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DATE: July 1, 2002

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-352, Laws of Florida

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

BILL #: HB 957
RELATING TO: Lealman Special Fire Control District (Pinellas County)
SPONSOR(S): Representative Farkas
TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL (W/D)
 - (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 provides that the Lealman Fire Control District will remain as the taxing authority with respect to fire services, over any lands in its boundaries that are annexed by other taxing authorities.

The bill permits other taxing authorities to collect the applicable tax, or assessment for fire services, and remit it to the District, at the District's annually adopted standard rate. The District's current millage rate is 5.323.

The bill takes effect on January 1, 2003.

This bill stands repealed, and the provisions of the District's current charter resume on January 1, 2008.

According to the economic impact statement, this bill does not have a fiscal impact.

The bill alters the general and special law provisions that apply to the District's imposition and collection of ad valorem taxes. Pursuant to House Rule 5.6(b), the bill may not be placed on the Special Order Calendar for expedited consideration because it provides an exemption from general law. (See section II.C. "EFFECT OF PROPOSED CHANGES:".)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input 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"/> |

The bill provides that the Lealman Fire Control District shall remain the taxing authority with respect to fire services, over any lands in its boundaries that are annexed by other taxing authorities. According to the economic impact statement residents living in areas that are annexed by taxing authorities with lower fire service taxes would be required to continue paying the District at its higher rate. The District's current millage rate is 5.323.

B. PRESENT SITUATION:

The Lealman Fire Control District (District) is an independent special district that is located in Pinellas County. The District's charter states that the District provides fire services to, and receives assessments from, all unincorporated lands within the District's boundaries. Further, the charter states that any land within the District's boundaries that becomes annexed to a municipality will be excluded from the District, effective the following January 1st.

The District's charter currently states that the District provides fire services to, and receives assessments from, all unincorporated lands within their boundaries. The charter provides that any land within the District's boundaries that becomes annexed to a municipality will be excluded from the District. The District relies heavily upon commercial property to support its tax base, and a large portion of the commercial property within the District has recently been annexed to surrounding municipalities. The District's current millage rate is 5.323.

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 amends the District's charter to state that if any municipality or other fire control district annexes land within the District's boundaries, the District shall continue as the sole taxing, enforcing, and service providing authority for fire control purposes to the annexed land. The bill permits municipalities to collect the applicable tax, or assessment for fire services, and remit it to the District, at the District's annually adopted standard rate. The District's current millage rate is 5.323.

This procedure is an exemption from the general law governing municipal annexation within independent special districts as provided in chapter 171.093, Florida Statutes.

The bill alters the general and special law provisions that apply to the District's imposition and collection of ad valorem taxes. Pursuant to House Rule 5.6(b), the bill may not be placed on the Special Order Calendar for expedited consideration because it provides an exemption from general law.

This bill is effective on January 1, 2003 and stands repealed on January 1, 2008.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsection (2) of section 3 of section 1 of chapter 2000-426, Laws of Florida, to provide that the District will continue to provide services to any unincorporated area that is located within the District's boundaries, after the annexation of the area by a municipality.

Section 2: Amends section 11 of section 1 of chapter 2000-426, Laws of Florida, to provide that the District will continue as the sole taxing, enforcing, and service-providing authority for District purposes to any unincorporated area that is located within the District's boundaries, after the annexation of the area by a municipality, or other fire control district; permits municipalities to collect the applicable tax, or assessment for fire services, and remit it to the District, at the District's annually adopted standard rate. The District's current millage rate is 5.323.

Section 3: Provides a sunset provision stating that the changes made by this bill to subsection (2) of section 3 of section 1 of chapter 2000-426, Laws of Florida will terminate on January 1, 2008.

After January 1, 2008, the subsection will revert to current provisions in chapter 2000-426, Laws of Florida. The subsection will once again provide that any parcel of land within the boundaries of the District that is annexed by a municipality will be excluded from the District on January 1, following the annexation.

Section 4: Provides a sunset provision stating that the changes made by this bill to section 11 of section 1 of chapter 2000-426, Laws of Florida, will terminate on January 1, 2008. After January 1, 2008, the section will revert to current provisions in chapter 2000-426, Laws of Florida. The section will once again provide that any unincorporated area that lies within the District's boundaries, and is annexed by a municipality, will not be subject to a levy of the District's ad valorem taxes.

Section 5: Provides that this bill shall take effect on January 1, 2003.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 15, 2001

WHERE? St. Petersburg Times: St. Petersburg, Pinellas County, 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:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

Fire District Tax Information for Fiscal Year 2002

	Column 1	Column 2	Column 3
	Millage	Taxable Value of 1 Mill	Budgeted Ad Valorem
Belleair Bluffs	1.475	\$203,859	\$300,692
Clearwater	3.001	\$769,775	\$2,310,095
Dunedin	2.350	\$248,754	\$584,572
Gandy	2.070	\$70,803	\$146,562
Largo	2.615	\$528,412	\$1,381,797

Pinellas Park	2.474	\$271,577	\$671,881	
Safety Harbor	3.167	\$54,918	\$173,925	
Tarpon Springs	1.236	\$133,482	\$164,984	
Seminole	2.219	\$1,884,296	\$4,181,253	
East Lake	1.505	\$1,874,025	\$2,820,408	
Lealman	5.323	\$677,324	\$3,605,396	
High Point	2.929	\$846,745	\$2,480,116	
Tierra Verde	1.190	\$501,212	\$596,442	
South Pasadena	2.186	\$75,449	\$164,932	
Totals		\$8,140,632	\$19,583,056	2.406

2.406 = Average Fire District Millage

Explaining the Chart

The chart on the preceding page was provided by the City of St. Petersburg Development Services Department, and it contains the most current tax information for fire districts located in Pinellas County. As demonstrated by the chart, the District's millage rate of 5.323 is approximately twice that of the Countywide average.

