

STORAGE NAME: h3961.ca

DATE: March 9, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 3961

RELATING TO: Big Corkscrew Island Fire Control and Rescue District, Collier County

SPONSOR(S): Representative Saunders

COMPANION BILL(S): HB 3917 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill allows Big Corkscrew Island Fire Control and Rescue District, an independent special fire control district in Collier County, to be governed by a three-member board.

The bill also makes the District a political subdivision of the State.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Codification

The 1997 Legislature created chapter 191, Florida Statutes, to provide for codification of fire control districts' charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. In addition, section 189.429, Florida Statutes, was created by the 1997 Legislature. That section requires that no changes be made to a special district's charter as it exists on October 1, 1997, in the codifying legislation. However, in the 1997 interim, some districts expressed the need to request substantive changes to their charters but because of the number of amendments (special acts) to their charters, they do not have time to codify. This provision was not placed in chapter 191, Florida Statutes.

As a result of the provisions of section 189.429, Florida Statutes, the Chair of the Committee on Community Affairs issued a Memorandum on October 3, 1997, explaining the policy of the Committee for charter codifications for the 1998 Legislative Session. The proposed submittal schedule applies to fire control districts. In part the Memorandum states:

1. Although two bills are preferable (one to codify and one to accomplish the substantive change), the House Committee on Community Affairs will accept one bill (containing the codification and substantive change).
2. The substantive change, if included in the codifying local bill, **must be advertised** clearly and concisely, i.e., "a substantive change to the charter is being sought affecting membership of the Board," or whatever change(s) is applicable.
3. If a substantive change is needed to a District's charter this Session, but codification is too large a task to accomplish at the same time, the Committee will hear bills for any substantive changes that a legislative delegation deems necessary.
4. The Committee will accept voluntary charter codifications from any district for the 1998 Legislative Session. A schedule for submitting the codifying charter is attached and is based on the number of special acts a district currently enjoys. The attached proposed schedule of submittals is based on an extended deadline of 2004, which must be accomplished legislatively. The Committee will have a bill to address this issue during the 1998 Legislative Session. Keep in mind, if they choose to do so, a district may submit its codification earlier than the proposed schedule indicates.

Chapter 191, Florida Statutes, Provisions

Chapter 191, Florida Statutes, is the "Independent Special Fire Control District Act." Its purpose is to establish standards and procedures concerning the operations and governance of independent special fire control districts, and to provide greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of such districts to ensure greater accountability to the public. The Act

requires each district, whether created by special act, general law of local application, or county ordinance, to comply. The section provides that it is the intent of the Legislature that this Act supersede all special acts or general laws of local application provisions that contain the charter of an independent special fire control district. However, those provisions that address district boundaries and geographical subdistricts for the election of members of the governing board are excepted.

The Act provides for the election of the district board of commissioners, including its membership, officers, and meetings. This section requires the business affairs of each district to be conducted and administered by a five-member board. However, the governing boards of districts appointed collectively by the Governor, the county commission, and any cooperating city within the county are excluded from this requirement. All three-member boards existing on the effective date of this Act must be converted to five-member boards. Pursuant to section 191.005(1)(a), districts with a three-member board may remain as three-member boards by special act adopted in 1997 or thereafter.

Currently, the Big Corkscrew Island Fire Control and Rescue District, an independent special district, has a three-member governing board.

Chapter 189, Florida Statutes, Provisions

Chapter 189 is the "Uniform Special District Accountability Act of 1989". The Act provides uniform provisions for special district definitions, creation, elections, comprehensive planning, reporting, non-ad valorem assessment collection, bond issuance, expansion of district boundaries, and the procedure for increasing district assessments. The Act also provides that special districts shall be treated as municipalities for the purposes of section 196.199(1), Florida Statutes, which relates to government property exemption from taxes.

Designation as a political subdivision of the state

In Florida, all governments are not taxed the same. Beginning with Park-N-Shop, Inc. v. Sparkman, 99 So. 2d 571 (Fla. 1957), the Florida Supreme Court decided that property of the federal government, the state, and the counties is immune from taxation. In Sarasota-Manatee Airport Auth. v. Mikos, 605 So. 2d 132 (Fla. 2nd DCA 1992), this total immunity from taxation principle was extended to special districts that are created as political subdivisions of the state. Property that is immune from taxation, even when leased to private entities conducting for-profit activities, is not subject to ad valorem taxation.

Other governmental property is exempt from taxation. Article VII, Subsection 3 (a) of the Florida Constitution exempts all property owned by a municipality and used exclusively for municipal or public purposes. Additionally, property used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation. Section 196.199, Florida Statutes, defines the governmental units that are exempt from taxation, not excluding certain governments that are also immune from taxation, and provides:

Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or

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public purpose or function, as defined in s. 196.012(6). In all such cases, all other interests in the leased property shall also be exempt from ad valorem taxation. In addition, property held by Port Authorities and any leaseholds in Port Authority property are exempt from ad valorem taxation to the same extent that county property is immune from taxation.

