

STORAGE NAME: h1033.lgva.doc

DATE: January 25, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 1033

RELATING TO: Lee Co./Bayshore Fire Service Dist.

SPONSOR(S): Representative Green

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill codifies all prior special acts relating to the Bayshore Fire Protection and Rescue Service District (District) into a single act.

In regards to ad valorem taxation, this bill conforms the charter to Florida law, which provides for a maximum rate of \$3.75 per \$1,000 of net taxable assessed valuation. The current maximum rate limit is \$2.50 per \$1,000 of net taxable assessed valuation. An actual increase in the ad valorem tax rate would be subject to the requirements of section 9(b), Article VII, of the Florida Constitution, thus requiring voter approval if the district raised the rate beyond what is currently authorized by the voters.

The bill permits the Board to levy non-ad valorem taxes in accordance with Florida law. It currently does not have that authority.

The bill directs the Board to determine the salaries for fire department and emergency service personnel.

The bill allows per diem expenses and salaries for the Board and lowers the surety bond amount from \$5,000 to \$1,000 that new Board members must give to the Governor in accordance with Florida law. It also removes the requirement that the Treasurer gives the Governor a \$10,000 surety bond. The bonds are conditioned on the faithful performance of the duties of the Board.

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

The Economic Impact Statement indicates that there is no fiscal impact on the state budget, on local governments or to the District.

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 checked="" type="checkbox"/> | N/A <input 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:

In regards to ad valorem taxation, this bill conforms the charter to chapter 97-340, Laws of Florida, which provides for a maximum rate of \$3.75 per \$1,000 of net taxable assessed valuation. The current maximum rate limit is \$2.50 per \$1,000 of net taxable assessed valuation. An actual increase in the ad valorem tax rate would be subject to the requirements of section 9(b), Article VII, of the Florida Constitution, thus requiring voter approval if the district raised the rate beyond what is currently authorized by the voters.

The bill permits the Board to levy non-ad valorem taxes in accordance with chapter 97-340, Laws of Florida. It currently does not have that authority.

B. PRESENT SITUATION:

Background

The Bayshore Fire Protection and Rescue Service District (District) was created in 1976, by chapter 76-414, Laws of Florida and has been subsequently amended by special acts. It is an independent special district.

There have been many attempts to raise the authorized millage rate limit for the District. The rate limit was last raised in 1987, pursuant to chapter 87-422, Laws of Florida, where it passed a referendum by one vote, 66 to 65, which provided that the rate limit be raised from \$1.50 per \$1,000 to \$2.50 per \$1,000 of net taxable assessed valuation. Chapter 95-459, Laws of Florida, provided, upon passage of a referendum, for an additional rate limit increase from the \$2.50 approved in 1987 to a proposed \$3.00 per \$1,000 of net taxable assessed valuation. The 1995 proposed rate limit increase failed to pass. Thirty-two votes were cast for raising the rate limit and fifty votes were cast for maintaining the rate limit at 1987 levels. The Board is not authorized to levy non-ad valorem taxes.

In 1997, chapter 97-340, Laws of Florida, created 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 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.

In 1991, chapter 91-398, Laws of Florida, amended the charter by allowing the District Board of Commissioners to employ personnel that it deemed necessary; removed the debt cap limit of \$125,000; authorized the purchase of rescue equipment; authorized the disposal of rescue

equipment; provided authority to the Board to provide all things necessary for the operation of a rescue district; and made grammatical corrections to the charter.

In 1988, chapter 88-545, Laws of Florida, amended the charter by removing the prohibition by other governmental entities to annex portions of the District.

In 1987, chapter 87-447, Laws of Florida, amended the charter by allowing for recall elections of Board members and repealing requirements for the electorate to vote on the abolishment of the District.

In 1981, chapter 81-414, Laws of Florida, amended the charter by requiring the elections of Board members, Board member qualifications and the process to fill Board member vacancies to have uniform standards, procedures and regulations with the other fire control districts in Lee County, Florida.

Currently, District Board Members are allowed compensation for actual expenses.

New Board members must give to the Governor a surety bond in the amount of \$5,000 and the Treasurer must give to the Governor a \$10,000 surety bond conditioned on the faithful performance of the duties of the Board.

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was authorized by the 1997 Legislature when it amended chapter 189, F.S., to provide for codification of all special district charters either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. Section 189.429, F.S. (1997), also required that no changes be made to a district's charter, as it existed on October 1, 1997. However, the 1998 Legislature amended section 189.429, F.S., to: (1) extend the codification deadline to December 1, 2004; (2) allow 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; (3) remove the prohibition of substantive amendments in a district's codification bill; and (4) remove 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. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended section 189.429, F.S. creating subsections (2) and (3). The subsections provide that reenactment of existing law pursuant to section 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supercede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Schedule Of Submittals Of Special Districts' Charters

Special Districts with less than 2 special acts	1999 Legislative Session
Special Districts with 3 - 4 special acts	2000 Legislative Session
Special Districts with 5 - 7 special acts	2001 Legislative Session
Special Districts with 8 - 12 special acts	2002 Legislative Session
Special Districts with more than 12 special acts	2003 Legislative Session
Special Fire Control Districts	2004 Legislative Session

Since the enactment of sections 189.429 and 191.015, F.S., 110 special districts have codified their charters. A list of those special districts that have codified pursuant to sections 189.429 and 191.015, F.S., is available at the office of the Committee on Local Government and Veterans Affairs, Florida House of Representatives.

