

STORAGE NAME: h0927a.ca
DATE: March 27, 1997

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

BILL #: HB 927
RELATING TO: Lee County (Independent Fire Control Districts)
SPONSOR(S): Representative Livingston
COMPANION BILL(S): SB 906 (i)

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

- (1) COMMUNITY AFFAIRS YEAS 5 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates the "Lee County Independent Special Fire Control District Act" for the purpose of providing standards and procedures regarding 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.

The bill defines various terms and provides for the expansion, merger, and dissolution of such districts. The bill provides general governmental powers, special powers relating to fire suppression and prevention and other emergency services, and authorizes districts to levy ad valorem taxes, non-ad valorem assessments, user charges, and impact fees. The bill authorizes all independent fire districts to issue various types of bonds and other obligations.

The Economic Impact Statement indicates that the costs associated with this bill are indeterminate until such time as the provisions of the bill may be implemented by each of the fire control districts in Lee County.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida has a long history of using special districts to provide various government services and infrastructure, including drainage and other water-related services, fire control, mosquito control, lighting, and roads and bridges. While the need to create special districts to provide these services has significantly declined as Florida has become more and more urbanized, there are still a number of areas in the state where necessary services such as fire control are provided by special districts, rather than by a general purpose local government (i.e., a county or municipality).

Florida's State Comprehensive Plan, under the heading and goal relating to Governmental Efficiency, includes the following policy, codified as subparagraph 187.201(21)(b)2., Florida Statutes:

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.

Most independent fire control districts have been created by special act of the Legislature. In the case of districts which have been in existence for many years, there is often an original enabling act, and then a long series of subsequent amending acts stretching over a period of years or even decades. Any change in the boundaries or powers of such a district requires the enactment of an additional, amendatory special act. There is presently no general law which provides uniform powers to independent fire districts.

Chapter 189, Florida Statutes, is entitled the Uniform Special District Accountability Act of 1989. That chapter contains a number of general provisions applicable to special districts, including requirements for and limitations on the formation of future districts, merger, and dissolution of districts. Definitions are provided to distinguish between dependent and independent special districts, and a detailed procedure is provided to govern the conversion of districts from one-acre/one-vote elections to one-person/one-vote governance. However, specific powers of individual districts and types of districts are essentially left to the particular special acts pertaining to each district.

An exception to the normal practice of creating and specifying the powers of special districts by special act may be found in chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980. Under that general law chapter, community development districts may be established (depending on the proposed acreage) by either a rule adopted by the governor and cabinet sitting as the Florida Land and Water Adjudicatory Commission, or by county or municipal ordinance. All of the powers and duties of community development districts (including fire control) are

provided by general law in chapter 190 (and, as to certain provisions, in chapter 189) of the Florida Statutes.

The following is a list of independent fire control districts in Lee County and chapters of the Laws of Florida which created the districts:

1. Alva Fire Control and Rescue Service District (ch. 76-413, L.O.F.);
2. Bayshore Fire Protection and Rescue Service District (ch. 76-414, L.O.F.);
3. Boca Grande Fire Control District (ch. 22372, L.O.F., 1943) **Lee and Charlotte Counties;**
4. Bonita Springs Fire Control and Rescue District (ch. 65-1828, L.O.F.);
5. Estero Fire Protection and Rescue Service District (ch. 76-408, L.O.F.);
6. Fort Myers Beach Fire Control District (ch. 27676, L.O.F., 1951 and ch. 73-532, L.O.F.);
7. Fort Myers Shores Fire Protection and Rescue District (ch. 76-409, L.O.F.);
8. Iona-McGregor Fire Protection and Rescue Service District (ch. 75-421, L.O.F.);
9. Lehigh Acres Fire Control and Rescue Service District (ch. 63-1546, L.O.F.);
10. Matlacha-Pine Island Fire Control District (ch. 63-1588, L.O.F.);
11. North Fort Myers Fire Control and Rescue Service District (ch. 29240, L.O.F., 1953);
12. San Carlos Park Fire Protection and Rescue Service District (ch. 76-411, L.O.F.);
13. Sanibel Fire Control District (ch. 30930, L.O.F., 1955);
14. South Trail Fire Protection and Rescue Service District (ch. 76-412, L.O.F.);
15. Tice Fire Protection and Rescue Service District (ch. 76-410, L.O.F.);
16. Captiva Island Fire Control District (ch. 30929, L.O.F., 1955); and
17. Upper Captiva Fire Protection and Rescue Service District (ch. 90-397, L.O.F.).