Property that is merely exempt from taxation, when leased to private entities conducting for-profit activities, is subject to ad valorem taxation. See Sebring Airport Auth. v. McIntyre, 642 So. 2d 1072 (Fla. 1994); City of Sarasota v. Mikos, 645 So. 2d 417 (Fla. 1994).

Despite this well-accepted county/immune versus municipality/exempt dichotomy in treatment for taxation purposes, subsection (8) of section 1.01, Florida Statutes, defines the words "public body," "body politic," or "political subdivision" to "include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state."

As stated on page 9 of a report entitled "The Taxation of Government Property Used for Non-Public Purposes," prepared by the Staffs of the Senate Finance, Taxation and Claims and House Finance and Taxation Committees on November 16, 1993:

Currently, government property is taxed as follows. Real property and tangible personal property owned by counties and other authorities considered to be subdivisions of the state are immune from taxation, but if property is used for non-public purposes, the leasehold interest in such property is subject to the tax on intangible personal property. Real and tangible personal property owned by municipalities and other authorities not considered to be subdivisions of the state are subject to taxation unless such property is used for public purposes, and therefore exempt from taxation, and the leasehold interest in non-exempt property is subject to the intangible personal property tax.

In Capital City Country Club v. Tucker, 613 So. 2d 453 (Fla. 1993), the Florida Supreme Court rejected a contention that by imposing a state intangible tax that cannot exceed two mills on nonpublic leaseholds of municipal land, the Legislature could exempt the land from the higher level of ad valorem taxation permitted by Article VII, Section 9 of the Florida Constitution. The Supreme Court also rejected a contention that taxation of the fair market value of the land and the imposition of intangible taxes on the leasehold interest amounted to double taxation of the property.

Tax-Exempt Bonds

A tax-exempt bond means any bond (or issue) in which the interest on the bond or bonds issued is excluded from gross income. 26 U.S.C.A. §150(a)(6). State or local bonds are tax-exempt bonds unless the issuance meets an exception. 26 U.S.C.A. §103(a). In order for the bond to be a State or local bond, the bond must be an obligation of a State or political subdivision of the State. 26 U.S.C.A. §103(c)(1). Under subsection 8 of section 1.01, Florida Statutes, "political subdivision" is defined in conjunction with the words "public body," and "body politic," to "include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state."

B. EFFECT OF PROPOSED CHANGES:

The bill allows the District to retain its three-member governing board. If the bill is not adopted, the District's governing board is required to convert to a five-member board pursuant to section 191.005(1)(a), Florida Statutes.

The bill also changes the District's status from a creature of statute, more like a municipality, to a political subdivision, more like a county. By being a political subdivision of the State, the District is an agent of the state. An advantage of this designation is that the District's properties are immune from taxation rather than exempt from taxation. This designation of immune versus exempt becomes important when the district leases its properties. As a political subdivision of the state, the District may lease its property to private entities conducting for-profit activities and the property is not subject to ad valorem taxes.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

N/A

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

An advantage of the "political subdivision" designation is that the District's properties are immune from taxation rather than exempt from taxation. This designation of immune versus exempt becomes important when the district leases its properties. As a political subdivision of the state, the District may lease its property to private entities conducting for-profit activities and the property is not subject to ad valorem taxes.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1: Provides that the Big Corkscrew Island Fire Control and Rescue District shall be governed by a three-member governing board; provides that the District is an independent special district; and provides that the District is a political subdivision of the State.

Section 2: Provides the act shall take effect upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 1, 1998

WHERE? Naples, Florida; Naples Daily News

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The bill is similar to HB 3917 in that both relate to retaining three-member governing boards for fire and rescue districts in Collier County. The differences between HB 3917 and this bill are:

- HB 3917 relates to all five fire control rescue districts in Collier County, including Big Corkscrew Island Fire Control and Rescue District. Whereas, this bill relates only to Big Corkscrew Island Fire Control and Rescue District; and
- HB 3917 requires the governing board of the district to adopt a resolution which is later approved by the electors of the district. This bill does not require

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resolution or elector approval. Upon passage of this bill, the District retains its three-member board.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor has agreed to one amendment:

Amendment 1: Remove the language designating the District a political subdivision of the state. It is not the intent of the District to become a political subdivision of the state, but rather be able to issue tax-exempt bonds. A section in the Federal Tax Code provides that a designation of "political subdivision" is required in order to issue tax-exempt bonds. Independent special districts may issue tax-exempt bonds without a "political subdivision" designation.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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