

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 631 w/CS St. Lucie County Fire District  
**SPONSOR(S):** Harrell  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government &amp; Veterans' Affairs</u>	<u>17 Y, 0 N w/CS</u>	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Judiciary</u>	<u></u>	<u></u>	<u></u>
3) <u>Finance &amp; Tax</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

**SUMMARY ANALYSIS**

The St. Lucie County Fire District is an independent fire control district established by chapter 96-532, Laws of Florida, as amended by chapter 97-356, Laws of Florida.

The bill, as a committee substitute, codifies all prior special acts of the St. Lucie County Fire District into a single act.

As an independent fire control district, the District is permitted to exercise only those powers set forth in its charter and in chapter 191, Florida Statutes.

The District is amending its charter to incorporate the following powers provided in chapter 191, Florida Statutes: (1) increase the permitted levy on real and personal property to that authorized by this chapter; and (2) grant the power to levy any authorized taxes.

The bill changes the charter to remove outdated provisions related to the predecessor district. Consistent with legislative practice, the bill also changes subsection designations from letters to numbers and changes the paragraph designations.

This bill seeks to continue two provisions of the charter which appear to provide exemptions to general law.

This bill will take effect upon becoming law.

## 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 St. Lucie County Fire District (District) is an independent fire control district established by chapter 96-532, Laws of Florida, as amended by chapter 97-356, Laws of Florida.

The District covers an area of 614 square miles with a population of approximately 203,000.<sup>1</sup> The District has 365 salaried employees and responded to 28,665 calls in 2002 with an average response time of 6 minutes, 10 seconds.<sup>2</sup>

The millage for fiscal year 2002-2003 is 2.67 and for fiscal year, 2003-2004, the millage will increase to 2.7806 "due to the rapid growth of population within the jurisdictional boundaries... [to] fund the necessary personnel to cover the increase in run volumes."<sup>3</sup>

The District is codifying all prior special acts of the district into a single act, as required by section 191.015, Florida Statutes.

As an independent fire control district, the District is permitted to exercise only those powers set forth in its charter and in chapter 191, Florida Statutes.<sup>4</sup>

The District is amending its charter to incorporate the following powers provided in chapter 191, Florida Statutes: (1) increase the permitted levy on real and personal property to that authorized by this chapter;<sup>5</sup> and (2) grant the power to levy any authorized taxes.<sup>6</sup>

The bill changes the charter to remove outdated provisions related to the predecessor district<sup>7</sup>. Consistent with legislative practice, the bill also changes subsection designations from letters to numbers and also changes paragraph designations.

The bill seeks to continue two provisions of the charter that may provide exemptions to general law:

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<sup>1</sup> See Response from the District to *Basic Questions for Fire District Bills* (on file with the Committee on Local Government & Veterans' Affairs).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See *infra* Background on Chapter 191, Florida Statutes

<sup>5</sup> See Fla. Stat. § 191.009 (2003) (permitting the levy of ad valorem taxes not to exceed 3.75 mills).

<sup>6</sup> *Id.*

<sup>7</sup> The bill removes sections 3 and 4 of the charter as set forth in chapter 96-532, Laws of Florida. Section 3 provided for the title, rights, and ownership of equipment and property held and owned by the "district herein and hereby abolished" to "pass and be vested in the district hereby created and established to succeed the district." Section 4 provided for the new district to be responsible and be bound for all contracts, judgments, and debts of the abolished district.

One provision<sup>8</sup> prohibits any action from being brought against the District for any negligent and wrongful injury or damage to persons or property unless brought within 12 months from the time of the injury or damage. This provision also prevents any suit arising out of any action in tort or sounding in tort from being maintained against the District unless a written notice of the claim, giving the time, place, and circumstance of the injury or damage, is given to the chairperson, vice chairperson, or the clerk-treasurer of the District within 30 days after the occurrence of the injury or damage.<sup>9</sup>

The second provision<sup>10</sup> identifies sections 200.071-200.141, Florida Statutes,<sup>11</sup> as inapplicable and superseded to the extent the power and authority of the District to levy, assess, collect, and enforce ad valorem taxes is effected.

