

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 381 Trailer Estates Fire Control District
SPONSOR(S): Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Smith</u>	<u>Cutchins</u>
2) <u>Local Governement & Veterans' Affairs</u>	_____	_____	_____
3) <u>Judiciary</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Trailer Estates Fire Control District (District) in Manatee County, an independent fire control district, was created in 1963 by chapter 63-1587, Laws of Florida, and has been subsequently amended by special acts.

This bill sets forth the codified charter of the District, including the powers currently authorized under the District's enabling act and subsequent special act amendments to that act, and certain other powers authorized for independent fire control districts by chapter 191, Florida Statutes.

The bill preserves the District's current authority to levy non-ad valorem assessments.

No fiscal impacts are anticipated for either fiscal year 2004-05 or 2005-06 according to the Economic Impact Statement.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill. (See section I.B. "EFFECT OF PROPOSED CHANGES:").

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:

The Trailer Estates Fire Control District, an independent fire control district, was created in 1963 by chapter 63-1587, Laws of Florida, and has been subsequently amended by special acts.

As an independent fire control district, the District is permitted to exercise only those powers set forth in its charter and in ch. 191, F.S.¹

The District is codifying all prior special acts of the district into a single act, as required by ch. 189, F.S.²

The District is amending its charter to incorporate the following powers provided in ch. 191, F.S.:

a board of five commissioners; the organization of the board; procedures for the governing board executing bonds to the Governor; district elections; 4-year term limits; the Supervisor of Elections to give results of the election; expenses of the Supervisor of Elections; vacancies; defining the fiscal year; the District to acquire and hold real and personal property, sue and be sued, enter into contracts, and perform other functions necessary to carry out the provisions and intent of this act; debt from being created without the approval of the board of commissioners; and commissioners not guilty of malfeasance in office will be relieved of any personal liability for any acts done by them while holding office in the District.

The bill creates an exemption to general law. The bill provides that the publication of a sample ballot pursuant to s. 101.20, F.S., is not required.

Currently the District has the power and authority to levy special assessments against the taxable real estate within its bounds in order to provide funds for the purpose of the District. The rate of the assessments shall be fixed by a resolution of the board of commissioners, and shall not exceed the limits set out in section 7 of the charter as set forth in section 3 of the bill. The bill preserves the District's current authority to levy non-ad valorem assessments:

...not [to] exceed the sum of \$50 per annum [on business firms and buildings, \$75 per annum on homes, \$0.50 per lot on vacant lots, and \$0.50 per acre or fraction thereof on unsubdivided acreage. Apartment buildings and tourist courts are to be construed as business buildings; provided, however, there shall be an additional assessment of \$0.50 for each rental unit.

¹ See *infra* Background on Chapter 191, F.S.

² Chapter 93-352, L.O.F., provides for the election of district boards of fire commissioners for all fire control districts in Manatee County; provides for filling vacancies, provides for compensation and reimbursement of per diem and travel expenses. This special act is not repealed by this bill.

Trailers and mobile homes with or without cabanas, carports, or utility rooms shall be construed as homes.

Background on the Codification Process

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 ch. 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.

The 1998 Legislature amended s. 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 s. 189.429, F.S., creating subsections (2) and (3). The subsections provide that reenactment of existing law pursuant to section 189.429: (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.

According to the schedule of submittals, Special Fire Control Districts are to submit their charters during the 2004 Legislative Session.

Background on Chapter 191, F.S.

Chapter 191, F.S., 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, F.S., 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, F.S., 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 ch. 191, F.S., 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), F.S. 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 ch. 99, F.S., ch. 582, F.S., 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 s. 105.035, F.S.

If a district presently elects members of its board, the next election must be conducted in accordance with s. 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 s. 112.061, F.S.

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 ch. 119, F.S. All meetings of the board are open to the public and governed by ch. 286, F.S., and s. 189.417, F.S., 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 s. 191.009(2), F.S., 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 ch. 73, F.S., or ch. 74, F.S., 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 ch. 197, F.S.

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 ch. 401, F.S., 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 ch. 252, F.S.
- 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 that this act is the codification pursuant to s. 191.015, F.S., of the Trailer Estates Fire Control District into a single, comprehensive special act charter; states the Legislative intent for the act; preserves all district authority, including the authority to annually assess and levy against each taxable property in the district a special assessment not to exceed \$75.

Section 2. Amends, codifies, reenacts, and repeals chapters 63-1587, 65-1894, 65-1895, 72-613, 80-534, 82-323, 84-473, 94-373, and 95-503, Laws of Florida.

Section 3. Without providing any additional powers other than those authorized by ch. 191, F.S., the Trailer Estates Fire Control District is reenacted and re-created to read:

Section 1. Restates section 1, chapter 63-1587, L.O.F., providing the status of the District.

Section 2. Amends section 1, chapter 63,-1587, L.O.F., as amended by section 1 of chapters 65-1894 and 72-613, L.O.F., providing for the boundaries of the District.

Section 3. Provides for a board of five commissioners; provides for the organization of the board; provides the board will not receive any compensation for their services, but the secretary and treasurer may receive a salary; provides procedures for the governing board executing bonds to the Governor.

Section 4. Provides for District elections; provides for 4-year term limits.

Section 5. Provides the Supervisor of Elections to give results of the election; provides for the expenses of the Supervisor of Elections.

Section 6. Provides for vacancies; provides vacancies will be filled by the remaining commissioners by the appointment of a successor commissioner or commissioners from among the registered voters residing in the District who are freeholders within the District.

