

STORAGE NAME: h0969.ca

DATE: March 9, 2000

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

BILL #: HB 969

RELATING TO: Braden River Fire Control District

SPONSOR(S): Representative Ogles

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 Braden River Fire Control District in Manatee County into a single act and repeals all prior special acts relating to the District's charter.

The bill 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.

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:

Codification & Status Statement

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exists on October 1, 1997, in the codifying legislation and that all prior Legislative acts relating to the district be repealed.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.

Pursuant to s. 189.404(2)(a), Florida Statutes, the Legislature prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), Florida Statutes. Independent districts created after September 30, 1989, must address and require certain provisions in their charters. The following describes the requirements:

- District purpose;
- Powers, functions, and duties of the district regarding ad valorem taxation, bond issues and other revenue-raising capabilities, budget matters, lien issues, and other similar issues;
- The methods for establishing the district;
- The method for amending the charter of the district;
- The membership and organization of the governing board of the district;

- The maximum compensation of a governing board member;
- The administrative duties of the governing board of the district;
- The applicable financial disclosure, noticing, and reporting requirements;
- If the district has authority to issue bonds, the procedures and requirements for issuing bonds;
- The procedures for conducting any district elections or referendum and the qualifications of an elector of the district;
- The methods for financing the district;
- The method(s) for collecting non-ad valorem assessments, fees, or service charges;
- Geographic boundary limitations;

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 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, Florida Statutes. 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.

- 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 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 chapter 191, F.S., 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.

C. EFFECT OF PROPOSED CHANGES:

This bill codifies all prior special acts relating to the Braden River Fire Control District in Manatee County into one special act.

The bill removes obsolete language which was preempted by the Independent Special Fire Control District Act and inserts applicable chapter language. For a more detailed explanation of the changes to the District's charter, please see the above summary regarding Chapter 191, Florida Statutes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Codifies, reenacts, amends, and repeals chapters 85-454, 88-488, 90-455, 91-396, 93-395, 94-417, and 95-461, Laws of Florida, relating to the Districts charter.

Section 2: Recreates and reenacts the Braden River Fire Control and Rescue District to read:

Section 1: Incorporation -- Creates the Braden River Fire Control and Rescue District and provides District's purpose.

Section 2: Jurisdiction -- Describes the Districts geographic boundaries.

Section 3: District Board of Commissioners (Board) -- Provides that the District's governing board consists of five commissioners who reside in the District; Provides for assumption of office; Provides the organization of the governing board; Provides for the disbursement of funds; Provides for a petty cash account; Provides additional powers and duties to the treasurer; Allows for compensation of board members; Provides maximum compensation; Provides special notice of any salary changes; Provides for additional allowance for secretary-treasurer; Provides for reimbursement of travel and per diem expenses; Provides for removal of commissioner and states grounds for removal; Provides that board members, upon assuming office, 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 thereof being borne by the district; Provides that the board is required to maintain records; Provides that the records are open to inspection; Provides that all meetings of the board are open to the public.

Section 4: General Powers -- Grants general powers to the board; Provides that the district can sue and be sued; Authorizes the board to adopt and use a seal and a facsimile, and to make and execute contracts and other instruments necessary to exercise its powers; Provides for a pension or retirement plan for its employees; Provides for an extra compensation program; Authorizes the board to hire consultants; Allows board to borrow money and accept gifts, use grants or loans of money or other property; Authorizes the board to hold, use, sell, and dispose of such moneys or property for any district purpose; Authorizes board 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; Authorizes the adoption of ordinances and

resolutions for district business; Provides that any resolution or ordinance adopted by the board and approved by referendum vote may only be repealed by referendum vote; Allows for office within the county or municipality in which the district is located and the appointment of an agent of record; Grants the authority to acquire and dispose of real and personal property; Authorizes the board to purchase equipment; Authorizes the District to hold, control, and acquire public easement, dedication, platted reservation, or reservation; Provides the authority to lease any facility or property of any nature for the use of the District when necessary; Grants authority to charge user and impact fees, and to enforce their receipt and collection; Grants power of eminent domain; Provides limitations of power; Requires that eminent domain may only be exercised for District purposes relating solely to the establishment and maintenance of fire stations and substations, specifically including the power to take easements; Authorizes the District to cooperate or contract with other persons or entities, etc. with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act; Authorizes the District to assess and impose upon real property in the district non-ad valorem assessments; Authorizes the enforcement and collection of non-ad valorem assessment pursuant to chapter 197, Florida Statutes; Authorizes the selection of any qualified public depository as a depository for its funds; Requires adequate insurance on all real and personal property, equipment, employees, volunteer firefighters, and other personnel; Authorizes the District to organize, participate in, and contribute monetarily to organizations or associations relating to the delivery of or improvement of fire control, prevention, emergency rescue services, or district administration.

