

**STORAGE NAME:** h1605.ca

**DATE:** March 14, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
ANALYSIS - LOCAL LEGISLATION**

**BILL #:** HB 1605

**RELATING TO:** Estero Fire Rescue District

**SPONSOR(S):** Representative C. Green

**TIED BILL(S):** None

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

- (1) COMMUNITY AFFAIRS (PRC)
  - (2) FINANCE & TAXATION (FRC)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill codifies all prior special acts relating to the Estero Fire Rescue District (District) in Lee County into a single act and repeals all prior special acts relating to the District's charter.

The bill declares that the District is an independent special district, and conforms the District's charter with the provisions of the "Independent Special Fire Control District Act."

The bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language.

No fiscal impacts are anticipated for either fiscal year 2000-01 and 2001-02 according to the Economic Impact Statement.

This bill does not make any substantive changes to current law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Estero Fire Rescue District was created on July 1, 1976. The purpose of the District is to provide fire protection and other services in emergency and crisis situations. The District is governed by a five-member board of commissioners. The District currently levies 1.97 mills.

The size of the District is 56 square miles in Lee County, and it serves 10,000 residents. The District currently employs 30 persons and has no volunteers. The District owns five firefighting vehicles. In 1999, the District received 1,171 calls. There has been a 34% increase in calls in the District between 1998 and 1999 due to the rapid population growth. The District expects population growth of more than 50,000 residents by the year 2005 with no annexation contemplated. The average response time to calls is 5 minutes.

**Codification**

Codification is the process of bringing up-to-date a special act. Special acts are not codified and, after the Legislature passes the initial enabling act, special acts continuously amend or alter previously enacted special acts. To ascertain the current status of any special act, it is necessary to research all amendments or changes made to the act since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to go to one special act to determine the current charter of a district, instead of two, ten, twenty, or sometimes more special acts.

Section 191.015, Florida Statutes, provided 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 which required that no changes be made to a special districts charter as it exists on October 1, 1997, in the codifying legislation and that all prior Legislative acts relating to the district be repealed.

The 1998 Legislature further amended section 191.015, Florida Statutes, by (i) *extending the deadline to codify to December 1, 2004*, (ii) allowing for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs, and (iii) removing the requirement that a codified charter must be submitted prior to the introduction of any act relating to the charter or prior to the

scheduled deadline. In addition, section 189.429 was amended by removing the prohibition of substantive amendments in a district's codification bill.

There are some independent special fire control districts which do not have to codify as they do not have more than one special act. Most of these independent special fire control districts previously were governed by ordinances. However, these ordinances were preempted by chapter 191, Florida Statutes, (see section 191.004, Florida Statutes). Some independent special fire control districts have codified their charter even though they currently do not have any special acts. These codifications are generally a restatement of chapter 191, Florida Statutes.

### **Status Statement Language**

Section 189.404(5), Florida Statutes, provides that after October 1, 1997, the charter of any newly created special district shall contain and, as practical, the charter of a preexisting special district shall be amended to contain, a reference to the status of the special district as dependent or independent. When necessary, the status statement shall be amended to conform with the departments determination or declaratory statement regarding the status of the district.

### **Chapter 191, Florida Statutes, Provisions**

Chapter 191, Florida Statutes, is the "Independent Special Fire Control District Act" (Act). The Act's purpose is to establish standards and procedures concerning the operations and governance of the 53 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. Chapter 191, Florida Statutes, also does not repeal any authorization providing for the levying of ad valorem taxes, special assessments, non-ad valorem assessments, impact fees, or other charges.

### **District Board of Commissioners**

Section 191.005, Florida Statutes, 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 which is elected in nonpartisan staggered elections by the electors of the district. Districts which currently have three-member boards were required to increase to five members unless a special act was enacted after 1997 which provides that they are three-member boards. Although a special act is needed to have fewer than five members, a district can have more than five commissioners on its governing board. Pursuant to paragraph (c) of subsection 191.005(1), the Act does not require the elimination of board seats from those boards with more than five commissioners.

