

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Codification Generally

Codification is the process of compiling, updating, and systematically arranging the special acts that comprise a special district's charter. After a special district's charter is created by special act of the Legislature, the original charter provisions may be amended by subsequent special acts. However, special act amendments are not automatically incorporated into one special act charter. Therefore, in order to ascertain the current status of a special district's charter, it is necessary to locate all special acts amending a district's original charter. This can often be a difficult and time-consuming process for persons interested in determining the current status of a district's charter. Codification of special district charters is important because it permits readers to easily locate and identify the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature in ss. 189.429 and 191.015, F.S., both of which were amended in 1998. The laws provide for codification of all special district charters by December 1, 2004. Any codified act relating to a special district must provide for the repeal of all prior special acts relating to the district. The 2001 Legislature amended s. 189.429, F.S., to provide that reenactment of existing law: (1) shall not be construed to grant additional authority nor supersede 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.

To date, 173 special districts have codified their charters.

Chapter 191, F.S. Independent Special Fire Control Districts

CREATION OF AN INDEPENDENT FIRE CONTROL DISTRICT

Independent special districts, including independent special fire control districts, may only be created by the Legislature. The creation of independent fire control special districts is governed by ch. 189, F.S., the "Uniform Special District Accountability Act of 1989", and ch. 191, F.S., the "Independent Special Fire Control District Act". However, the legislature may provide an exemption from the general law requirements in chs. 189 and 191, F.S., in a local bill creating an independent special district. If a local bill creates an exemption from general law, Rule 5.5 of the Florida House of Representatives prohibits the local bill from being placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills.

THE UNIFORM SPECIAL DISTRICT ACCOUNTABILITY ACT OF 1989

Chapter 189, F.S., known as the "Uniform Special District Accountability Act of 1989", includes requirements that must be satisfied when the Legislature creates any independent special district, including independent special fire control districts created under ch. 191, F.S. Unless the Legislature has enacted a special law exempting a particular independent special district, all districts must comply with applicable provisions of ch. 189, F.S., including provisions related to issues that must be

addressed in a district's charter, election of district governing board members, bond referenda, public records and meetings, and reporting requirements.

THE INDEPENDENT SPECIAL FIRE CONTROL DISTRICT ACT

Chapter 191, F.S., is known as the "Independent Special Fire Control District Act" (the Act). Section 191.002, F.S., sets forth the Act's purpose, which is to establish standards and procedures concerning the operations and governance of independent special fire control districts (districts), and to provide greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of districts. Currently, there are 56 districts in Florida.

Unless otherwise exempted by special or general law, the Act requires each district, whether created by special act, general law of local application, or county ordinance, to comply with the Act and provides that it is the intent of the Legislature that the Act supersede all special acts or general laws of local application provisions that contain the charter of a district. Provisions that address district boundaries and geographical subdistricts for the election of members of the governing board are excepted.

District Governing Board

Section 191.005, F.S., prescribes procedures for the election, composition, and general administration of a district's governing board. With the exception of districts whose governing boards are appointed collectively by the Governor, the county commission, and any cooperating city within the county, requires the business affairs of each district to be conducted and administered by a five-member board. Each member must be elected for a term of 4 years and serve until the member's successor assumes office. Each member of the board must be a qualified elector at the time he or she qualifies and continually throughout his or her term. Any board member who ceases to be a qualified elector is automatically removed pursuant to the Act. Prior to election, each candidate must qualify for election by either paying a filing fee or obtaining the signatures of at least 25 registered electors of the district on petition forms provided by the supervisor of elections and submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates. A candidate who does not collect contributions and whose only expense is the filing fee is not required to appoint a campaign treasurer or designate a primary campaign depository.

The electors of the district must elect board members at the next general election following the effective date of a special act or general act of local application creating a new district. Except as provided by the Act, all elections must be held at the time and in the manner prescribed by law for holding general elections in accordance with s. 189.405(2)(a) and (3), F.S. If a vacancy occurs on the board due to the resignation, death, or removal of a board member, or the failure of anyone to qualify for a board seat, the remaining members may 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 for the remaining term, if any.

Members of the board may each be paid a salary or honorarium to be determined by at least a majority plus one vote of the board but which may not exceed \$500 per month for each member. Separate compensation for the board member serving as treasurer may be authorized by like vote so long as total compensation for the board member does not exceed \$500 per month. Members may be reimbursed for travel and per diem expenses as provided in general law.

