To be included on the list, an entity must have at least five years of experience conducting performance audits, must conduct audits according to applicable auditing or evaluation standards of appropriate authoritative bodies, and must follow any relevant industry best practices. The audit report must be filed with the governing body of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than nine months from the beginning of the fiscal year in which the report is due. If the Auditor General conducts a performance audit of a district in the same fiscal year, that report may be used to satisfy this requirement.

The bill requires all independent mosquito control districts and soil and water conservation districts to undergo a performance audit conducted by OPPAGA. The performance audit must compare the services provided by each district with similar services provided by counties and municipalities, examining the similarities and differences as well as relative costs and efficiencies of services. OPPAGA must submit the performance audits of the districts to the President of the Senate and the Speaker of the House of Representatives:

- By September 30, 2023, for independent mosquito control districts.
- By September 30, 2024, for soil and water conservation districts.

The bill defines the term “performance audit” as having the same meaning used in statutes concerning audits performed by the Auditor General.<sup>63</sup>

### **Annual Financial Report and Annual Financial Audit Report**

The bill requires the annual financial report and annual financial audit report for all special districts to specify separately the total number of people employed by the district, the amounts budgeted by the district for employee salaries and benefits, and each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

The bill requires the annual financial report and annual financial audit report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rates of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

<sup>59</sup> S. 11.45(1)(j), F.S.

<sup>60</sup> Gov’t Auditing Standards, s. 1.21 (Gov’t Accountability Office 2018). Rule 10.55(3) of the Auditor General incorporate the 2018 Government Auditing Standards adopted by the U.S. Government Accounting Office (2018 Yellow Book).

<sup>61</sup> S. 11.45(2)(g)-(h), F.S.

<sup>62</sup> S. 212.055(11)(a), F.S.

<sup>63</sup> See notes 60, 61, *supra*, and related text.

The bill revises requirements concerning annual financial audit reports to clarify that the annual financial audit report of a community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000 must be provided separately from the annual financial audit report of the county or municipality that created the district.

**B. SECTION DIRECTORY:**

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

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

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

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

The bill may require expenditures by special districts to the extent additional staff may be necessary to comply with additional reporting requirements created by the bill. Independent special fire control districts and hospitals governed by special districts or the board of trustees of a public health trust will incur expenditures related to the conduct of performance audits.

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

None.

**D. FISCAL COMMENTS:**

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

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2021, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. This amendment requires the annual financial audit report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rates of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

This analysis is drafted to the committee substitute as passed by the Local Administration & Veterans Affairs Subcommittee.