Candidates for the board are required to qualify with the county supervisor of elections. Except as specifically stated in chapter 191, Florida Statutes, elections must be held at the same time and in the same manner as prescribed by law for holding general elections in accordance with subsections 189.405(2)(a) and (3), Florida Statutes. Each member is

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elected for a term of 4 years and serves until the member's successor is chosen and qualified. Candidates for the board must qualify by paying a filing fee equal to 3 percent of the salary or honorarium paid for the office, or a filing fee of \$25, whichever is more. In the alternative, candidates may qualify by submitting a petition that contains the signatures of at least 3 percent of the district's registered electors, or any lesser amount of signatures as directed by chapter 99, chapter 582, or other general or special law. No election or party assessment shall be levied if the election is nonpartisan. The forms are to be submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates pursuant to section 105.035, Florida Statutes.

If a district presently elects members of its board, the next election must be conducted in accordance with section 191.005, F.S. This section does not require the early expiration of any member's term of office by more than 60 days.

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, Florida Statutes.

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 \$5,000. 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, Florida Statutes. All meetings of the board are open to the public and governed by chapter 286, Florida Statutes, section 189.417, Florida Statutes, and other applicable general laws.

#### Powers of the District

The district's general governmental powers, which may be exercised by majority vote, include but are 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.

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- 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, Florida Statutes, or chapter 74, Florida Statutes, 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, Florida Statutes.

#### Special Powers of the District

Independent special fire control districts are granted “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:

- Establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to chapter 401, Florida Statutes, and any certificate of public convenience and necessity or its equivalent issued for those purposes.
- Employ, train, and equip firefighting and other personnel, including volunteer firefighters, as necessary to accomplish the duties of the district.
- Conduct public education to promote awareness of methods to prevent fires and reduce loss of life and property.
- Adopt and enforce fire safety standards and codes and enforce the rules of the State Fire Marshal.
- Conduct arson investigations and cause-and-origin investigations.
- Adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency, as provided in chapter 252, Florida Statutes.
- Contract with general-purpose local government for emergency management planning and services.

### Taxes and Assessments

Districts are authorized to levy ad valorem taxes and non-ad valorem assessments for district purposes. Each district is 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.

### Bonds

Independent special fire control districts are authorized 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 percent 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.

### Boundaries and Mergers

There are 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.

**B. EFFECT OF PROPOSED CHANGES:**

This bill codifies all prior special acts relating to the to the Estero Fire Rescue District of Lee County.

This bill codifies chapters 76-408, 81-414, 81-421, 83-447, 84-467, 84-468, 87-442, 87-447, 88-545, 90-400, and 94-455, Laws of Florida, relating to the Estero Fire Rescue District in Lee County into a single act.

The bill removes obsolete language which was preempted by the Independent Special Fire Control District Act and inserts applicable chapter language.

The bill modifies the boundaries of the District. The District has submitted a letter stating that while the language for the metes and bounds has changed, the District boundaries have not.

Finally, the bill declares that if there is a conflict with a provision of this act and a provision of another act, then this act controls.

**C. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Provides that this act constitutes the District's charter codification pursuant to chapter 97-255, Laws of Florida; Provides legislative intent and preserves the authority granted to the District by general law and its legislative enactments; Grants authority to preserve all of the District's authority and power.

**Section 2:** Codified, reenacts, amends and repeals special acts relating to the District's charter.

**Section 3:** Recreates and reenacts the Estero Fire Rescue District as an independent special fire control district as follows:

Section 1: Definitions. -- Provides definitions.

Section 2: Creation; Legal Description. -- Creates the Estero Fire Rescue District; Describes the District boundaries; Authorizes the chief or other governing official to render services to communities adjacent to the land described in the District boundaries, or such other places.

Section 3: District Board. -- Provides for a five-member governing board who shall reside in the District, elected by the qualified electors residing in the District; Provides for 4-year terms for commissioners; Provides schedule of elections; Authorizes the District to adopt policies and procedures for the proper function and operation of the District; Provides for the employment of personnel; Provides for special district elections; Requires only registered voters residing within the District shall be permitted to vote; Provides costs of any election shall be borne by the District; Provides all elections shall be called by resolution of the Board; Provides that election results shall be determined by a plurality of the votes cast; Provides for assumption of office; Provides that vacancies are filled by appointment by the remaining commissioners; Provides that elections shall be held in accordance with the provisions of chapter 191, Florida Statutes, as amended from time to time.