B. EFFECT OF PROPOSED CHANGES:

Section 1 -- Provides that sections 1-13 of the act may be known as the "Lee County Independent Special Fire Control District Act." The act lists the fire control districts in Lee County to which the act applies and the special acts creating each district.

Section 2 -- Provides that the purpose of the act is to establish standards and procedures concerning the operations and governance of independent special fire control districts in Lee County, 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.

Section 3 -- Defines the following terms: "board," "district," "elector," "emergency medical service," and "rescue response service."

Section 4 -- Requires each district in Lee County, whether created by special act or general law of local application to comply with the "Lee County Independent Special Fire Control District Act" (Act). The section provides that it is the "intent" of the Legislature that this Act supersede all special acts or general laws of local application that contain the charter of an independent special fire control district located in Lee County and that address the same subjects as the provisions contained within the Act except as such acts, laws, or ordinances address district boundaries or authorize the levy and assessment of ad valorem taxes, special assessments, non-ad valorem assessments, impact fees, or fees or charges by a district.

It is further provided that the Act does not require any modification to district financing or operations which would impair existing contracts, including collective bargaining agreements, debt obligations, or covenants and agreements relating to bonds validated or issued by the district.

Section 5 -- 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 the Captiva Fire Control District, Boca Grande Fire Control District, and Sanibel Fire Control District remain governed by three-member boards.

The board must be elected in nonpartisan elections by the electors of the district. Candidates for the board are required to qualify with the county supervisor of elections. Except as specifically stated in the Act, elections must be held at the same time and in the same manner as prescribed by law for holding general elections in accordance with section 189.405(2)(a) and (3), F.S. Each member is elected for a term of four years and serves until the member's successor is chosen and qualified.

Candidates for the Board may qualify by paying a \$25 filing fee or providing petitions of at least 25 registered electors of the district on forms provided by the supervisor of

elections. The forms are to be submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates pursuant to section 105.035, F.S.

If, on the effective date of this Act, a district presently elects members of its board, the next election must be conducted in accordance with this section. This section does not require the early expiration of any member's term of office by more than 60 days.

Board members assume office on the first Tuesday following the first Monday in January of the succeeding year following the election. Within 60 days after the newly-elected members have taken office, the board must organize and elect its officers. Funds of the district may only be disbursed upon order or resolution of the board. A "petty cash" account is authorized.

Members of the board may each be paid a salary or honorarium which is determined by at least a majority-plus-one vote of the board. Such salary or honorarium is prohibited from exceeding \$500 per month for each member. Members may be reimbursed for travel and per diem expenses pursuant to section 112.061, F.S.

When a vacancy occurs on the board, the remaining members are permitted to appoint a qualified person to fill the seat until the next general election, at which time an election must be held to fill the vacancy. Upon assuming office, each member must take and subscribe to the oath of office and within 30 days after assuming office, give a surety bond in the sum of \$1,000. The cost of such bond is borne by the district.

The board is required to maintain records of all meetings, resolutions, proceedings, certificates, bonds given by commissioners, and corporate acts. The records are open to inspection in the same manner as state, county, and municipal records are open under chapter 119, F.S. All meetings of the board are open to the public and governed by chapter 286, F.S., section 189.417, F.S., and other applicable general laws.

Section 6 -- Grants the district general governmental powers which the board may exercise by majority vote, including but not limited to the following:

- ✓ To provide for a pension or retirement plan for its employees. The board is also authorized to provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees.
- ✓ To adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the district, the conduct of the business of the district, the maintenance of records, and the form of other documents and records of the district. The board is also authorized to adopt ordinances and resolutions that are necessary to conduct district business.
- ✓ To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate for any purpose authorized in the Act.