Section 7. Restates section 4, chapter 63-1587, L.O.F., as amended by section 1 of chapters 65-1895, 80-534, 82-323, and 95-503, L.O.F., authorizing non-ad valorem assessments.

Section 8. Restates section 5, chapter 63-1587, L.O.F., providing such special assessments shall be a lien on the land until the assessments and taxes have been paid.

Section 9. Restates section 6, chapter 63-1587, L.O.F., providing the District funds must be deposited in qualified depositories and provides guidelines for issuing checks or drafts.

Section 10. Defines the fiscal year.

Section 11. Provides the District may acquire and hold real and personal property, sue and be sued, enter into contracts, and perform other functions necessary to carry out the provisions and intent of this act; provides no debt will be created without the approval of the board of commissioners.

- Section 12. Restates section 7, chapter 63-1587, L.O.F., providing the board of commissioners with the power to borrow money for the purpose of the District; restates that the District commissioners shall not incur obligations for any amount which the district is unable to pay out of it's funds.
- Section 13. Restates section 8, chapter 63-1587, L.O.F., as amended by section 1, chapter 84-473, L.O.F., providing that District funds shall only be used for the administration of the affairs, and business of the District; for the acquisition, construction, maintenance, and operation of sites for fire stations; for firefighting, fire station, rescue equipment and any ancillary structures; providing payment of essential personal.
- Section 14. Amends section 9, chapter 63-1587, L.O.F., providing the board of commissioners will have the authority to lease, rent, trade, sell, and purchase real and personal property necessary to carry out the purpose of this act; and the right to acquire such property by any means whatsoever; providing for contracts.
- Section 15. Amends section 10, chapter 63-1587, L.O.F., restates that a record shall be kept of all Board of Fire Commissioner meetings; restates that in such meetings a concurrence of a majority of commissioners consisting of a quorum is necessary for any affirmative actions by the board; providing for the authority to employ by written contract the services of a technical advisor; providing for the authority by the board of commissioners to employ and enter into contracts with consultants, engineers, attorneys, and fiscal, financial, or other experts.
- Section 16. Restates section 11, chapter 63-1587, L.O.F., providing the board of commissioners may appoint a fire marshal; provides for the duties of the fire marshal.
- Section 17. Amends section 12, chapter 63-1587, L.O.F., providing that the District shall exist until dissolved by law; providing for the abolishment of the District.
- Section 18. Provides commissioners not guilty of malfeasance in office will be relieved of any personal liability for any acts done by them while holding office in the District.
- Section 19. Restates section 13, chapter 63-1587, L.O.F., setting forth the requirements for instituting or maintaining a suit, action, or proceeding against the District.
- Section 20. Restates section 14, chapter 63-1587, L.O.F., providing definitions for the terms "district" and "board", as they are used throughout the charter.
- Section 21. Provides for the severability of any invalid provision.
- Section 22. Provides this act will take precedence over conflicting laws.
- Section 23. Provides that this act shall be liberally construed as a remedial act for the purposes for which it was intended.
- Section 4.** Repeals chapters 63-1587, 65-1894, 65-1895, 72-613, 80-534, 82-323, 84-473, 94-373, and 95-503, Laws of Florida.
- Section 5.** Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? September 9, 2003

WHERE? *Bradenton Herald*, Bradenton, Manatee 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

III. COMMENTS

A. CONSTITUTIONAL ISSUES: Not Applicable.

B. RULE-MAKING AUTHORITY: Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Supremacy Clause

Many local bills contain language providing that in the event of a conflict of the provisions of the local bill with the provisions of any other general or local law, the provisions of the act being considered controls to the extent of the conflict(s). This is referred to as a "supremacy" clause. This language does not allow interested persons or Members of the Legislature knowledge of the specific laws containing potential conflicts. Unless those specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

Legal Boundary of District

Mr. Harlan R. Domber, Esq., with the law firm of Harlan R. Domber, P.A., representing the District, sent the following letter relating to the legal boundary changes: "In the pending bill to codify the charter, Parcels (a) through (l) comprise the original district. Parcels (a) thru (f) represent the subdivisions that comprise Trailer Estates. By Chapter 81-428, Laws of Florida, Parcel (g) was added to the Trailer Estates Park and Recreation District; it has been served by the fire control district too. By Chapter 94-413, Laws of Florida, Parcels (h), (i) and (j) were added to Trailer Estates Park and Recreation District. Those parcels represent three home sites adjacent to Trailer Estates Subdivision(s); the affected property owners executed written joinders with the formalities of a deed to signify their desire to become bound by the restrictions and enabling act of Trailer Estates. Those parcels have also been served by the fire control district and are presently assessed for fire service on their annual real estate tax bills. Parcels (k) and (l) represent two parcels that have been conveyed directly to the fire control district by recorded deeds. Those properties are owned by the Trailer Estates Fire Control District at this time. The foregoing description of the properties that represent the Trailer Estates Fire Control District is consistent with the map of the Fire Control District as maintained by the Manatee County

Property Appraiser's office. The parcels form one contiguous property and there is no overlap with any neighboring fire control districts".

Other Comments

The Sponsor may wish to correct the directory language and remove the supremacy clause through the amendatory process. Since the language of this bill may conflict with a reference to the District in ch. 93-352, L.O.F., the sponsor may wish to remove this reference.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Local Affairs recommended three amendments on February 17, 2004. The first amendment corrects the directory language. The second amendment removes the supremacy clause. The third amendment removes a reference to the District in ch. 93-352, L.O.F.