Each member must, upon assuming office, take and subscribe to the oath of office prescribed by s. 5(b), Art. II of the State Constitution and s. 876.05, F.S. Each member, within 30 days of assuming office, must also give the Governor a good and sufficient surety bond in the sum of \$5,000, the cost thereof being borne by the district, conditioned on the member's faithful performance of his or her duties of office.

The board must keep a permanent record book in which the minutes of all meetings, resolutions, proceedings, certificates, bonds given by commissioners, and corporate acts are recorded. The record book must be open to inspection in the same manner as state, county, and municipal records are open

under ch. 119, F.S., and s. 24, Art. I of the State Constitution. All meetings of the board must be open to the public consistent with ch. 286, s. 189.417, and other applicable general laws.

General Powers

Section 191.006, F.S., sets forth the following general powers of a district, which may be exercised by a majority vote of the board:

- To sue and be sued in the name of the district, to adopt and use a seal and authorize the use of a facsimile thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To provide for a pension or retirement plan for its employees. In accordance with general law, the board may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.
- To contract for the services of consultants to perform planning, engineering, legal, or other professional services.
- To borrow money and accept gifts, to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith, and to hold, use, sell, and dispose of such moneys or property for any district purpose in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- 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 may also adopt ordinances and resolutions that are necessary to conduct district business, if such ordinances do not conflict with any ordinances of a local general purpose government within whose jurisdiction the district is located. Any resolution or ordinance adopted by the board and approved by referendum vote of district electors may only be repealed by referendum vote of district electors.
- To maintain an office at places it designates within a county or municipality in which the district is located and appoint an agent of record.
- To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate therein for any purpose authorized by this act and to trade, sell, or otherwise dispose of surplus real or personal property. The board may purchase equipment by an installment sales contract if funds are available to pay the current year's installments on the equipment and to pay the amounts due that year on all other installments and indebtedness.
- 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 this act and to use such easement, dedication, or reservation for any purpose authorized by this act consistent with applicable adopted local government comprehensive plans and land development regulations.
- To lease as lessor or lessee to or from any person any facility or property of any nature for the use of the district when necessary to carry out the district's duties and authority under this 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 mortgage real and personal property when necessary to carry out the district's duties and authority under this act.
- 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 and authorized by law. However, the imposition of impact fees may only be authorized as provided by general law.
- To exercise the right and power of eminent domain, pursuant to general law, over any property within the district, except municipal, county, state, special district, or federal property used for a public purpose, for the uses and purposes of the district relating solely to the establishment and

maintenance of fire stations and fire substations, specifically including the power to take easements that serve such facilities consistent with applicable adopted local government comprehensive plans and land development regulations.

- To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act.
- To assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments as authorized by this act.
- To impose and foreclose non-ad valorem assessment liens as provided by this act or to impose, collect, and enforce non-ad valorem assessments pursuant to general law.
- To select as a depository for its funds any qualified public depository as defined by general law which meets all the requirements of ch. 280, F.S., and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.
- To provide adequate insurance on all real and personal property, equipment, employees, volunteer firefighters, and other personnel.
- To organize, participate in, and contribute monetarily to organizations or associations relating to the delivery of or improvement of fire control, prevention, emergency rescue services, or district administration.

Special Powers

Section 191.008, F.S., requires districts to provide for fire suppression and prevention by establishing and maintaining fire stations and fire substations and by acquiring and maintaining firefighting and fire protection equipment deemed necessary to prevent or fight fires. All construction must be in compliance with applicable state, regional, and local regulations, including adopted comprehensive plans and land development regulations.