- ✓ To hold, control, and acquire by donation or purchase any public easement, dedication to public use, platted reservation for public purposes, or reservation for those purposes authorized by the Act.
- ✓ To borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, taxes, and assessments, warrants, notes, or other evidence of indebtedness, and to mortgage real and personal property when necessary.
- ✓ To charge user and impact fees authorized by resolution of the board, in amounts necessary to conduct district activities and services, and to enforce their receipt and collection "in the manner prescribed by resolution not inconsistent with law."
- ✓ To exercise the power of eminent domain pursuant to chapter 73, F.S., or chapter 74, F.S., over any property within the district, except municipal, county, state, special district, or federal property used for a public purpose. Eminent domain may only be exercised for district purposes relating solely to the establishment and maintenance of fire stations and substations.
- ✓ To assess and impose upon real property in the district ad valorem taxes and special assessments.
- ✓ To impose and foreclose special assessment liens or to impose, collect, and enforce non-ad valorem assessments pursuant to chapter 197, F.S.

Section 7 -- Grants the independent special fire control districts in Lee County "special powers" relating to the provision of fire suppression and prevention, which involves the establishment and maintenance of fire stations and substations and the acquisition and maintenance of firefighting and fire-protection equipment deemed necessary to prevent or fight fires. The board is authorized to carry out the following powers:

- (1) Establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to chapter 401, F.S., and any certificate of public convenience and necessity or its equivalent issued for those purposes.
- (2) Employ, train, and equip firefighting and other personnel, including volunteer firefighters, as necessary to accomplish the duties of the district.
- (3) Conduct public education to promote awareness of methods to prevent fires and reduce loss of life and property.
- (4) Adopt and enforce firesafety standards and codes and enforce the rules of the State Fire Marshal.

- (5) Conduct arson investigations and cause-and-origin investigations.
- (6) Adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency, as provided in chapter 252, F.S.
- (7) Contract with general-purpose local government for emergency management planning and services.

Section 8 -- Provides that a district is authorized to levy ad valorem taxes and non-ad valorem assessments for district purposes. Each district would be authorized by this general provision to levy ad valorem taxes up to 3.75 mills, upon voter approval, notwithstanding lower millage caps in the special acts of individual districts. This provision applies unless a higher amount has previously been authorized. In that event, the higher, previously authorized rate applies. With respect to user charges, the board is permitted to provide a schedule of charges for emergency services, including firefighting occurring in or to structures outside the district.

The board may establish a schedule of impact fees, if the general-purpose local government has not adopted an impact fee for fire services. The schedule of impact fees must be in compliance with any standards set by general law for new construction to pay for the cost of new facilities and equipment. The board may enter into agreements with general-purpose local governments to share in the revenues from fire protection impact fees imposed by such governments.

Section 9 -- Establishes the procedures for districts to follow for the levy and collection of assessments. A district must adopt by resolution a non-ad valorem assessment roll pursuant to the procedures contained in this section or in section 197.3632, F.S., if:

- (a) The assessment is levied for the first time;
- (b) The assessment is increased beyond the maximum rate authorized by general law or special act at the time initially imposed;
- (c) The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- (d) There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

The board must declare by resolution the nature of the proposed service, including the location of the capital facilities, personnel, and equipment needed to provide the service; any other projected expense of providing the service or improvement; the portion of the expense to be paid by the assessments; and the manner in which and when such assessments must be made.

Once the resolution is adopted or the preliminary assessment roll is completed, whichever is later, the board must publish notice of the resolution once in a newspaper of general circulation in Lee County. The notice must briefly state in general terms a description of the proposed service or improvements and that the plans, specifications, and estimates are available to the public at the district's offices. The notice must also state the date and time of the hearing to hear objections, which hearing may be no earlier than 15 days after publication of the notice.

Once the preliminary assessment roll is completed, the board must by resolution fix a time and place at which the owners of the property to be assessed or other interested parties may appear before the board and comment on the proposal to make such improvements or provide such services, including the cost of such actions and the amount to be assessed against each property so improved. Following the meeting of the board to hear objections from affected property owners, the board must make a final decision on whether to levy the non-ad valorem assessments, adjusting such assessments based on information received at or prior to the hearing.

When approved by resolution of the board, the final assessment roll must be filed with the vice chairman of the board, and such assessments shall become first liens upon the property against which such assessments are made until paid.