## **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 chapter 189, Florida Statutes, 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 section 189.429, Florida Statutes, 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, Florida Statutes, 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.

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<sup>8</sup> See section 15 of the charter as set forth in section 3 of the bill.

<sup>9</sup> *But see* Fla. Stat. § 768.28 (2003) (setting forth the provisions governing tort actions against state agencies or subdivisions including claim procedures and time limitations).

<sup>10</sup> See subsection (5) of section 16 of the charter as set forth in section 3 of the bill.

<sup>11</sup> It is not clear that these provisions directly apply to the District. Section 200.71, Florida Statutes, relates to the millage limitation for counties; section 200.081, Florida Statutes, relates to the millage limitation for cities; section 200.091, Florida Statutes, provides for a referendum to increase the millage for counties; section 200.101, Florida Statutes, provides for a referendum to increase the millage for municipalities; section 200.141, Florida Statutes, relates to the millage following consolidation of city and county functions.

## **Background on Chapter 191, Florida Statutes**

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 (1) of section 191.005, 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 (2)(a) and (3) of section 189.405, 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, Florida Statutes, chapter 582, Florida Statutes, or other general or special law. No election or party assessment shall be levied if the election is nonpartisan. The forms are to be submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates pursuant to section 105.035, Florida Statutes.

If a district presently elects members of its board, the next election must be conducted in accordance with section 191.005, Florida Statutes. This section does not require the early expiration of any member’s term of office by more than 60 days.

Members of the board may each be paid a salary or honorarium 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, and 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 that the bill is the codification of all special acts relating to the District; provides legislative intent to preserve the current authority of the District.

Section 2: Codifies, reenacts, amends, and repeals chapters 96-532 and 97-356, Laws of Florida.

Section 3: Recreates and reenacts the charter of the District.<sup>12</sup>

Section 1: Provides that all the lands in the County of St. Lucie are part of the District; sets forth the purpose of the District.

Section 2: Creates the governing body of the District or "the board;" provides for seven members; gives all the powers of a body corporate; permits the board to contract, sue and be sued, adopt and alter a seal, control real estate and personal property, employ experts, agencies, and employees; borrow money and issue negotiable promissory notes; adds attorneys to the list the board is authorized to employ;<sup>13</sup> provides for the general exercise of powers.

Section 3: Board composition; terms; elections.-- provides that the seven member board is to consist of one member appointed by the governor and two members to be elected by and from each of the following: the Board of County Commissioners, the City Commission of the City of Fort Pierce, and the City Council of the City of Port St. Lucie; provides terms of office of two years and essential qualifications; requires the election of a chairperson and vice chairperson and a quorum to transact business.

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<sup>12</sup> Except as noted, all provisions are as provided by chapter 96-532, Laws of Florida.

<sup>13</sup> Payment for the fees and expenses of an attorney was previously provided by chapter 96-532, Laws of Florida, and continues to be included in section 11 of the charter.