This section grants districts the following special powers relating to facilities and duties authorized by the Act:

- To establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to general law and any certificate of public convenience and necessity or its equivalent issued thereunder.
- To employ, train, and equip such personnel, and train, coordinate, and equip such volunteer firefighters, as are necessary to accomplish the duties of the district. The board may employ and fix the compensation of a fire chief or chief administrator. The board must prescribe the duties of such person, which include supervision and management of the operations of the district and its employees and maintenance and operation of its facilities and equipment. The fire chief or chief administrator may employ or terminate the employment of such other persons, including, without limitation, professional, supervisory, administrative, maintenance, and clerical employees, as are necessary and authorized by the board. The board must provide the compensation and other conditions of employment of the officers and employees of the district.
- To conduct public education to promote awareness of methods to prevent fires and reduce the loss of life and property from fires or other public safety concerns.
- To adopt and enforce firesafety standards and codes and enforce the rules of the State Fire Marshal consistent with the exercise of the duties authorized by chs. 553 or 633, F.S., with respect to fire suppression, prevention, and firesafety code enforcement.
- To conduct arson investigations and cause-and-origin investigations.
- To adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency.
- To contract with general purpose local government for emergency management planning and services.

District Funding Mechanisms

Section 191.009, F.S., authorizes districts to levy ad valorem taxes, special assessments, user charges, and impact fees.

Ad Valorem Taxes -- An elected board may levy and assess ad valorem taxes on all taxable property in the district to construct, operate, and maintain district facilities and services, to pay the principal of, and interest on, general obligation bonds of the district, and to provide for any sinking or other funds established in connection with such bonds. An ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and the Act. The levy of ad valorem taxes must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. The tax is assessed, levied, and collected in the same manner as county taxes.

Non-Ad Valorem Assessments -- A district may levy non-ad valorem assessments to construct, operate, and maintain district facilities and services. The rate of such assessments must be fixed by resolution of the board pursuant to statutory procedures. 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 5 years. Non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition. Proposed non-ad valorem assessment increases which exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last 5 years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum of the electors of the district. The referendum on the first-time levy of an assessment must include a notice of the future non-ad valorem assessment rate increases permitted by the Act without a referendum. Non-ad valorem assessments must be imposed, collected, and enforced pursuant to general law.

User Charges -- The board may provide a reasonable schedule of user charges for the following services:

- Special emergency services, including firefighting occurring in or to structures outside the district, motor vehicles, marine vessels, aircraft, or rail cars, or as a result of the operation of such motor vehicles or marine vessels, to which the district is called to render such emergency service, and may charge a fee for the services rendered in accordance with the schedule;
- Fighting fires occurring in or at refuse dumps or as a result of an illegal burn, which fire, dump, or burn is not authorized by general or special law, rule, regulation, order, or ordinance and which the district is called upon to fight or extinguish;
- Responding to or assisting or mitigating emergencies that either threaten or could threaten the health and safety of persons, property, or the environment, to which the district has been called, including a charge for responding to false alarms; and
- Inspecting structures, plans, and equipment to determine compliance with firesafety codes and standards.

The district has a lien upon any real property, motor vehicle, marine vessel, aircraft, or rail car for any user charge assessed.

Impact Fees -- If the general purpose local government has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries, the board may establish a schedule of impact fees to pay for the cost of new facilities and equipment, the need for which is in whole or in part the result of new construction. The impact fees collected by the district must be kept separate from other revenues of the district and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof needed to provide fire protection and emergency services to new construction. The term "new facilities" is defined as land, buildings, and capital equipment,

including, but not limited to, fire and emergency vehicles, radiotelemetry equipment, and other firefighting or rescue equipment. The board must maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment. The board may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by the governments.

District Bonds

Section 191.012, F.S., authorizes a district to issue general obligation bonds, assessment bonds, revenue bonds, notes, bond anticipation notes, or other evidences of indebtedness to finance all or a part of any proposed improvements authorized to be undertaken under the Act or other law, provided the total annual payments for the principal and interest on such indebtedness does not exceed 50 percent of the total annual budgeted revenues of the district. This section also provides detailed instructions and procedures regarding the issuance and satisfaction of district bonds.

Bonds are payable from non-ad valorem assessments or other non-ad valorem revenues, including, without limitation, user fees or charges or rental income authorized to be levied or collected or received pursuant to the Act or general law. General obligation bonds payable from ad valorem taxes may also be issued by the district, but only after compliance with s. 12, Art. VII of the State Constitution. Subject to referendum approval, a district may pledge its full faith and credit for the payment of principal and interest on general obligation bonds and for any reserve funds provided therefor and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all property in the district to the extent necessary for the payment thereof. A district is authorized, after notice and opportunity to be heard has been afforded to those affected, to impose, charge, and collect non-ad valorem revenues in connection with any of the improvements authorized under the Act and to pledge the same for the payment of bonds.