The assessments approved by the board may be levied, assessed, and collected pursuant to sections 197.363-197.3635, F.S. The collection and enforcement of the assessments levied by the district must be at the same time and in the same manner as county taxes. Counties, school districts, and other governmental entities are made subject to the assessments, and to liens therefor, to the same extent as private property owners.

Section 10 -- Authorizes independent special fire control districts in Lee County to issue various types of bonds, including general obligation bonds, assessment bonds, revenue bonds, notes, bond anticipation notes, or other evidences of indebtedness to finance all or part of any proposed improvements by this act or under general law or special law. The total annual payments for the principal and interest on such indebtedness must not exceed 50% of the total annual budgeted revenues of the district. The bonds are payable from the non-ad valorem assessments or other non-ad valorem revenues, including user fees or charges or rental income authorized by this act or general law. No proceedings may be required for the issuance of bonds other than those provided by this section and by general law. Detailed and lengthy provisions are set forth relating to issuance of bonds and the use of bond proceeds, and authority is given for the issuance of refunding bonds.

Section 11 -- Requires each independent special fire control district to adopt a 5-year plan to identify the facilities, equipment, personnel, and revenue needed by the district during such 5-year period. The plan must be updated in accordance with the provisions contained in section 189.415, F.S., relating to the special district facilities report.

Section 12 -- Establishes the conditions under which the boundaries of an independent special fire control district are permitted to be modified, extended, enlarged or dissolved. Lands may be added or deleted from a district only by special act of the Legislature, subject to a referendum vote.

The merger of a district with all or part of another independent special district or dependent fire control district is effective only when it is ratified by the Legislature. A district's merger with another governmental entity is not justification for increasing the ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless such increase is approved by the electors of the district by referendum.

A district may only be dissolved by special act of the Legislature, subject to referendum vote of the electors of the district. If legislative dissolution of a district is proposed in order to consolidate fire services under county government, the county is required to prepare a report describing the plans for merger. The county commission is required to consider the report at a public hearing. If the report is adopted by the commission, the request for legislative dissolution is permitted to proceed. The report must be filed as an attachment to the economic impact statement regarding the special act or general law of local application dissolving the district.

Section 13 -- Provides effective date of upon becoming a law.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Creates a new chapter in the Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

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

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

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

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

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?

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

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

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

It may, depending on the rate of ad valorem currently provided in each special act of each independent fire control district.

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

It sets the ad valorem tax rate at no higher than 3.75 mills. This may allow some districts to increase their current rate.

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

No.

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

No.

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

See #2.a. above.

3. Personal Responsibility:

Not applicable.

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom:

Not applicable.

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment:

Not applicable.

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
 - (2) Who makes the decisions?
 - (3) Are private alternatives permitted?
 - (4) Are families required to participate in a program?
 - (5) Are families penalized for not participating in a program?

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

- 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?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION ANALYSIS:

See above Section B. Effect of Proposed Changes.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 10, 17, 1996

WHERE? The Ft. Myers News-Press, Ft. Myers, FL

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:

Section 4 of the bill states legislative intent to preempt, but does not repeal, various special laws or general laws of local application which address "the same subjects as" the bill. Because these other laws (1) are not identified, and (2) are not repealed, it is likely

questions will arise as to whether the general laws of local application or the special law provisions related to a particular district, will control under various circumstances.

It is also unknown which powers are currently possessed by which individual districts and, accordingly, what effect this bill will have on each district. For instance, no information has been provided, or is immediately available, as to which individual districts currently have the authority to issue bonds, or as to the particular revenue-raising authority possessed by each district (e.g., ad valorem taxing authority, including the maximum authorized millage; and special assessment authority).

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The following amendments were adopted by the House Committee on Community Affairs at its meeting on March 27, 1997. The amendments do not substantively affect the advertised notice.

Amendments #1-3 conform this bill with Senate Bill 906 which was passed by the Senate Committee on Community Affairs on March 17, 1997. Amendment #4 corrects a bill drafting error.

- #1 Removes the Boca Grande Fire Control District from inclusion in the Lee County Independent Special Fire Control District Act.
- #2 Clarifies when an elected member of the board is required to assume office.
- #3 Clarifies that the board may adopt ordinances and resolutions that are necessary to conduct district business, provided such ordinances do not conflict with any ordinances of a local general purpose government within whose jurisdiction the district is located.
- #4 Corrects bill drafting error.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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