Fire District Codification

There are some independent special fire control districts that do not have to codify, as they do not have more than one special act. Most of these independent special fire control districts were previously 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.

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 supersedes 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 that is elected in nonpartisan staggered elections by the electors of the district. Districts that currently have three-member boards were required to increase to five members unless a special act was enacted after 1997 that 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 board of any district may request the local legislative

delegation that represents the area within the district to create by special law geographical subdistricts for board seats. Any board of five members or larger elected on a subdistrict basis as of the effective date of this act shall continue to elect board members from such previously designated subdistricts, and this act shall not require the elimination of board seats from such boards.

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, 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 that 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 levy non-ad valorem assessments against the taxable real estate lying within the territorial bounds of the District. The amounts of the non-ad valorem assessments shall not exceed the rates set forth in section 15 of chapter 89-502, Laws of Florida, unless increased to an amount not to exceed the average annual growth rate in Florida personal income over the previous five years, as provided in section 191.009(2), Florida Statutes.

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 ad valorem taxes, and special assessments, on real property in the district.

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, Assessments, and Impact Fees

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. In order to levy ad valorem taxes in a newly annexed area, approval at referendum is required.

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 commission adopts the report, 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 Bayshore Fire Protection and Rescue Service District in Lee County into a single act and repeals all prior special acts relating to the District's charter. This bill includes the following charter provisions: describing the purpose for the District; describing 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; describing the methods for establishing the District; describing the method for amending the charter of the District; describing the membership and organization of the governing board of the district; describing the compensation of a governing board member; describing the administrative duties of the governing board of the District; describing the applicable financial disclosure, noticing, and reporting, requirements; describing the procedures and requirements for issuing bonds; describing the procedures for conducting any district elections or referenda and the qualifications of an elector of the district; describing the methods for financing the district; describing the authorized millage rate; describing the methods for collecting non-ad valorem assessments, fees, or service charges; describing the District planning requirements; and describing the geographic boundary limitations.

In regards to ad valorem taxation, the bill conforms the charter to chapter 97-340, Laws of Florida, which provides for a maximum rate of \$3.75 per \$1,000 of net taxable assessed valuation. The current maximum rate limit is \$2.50 per \$1,000 of net taxable assessed valuation. An actual increase in the ad valorem tax rate would be subject to the requirements of section 9(b), Article VII, of the Florida Constitution, thus requiring voter approval if the district raised the rate beyond what is currently authorized by the voters.

The bill permits the Board to levy non-ad valorem taxes in accordance with chapter 97-340, Laws of Florida.

The bill directs the Board to determine the salaries for fire department and emergency service personnel.

The bill allows per diem expenses and salaries for the Board in accordance with chapter 97-340, Laws of Florida. The maximum salary allowed is \$500 a month and must be approved by a majority-plus-one vote of the Board. A public notice must be issued at least 2 weeks before any votes are scheduled to make changes to Board compensation.

The bill changes the surety bond amount from \$5,000 to \$1,000 that new Board members must give to the Governor in accordance with chapter 97-340, Laws of Florida. It also removes the requirement that the Treasurer gives to the Governor a \$10,000 surety bond. These bonds are conditioned on the faithful performance of the duties of the Board.

The bill states that if there is a conflict between this act and the provisions of chapter 97-340, Laws of Florida, those provisions of chapter 97-340, shall supersede this act.

The bill provides that the District's charter may only be amended by special act.

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

In compliance with section 189.404(5), F.S., this bill provides that the District is an independent special district.

D. SECTION-BY-SECTION ANALYSIS:

- Section 1:** States that this act constitutes the codification of special acts relating to this district.
- Section 2:** States that all previous laws pertaining to this District are codified, reenacted, amended, as provided herein.
- Section 3:** Recreates and reenacts the district charter, providing the following:
- Section 1: Provides definitions for words and phrases used in the act.
- Section 2: Provides the geographical boundaries for the District and amends charter.
- Section 3: Creates governing board, allows for the employment of personnel, provides for compensation, provides for organization and provides procedures for the governing board executing bonds to the Governor.
- Section 4: Defines powers, duties, and responsibilities for the District.
- Section 5: Authorizes the governing board to assess ad valorem taxes, non-ad valorem assessments and provides guidelines.
- Section 6: Defines the fiscal year.
- Section 7: Provides that District funds must be deposited in qualified depositories and provides guidelines for issuing checks.
- Section 8: Provides authority to borrow money.
- Section 9: Defines the procedure for board actions and provides the authority to adopt policies and regulations.
- Section 10: Allows the governing board to enact a fire prevention code.
- Section 4:** Provides for liberal construction.
- Section 5:** Provides that if any part of this act is deemed void, the other parts remain in effect.
- Section 6:** Provides that in the event of a conflict, this act shall control.
- Section 7:** Repeals prior special acts relating to this District.
- Section 8:** This act takes effect upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

December 21, 2001

WHERE? News-Press, 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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

NONE

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

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