- Section 4: Organization of Board. -- Provides for the election of Board officers; Authorizes members to receive compensation for expenses incurred while performing the duties of their office; Requires members to execute a surety bond of \$5,000; Requires treasurer to execute a surety bond of \$10,000; Provides the premium for such bonds shall be paid from the funds of the District.
- Section 5: Levy of Ad Valorem Taxes. -- Authorizes the board to levy millage tax on taxable property within the District; Provides the tax rate shall be fixed by a resolution of the Board following public hearings of the proposed budget; Authorizes the property appraiser and tax collector to take all appropriate action to comply with the intent and purpose of this act.
- Section 6: Fiscal Year, Protest Procedures, Property Appraiser, Tax Collector. -- Provides definition of fiscal year; Provides for a tax roll to be prepared and delivered to the property appraiser by June 1; Allows land owners to file a protest against the proposed assessments; Provides protest procedures; Provides that it is the duty of the county tax collector to collect the District's assessments; Provides the property appraiser shall receive reimbursement, and the tax collector shall receive a commission or fee for collecting such taxes; Provides that the amount of reimbursement to the property appraiser and the tax collector's commission or fee shall be based on the applicable law of Florida in effect at the time of rendering the service.
- Section 7: Tax Liens on Lands, Collection and Enforcement. -- Provides that special assessments are a lien and treated with the county's lien in regards to collection and enforcement.
- Section 8: District Funds. -- Provides that the proceeds of the District shall be deposited in a bank authorized to receive public funds; Provides the bank is designated by a resolution of the Board.
- Section 9: Borrowing Money, Revenue Anticipation Certificates, Liability of Board and Commissioners. -- Authorizes the Board to borrow money for District purposes; Restricts total amount of indebtedness the District may incur; Authorizes the Board to issue revenue anticipation certificates which shall be issued and validated under general law; Authorizes the Board to pledge anticipation revenue and delinquent tax assessment liens for the payment of such certificates, which shall be the sole security for said loan; Provides that no member is liable for District loans; Prohibits the Board to create indebtedness or incur obligation for any sum that it was unable to pay out of current district funds, however, the commissioners may make purchases of equipment if funds are available.
- Section 10: Use of District Funds. -- Provides that no funds of the District shall be used for any purpose other than the administration of the affairs and business of the District, the construction, care, maintenance, upkeep, operation, and purchase of fire fighting and rescue equipment or a fire and rescue station(s), and/or the payment of salaries of District personnel; Authorizes the Board to buy, own, lease, and maintain a fire department within the District, and to purchase, acquire by gift, own, lease, and dispose of fire fighting and rescue equipment and property, real and personal.



Section 11: Record of Meetings, Board to Adopt Rules, Annual Report, Budget. -- Requires minutes of meeting; Requires vote of majority of commissioners for Board action; Authorizes the Board to adopt rules and regulations for the transaction of its business and in implementing and carrying out the provisions of this act; Authorizes the Board to provide all things necessary for rescue services and the prevention, extinguishment, and control of fires in the District.

Section 12: Fire Prevention Code, Personnel, Salaries. -- Grants the Board the right and power to enact a fire prevention code or ordinance; Grants the authority to hire firefighters and other personnel; Provides for the compensation and any other wages.

Section 13: Severability. -- Provides for the severability of any unconstitutional provision.

Section 14: Effect of Conflict. -- Provides for act's control if there are conflicting provisions.

Section 15: Notice of Intention. -- Provides for the required notice of intention.

**Section 4:** Repeals special acts relating to the District's charter.

**Section 5:** Provides for the validity of remaining sections or provisions of this act should any part of the act be held invalid or unenforceable.

**Section 6:** Provides for the validity of the provisions of this act should any part of the act be held in conflict with any other act.

**Section 7:** Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 3, 1999

WHERE? News Press in Fort Myers, Florida

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:

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A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

A letter was received from the Estero Fire Protection and Rescue Service District stating that while the language for the metes and bounds description has changed, the District boundaries have not.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

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Terri S. Boggis

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Joan Highsmith-Smith