Section 5: Exemption from Taxation -- Provides that the District's exercise of powers benefits the people of the state and area; Provides for exemption from taxation.

Section 6: Special Powers -- Grants special powers to the District relating to facilities and duties, including the power to: establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment; employ, train, and equip firefighters, volunteer firefighters and other personnel, as necessary to accomplish the duties of the District; employ and fix the compensation of a fire chief or chief administrator, who shall reside within the District, the board shall prescribe the duties of fire chief; Grants the fire chief or chief administrator power to employ or terminate the employment of other personnel; Provides that the compensation and other conditions of employment of the officers and employees of the District shall be provided by the board; Allows District to conduct public education to promote awareness of methods to prevent fire and reduce loss of life and property; Allows District to adopt and enforce fire safety standards and codes and enforce the rule of the State Fire Marshal; Requires District to conduct arson investigations and cause-and-origin investigations; Allows the adoption of hazardous material safety plans and emergency response plans in coordination with the county emergency management agency; Allows District to contract with general purpose local government for emergency management planning and services.

Section 7: Taxes, Non-Ad Valorem Assessments; Impact Fees; and User Charges -- Authorizes the right, power, and authority to levy non-ad valorem assessments for the construction, operation, and maintenance of district facilities and services; Provides that the rate of such assessments must be fixed by

resolution; Provides that the rate set by the District may exceed the maximum rates established by this act, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous 5 years; Requires referendum approval if non-ad valorem assessment exceeds the growth rate; Provides that non-valorem assessments shall be imposed, collected, and enforced pursuant to section 191.011, Florida Statutes; 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 that special assessments are a lien and treated with the county's lien in regards to collection and enforcement.

- Section 8: Schedule of Special Assessments -- Sets forth assessment procedures and amounts which are divided into three general classifications: vacant parcels, residential parcels (single family residential and condominium residential), and commercial/industrial parcels.
- Section 9: User Charges -- Provides the board a reasonable schedule of charges for special emergency services, for fighting fires occurring in or at refuse dumps or as a result of an illegal burn, responding to emergencies that threaten the health and safety of persons, property, or the environment, a false alarm; inspecting structures, plans, and equipment to determine compliance with fire safety codes and standards; Provides that the failure to pay any charge assessed is a lien against property under this section.
- Section 10: Impact Fees -- Authorizes the District to establish a schedule of impact fees; Provides that impact fee proceeds must be kept separate from other revenues; Provides that 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; Allows the District to enter into agreements with general purpose local governments to share in the revenues from fire protection impact maintained to ensure the proper use of impact fees.
- Section 11: Borrowing Power of the District -- Grants the District the authority 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; Prohibits the total annual payments for the principal and interest on such indebtedness from exceeding 50 percent of the total annual budgeted revenues of the district.
- Section 12: Existence -- Provides the District shall exist until dissolved by law.
- Section 13: Definitions -- Provides definitions.
- Section 3:** Provides a severability clause.
- Section 4:** Provides for liberal interpretation of this act.
- Section 5:** Repeals Chapters 85-454, 88-488, 90-455, 91-396, 93-395, 94-417, and 95-461, Laws of Florida.

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Section 6: Repeals all conflicting laws.

Section 7: Provides a statement relating to codification of this act.

Section 8: Provides effective date of upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 8, 2000

WHERE? Bradenton Herald

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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Four technical amendments are offered by Representative Ogles:

Amendment #1 - Places intent language outside the charter provisions.

Amendment #2 - Adds status statement declaring the district "an independent special fire control district."

Amendment #3 - Correct scrivener's's error.

Amendment #4 - Removes Section 7 of the bill as this is superfluous language.

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VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Terri S. Boggis

Joan Highsmith-Smith