



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

##### Effect of HB 1717

This bill is a codification of all special acts relating to the Upper Captiva Fire Protection and Rescue Service District, an independent special fire control district in Lee County. Consistent with s. 191.015, F.S., the bill preserves all legislative authority, including the authority to annually assess and levy taxes, impact fees, and non-ad valorem assessments, and conforms the charter to ch. 191, F.S., the Independent Special Fire Control District Act.

The charter provides that the District is governed by a commission consisting of five members serving four year terms, elected on a nonpartisan basis by qualified electors residing in the District. Commissioners serve without compensation, but are entitled to reimbursement of actual and necessary expenses. Each commissioner must place a \$5,000 bond, the treasurer a \$10,000 bond, with the premiums paid by the District.

The District may levy and collect an ad valorem tax not to exceed 3.75 mills. Additionally, the District may levy and collect non-ad valorem assessments and impact fees in accordance with ss. 191.009 and 191.011, F.S. Further, the District may incur debt and issue bonds as provided for in Art. VI, s. 12, State Constitution, and s. 191.012, F.S.

##### 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 55 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. As provided in section 191.009(2), Florida Statutes, non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, 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 five years.
- 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. 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. SECTION DIRECTORY:

Section 1. Provides for the codification of all special acts relating to the Upper Captiva Fire Protection and Rescue Service District pursuant to s. 191.015, F.S.

Section 2. Provides for the codification, reenactment, amendment and repeal of chs. 89-478 and 90-397, L.O.F.

Section 3. Recreates and reenacts the charter of the Upper Captiva Fire Protection and Rescue Service District as follows:

Section 1. Provides for the District name of the Upper Captiva Fire Protection and Rescue Service District.

Section 2. Provides for the District boundaries; and provides authority to render services in the waters adjacent to the District's lands and adjacent communities.

Section 3. Provides for District powers as provided in ch. 97-340, L.O.F., and chs. 189 and 191, F.S., along with specific authorities including the power to establish and maintain a fire suppression and control service, and the provision of emergency medical services.

Section 4. Provides for a five member board of commissioners, qualifications, and four year staggered terms in accordance with schedules provided in ch. 97-340, L.O.F.; provides for nonpartisan elections; provides for vacancies; provides that commissioners will serve without compensation but shall be entitled to expense reimbursement; provides that commissioners will take an oath of office prescribed by Art. II, s. 5(b), State Constitution, and s. 876.05, F.S.; and provides for each commissioner to give a \$5,000 bond, with the treasurer giving a \$10,000 bond.

Section 5. Relates to the organization of the board of commissioners; the adoption of bylaws; the removal of a commissioner for three consecutive unexcused absences; the requirements for the distribution of funds; and the keeping of certain records open to the public.

Section 6. Provides for a fiscal year of October 1 through September 30; requires an annual budget pursuant to the requirements of ch. 200, F.S.; authorizes the levying of an ad valorem tax at a millage rate not exceeding 3.75 mills, except as otherwise provided in s. 191.009, F.S.; and authorizes the levy of non-ad valorem assessments in accordance with ss. 191.009 and 191.011, F.S.

Section 7. Relating to indebtedness and use of funds; allows the District to incur debt and issue bonds as provided in Art. VII, s. 12, State Constitution, and s. 191.012, F.S.; allows funds to be used for District purposes including the constructing, purchasing, leasing, owning and maintaining a fire department and rescue service, and the disposal of surplus real and personal property. Additionally, the District may enter into interlocal agreements.

Section 8. Provides for the adoption of a 5-year plan regarding needed facilities, equipment, personnel, and revenues; provides for plan updates in accordance with s. 189.415(2), F.S.

Section 4. Provides that the act is construed as remedial and provides for liberal construction.

Section 5. Provides for severability.

Section 6. Repeals chs. 89-478 and 90-397, L.O.F.

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

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

January 21, 2004.

WHERE?

*News-Press*, a daily newspaper of general circulation in Lee, Charlotte, Collier, Glades, and Hendry Counties.

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

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 1717 attempts to repeal ch. 89-478, L.O.F., which was previously repealed by ch. 90-397, L.O.F. A technical amendment should resolve this issue.

Additionally, HB 1717 draws all of the District's powers from ch. 97-340, L.O.F., by reference thereby counteracting the purpose of codification, which is to bring current into one act all of the previous acts affecting a special district. In that way, anyone wishing to know the powers and duties of the District will only need to look to one place, one act. HB 1717 should include within its text any powers, duties, or otherwise that are presently contained in ch. 97-340, L.O.F., and then the reference to the District should be stricken from ch. 97-340, L.O.F.

#### **IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES**

The Sponsor intends to offer a strike all amendment to resolve the drafting issues noted above. The strike all amendment will accomplish the following:

- Deletes the repeal of ch. 89-478, L.O.F., which was previously repealed by ch. 90-397, L.O.F.
- Deletes the incorporation by reference of ch. 97-340, L.O.F.
- Repeals that portion of ch. 97-340, L.O.F., that references the Upper Captiva Fire Protection and Rescue Service District.