The second column in the chart is entitled, "Taxable Value of 1 Mill". The numbers in this column represent the amount that would be raised in each district by imposing a 1-mill tax on the property located in the district. Thus, the District raises \$677,324.00 for each 1-mill tax levied on the property within its boundaries. The total amount of revenue generated by a district's ad valorem tax rate is attained by multiplying a district's "millage rate", located in column 1, by a district's "taxable value of 1 mill", located in column 2. Thus, the District anticipates receiving \$3,605,396.00 in ad valorem tax revenue for the 2002 fiscal year.

The concern has been raised that this bill may result in the residents of annexed areas being subject to double taxation. If a municipality incorporates fire service charges into its ad valorem taxes, and annexed residents are required to pay the District's ad valorem, and non-ad valorem taxes, the residents would be subject to paying twice for fire services. According to representatives from a municipality located in Pinellas County, this double taxation issue will have an adverse effect on municipalities annexing unincorporated territory, thus restricting the choices of residents in those areas.

However, according to the attorney for the District, double taxation issues will be prevented by the provision in the bill that allows municipalities to collect the applicable tax, or assessment for fire services, and remit it to the District, at the District's annually adopted rate of 5.323 mills. The attorney stated that the portion of a municipality's ad valorem tax that is earmarked for fire control service could be subtracted from the ad valorem rates of the annexed residents that are required to pay the District.

However, according to the economic impact statement, residents living in municipalities that assess lower fire service taxes will be required to continue paying the District at its higher rate.

Inconsistencies within the District's Charter

The District's charter in subsection 2 of section 3 states that:

If any area, tract, or parcel of land within the boundaries of the District shall hereafter become annexed to a municipality, such area, tract, or parcel of land shall be excluded from the District effective the next January 1 following such annexation by a municipality.

Thus, when read alone, it would be reasonable to assume that the boundaries of the District would not be amended to exclude the area annexed until January 1 of the year following the annexation. However, contradictory language located in section 11 of the charter states that:

For the purposes and requirements of this Act, after the annexation by a municipality of any unincorporated area within the Lealman Special Fire Control District, the annexed area shall be treated as lying within the corporate boundaries of the annexing municipality, and shall not be subject to a levy of the ad valorem tax which is authorized by this Act.

This section implies that the District's boundaries are amended, and ad valorem taxation by the District ceases immediately after annexation.

According to a memo prepared by the Sr. Assistant Pinellas County Attorney, these internal inconsistencies in the charter have prevented the District from utilizing the benefits of its charter provisions, as well as section 171.093, Florida Statutes, (Statute). This Statute was enacted by the Legislature during the 2000 Session, and it sets forth a scheme for special districts and annexing municipalities to resolve issues of funding, and responsibility for providing services. The Statute provides a procedure for an interlocal agreement between the special district providing services up to the date of annexation, and the annexing municipality. If an interlocal agreement cannot be reached, the Statute provides that the special district will continue to provide services to the disputed area for a period of four years following the annexation. During this four-year period, the municipality will pay the district an amount equal to what the district would have collected had the property remained part of the district.

The District's charter provisions were codified when the District was created in 2000, by 2000-426, Laws of Florida. However, the Statute was also implemented during the 2000 Session, by 2000-304, Laws of Florida. Normally this would indicate that the District's charter was passed later, and its provisions should be controlling. However, according to the Sr. Assistant Pinellas County Attorney, since special laws are generally codified in later chapters, the provisions of the District's charter cannot be assumed to control.

It is in the context of this dispute that the District has requested this bill. According to the attorney for the District, the bill is in response to the numerous annexations of commercial property within the District's boundaries by neighboring municipalities. Further, Pinellas County employs a "first response" system of emergency service, whereby the emergency unit that is closest to an emergency call, is responsible for responding to that call. Thus, the District's attorney has stated that the annexations have resulted in the District continuing to serve as first responder to areas that have been de-annexed, in spite of the fact that the District no longer has taxing authority over them.

However, according to representatives from a municipality located in Pinellas County, the provisions of the County's "first response" system impose the same burden on all fire control districts within the County.

The attorney for the District has stated that the annexations have resulted in a dramatic decrease in the District's tax base, which in turn requires residents of the District to shoulder the tax burden for fire services to their own properties, as well as the properties annexed by municipalities.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Alex Abdo

Joan Highsmith-Smith

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

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Joan Highsmith-Smith