- Section 4: Books; audits. -- requires the board to annually have the books audited by an independent certified public accountant.
- Section 5: Depositories; use of funds. -- directs the deposit of funds of the District; prohibits payment or disbursement except by check; sets forth how funds of the district may be used.
- Section 6: Gifts; purchases; loans.-- permits the board to have the power and authority to hold, control, and acquire real or personal property; authorizes payment in installments or deferred payments; grants the power of eminent domain; authorizes the board to borrow money not to exceed \$1,500,000 in any one year unless there is a District emergency; prohibits total borrowing from exceeding \$5 million; allows the board to issue promissory notes; sets forth the definition of "emergency" for the District; gives the board power: to acquire firefighting and other equipment, to hire necessary personnel, to inspect all property and investigate for fire hazards; and to prescribe rules and regulations.
- Section 7: Records; adoption of rules.-- provides that the officers of the board have duties similar to those of like officers; requires a record to be kept of all meetings of the board; permits the board to adopt rules and regulations.
- Section 8: Annual reports; fiscal year.-- requires the board to make an annual report of its actions and accounting of its funds and to file the report with the Clerk of the Court of St. Lucie County; fixes the date of the fiscal year.
- Section 9: Rights under civil service; retirees.-- provides that all rights of firefighting personnel under the civil service and retirement laws of the City of Fort Pierce are preserved unto such personnel.
- Section 10: Millage; taxes.-- authorizes the board to annually levy upon all the real and personal taxable property in the District; provides that such levy shall not exceed 3 mills unless authorized by chapter 191, Florida Statutes; permits the levy of taxes permitted by the charter or chapter 191, Florida Statutes; requires the levy of taxes to be by resolution and sets forth requirements for delivery of such resolution; provides that the determination of millage and collection of taxes shall be in accordance with chapter 200, Florida Statutes, and other applicable laws; declares that the special assessment taxes are special assessments for special or peculiar benefit accruing to properties within the District; provides that the duties and responsibilities of the board are public purposes as well as county, district, and municipal purposes.
- Section 11: Payment of expenses. -- authorizes the board to pay expenses, including the fees and expenses of an attorney; requires funds to be paid out only upon check and sets forth requirements for such checks.
- Section 12: Fire chief. -- requires the board to appoint and employ a fire chief and provides responsibilities for the fire chief.
- Section 13: Clerk-treasurer. -- requires the board to appoint and employ a clerk-treasurer to be the financial officer and maintain the records of the District; sets forth a \$10,000 bond requirement for the clerk-treasurer and for payment of the bond.<sup>14</sup>

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<sup>14</sup> As provided by chapter 96-532, Laws of Florida, as amended by chapter 97-356, Laws of Florida.



- Section 14: Insurance for employees and dependents; retirees.-- permits the District to pay certain insurance premiums for its employees and the families of such employees; allows the District to have retired former personnel and eligible dependents participate in group insurance or self-insurance plans; authorizes the "commingling of the claims experience" for the retiree group with the active employees.
- Section 15: Torts; negligence.-- prohibits any action from being brought against the District for any negligent and wrongful injury or damage to persons or property unless brought within 12 months from the time of the injury or damage; prevents any suit arising out of any action in tort or sounding in tort from being maintained against the District unless a written notice of the claim, giving time, place, and circumstance of the injury or damage, is given to the chairperson, vice chairperson, or the clerk-treasurer of the District within 30 days after the occurrence of the injury or damage.
- Section 16: Removal of fire hazards; enforcement of liens. -- permits the board to require, by resolution, that lands in St. Lucie County be cleared of weeds, debris, and any materials which may create a fire hazard; provides for action by the board if the property owner fails to comply including allowing the board to clear the land and assess a lien.
- Section 17: Miscellaneous provisions.-- provides that any obligation issued or incurred by the District shall be approved by the qualified freeholder electors when required by the laws of Florida; provides that whoever willfully damages the property of the District will be punished as provided by the general laws; provides a savings clause; provides for liberal construction to accomplish the purposes; identifies the provisions of sections 200.071-200.141, Florida Statutes, as inapplicable and superseded to the extent the power and authority of the District to levy, assess, collect, and enforce ad valorem taxes is effected.

Section 4: Repeals chapters 96-532 and 97-356, Laws of Florida.

Section 5: Provides that the bill will take effect upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? WHERE?

An Affidavit of Proof of Publication states that a Notice of Intent to Seek Legislation was published in the Fort Pierce/Port St. Lucie Tribune on November 8, 2003.

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

The economic impact statement indicates no economic impact.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

There do not appear to be any constitutional issues with this bill.

#### **B. RULE-MAKING AUTHORITY:**

The bill grants the District rule-making authority.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

No drafting issues or other comments.

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

On March 3, 2004, the Committee on Local Government & Veterans' Affairs adopted three amendments, without objection:

Amendment 1 on page 13, lines 353-356 to remove the provision which declares all inconsistent general, special, or local laws, or parts thereof, inapplicable to the bill and reinsert existing exemption to general law.

Amendment 2 on page 4, line 111 to remove line and insert same line with "Chief Financial Officer" instead of "State Treasurer."

Amendment 3 on page 8, line 208 to remove line and insert same line with "Chief Financial Officer" instead of "Comptroller."

The bill was then reported favorably as a committee substitute.