District Boundaries and Mergers

Section 191.014, F.S., provides that boundaries of a district may be modified, extended, or enlarged only upon approval or ratification by the Legislature. The merger of a district with all or portions of other independent special districts or dependent fire control districts is effective only upon ratification by the Legislature. A district may not, solely by reason of a merger with another governmental entity, increase ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless approved by the electors of the district by referendum.

Dorcas Fire District

The bill codifies all existing Okaloosa County ordinances relating to the Dorcas Fire District (District) in Okaloosa County into a single special act. The District was created pursuant to County Ordinance No. 84-39. The District was created for the purpose of providing fire protection for the benefit of the residents within the District. Currently, the District has three board members serving 4-year terms. The District is authorized to levy and impose an annual assessment or service charge on all improved property in the District not to exceed \$20 per annum for each residential unit, house trailer, mobile home, commercial establishment or business. The District does not levy an ad valorem tax.

Effect of Proposed Changes

The bill codifies all existing Okaloosa County ordinances relating to the Dorcas Fire District in Okaloosa County into a single special act. The bill conforms the District's charter to the provisions of the Independent Fire Control District Act, including authorizing the District to annually assess and levy against the taxable property in the district an ad valorem tax not to exceed 3.5 mills, subject to referendum approval. The bill declares the District an independent district.

Charter of District

In recreating and reenacting the charter for the Authority, the bill:

- Section 1: Declares the District to be an independent special district and provides for the creation of the district, for its name, and for the District to operate pursuant to Ch. 191, F.S.
- Section 2: Provides for the boundaries of the District.
- Section 3: Provides for the purpose of the District.
- Section 4: Provides definitions for the following words and terms: "Board", "District", "Elector", "Emergency medical service", and "Rescue response service."
- Section 5: Provides for a five member board of commissioners; provides for the election of the commissioners; provides for 4-year terms; provides for qualification of commissioners; provides for the assumption of office; provides for the organization of the board; provides for compensation; provides for travel and per diem expenses as provided by general law; provides for vacancies; provides each board member to take the oath of office; provides for record keeping; provides all meetings are open to the public; and provides for audits of the District's books and records.
- Section 6: Provides for the general powers of the District, including the power to:
- (1) sue and be sued;
 - (2) provide for a pension or retirement plan for its employees;
 - (3) contract for planning, engineering, legal, or other professional services;
 - (4) borrow money and accept gifts, use grants or loans of money or other property, and hold, use, sell, and dispose of such moneys or property for any District purpose;
 - (5) 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; adopt ordinances and resolutions for the business of the District -- provides that any resolution or ordinance adopted by the board and approved by referendum vote may only be repealed by referendum vote;
 - (6) establish an office within the county or municipality in which the District is located and the appointment of an agent of record;
 - (7) acquire and dispose of real and personal property, and purchase equipment;
 - (8) hold, control, and acquire public easement, dedication to public use, platted reservation, or reservation;
 - (9) lease any facility or property of any nature for the use of the District when necessary;
 - (10) borrow money, 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 mortgage real and personal property when necessary to carry out the District's duties and authority;
 - (11) charge user and impact fees, and enforce their receipt and collection;
 - (12) exercise eminent domain -- requires that eminent domain may only be exercised for District purposes relating solely to the establishment and maintenance of fire stations and fire substations, specifically including the power to take easements;

- (13) cooperate or contract with other persons or entities, etc., with providing effective mutual aid and furthering any power, duty, or purpose authorized by the Act;
- (14) enforce and collect of ad valorem taxes and non-ad valorem assessments as authorized by this Act;
- (15) impose and foreclose non-ad valorem assessment liens as provided by this Act, and enforce the collection of non-ad valorem assessment pursuant to ch. 197, F.S.;
- (16) select of any qualified public depository as a depository for its funds;
- (17) provide for required, adequate insurance on all real and personal property, equipment, employees, volunteer firefighters, and other personnel;
- (18) organize, participate in, and contribute monetarily to organizations or associations relating to the delivery of or improvement of fire control, fire prevention, and emergency rescue services, or District administration; and
- (19) promulgate and enforce reasonable fire regulations by resolution.

Section 7: Provides for exemption from taxation.

Section 8: Provides for the special powers of the District, including the power to provide for facilities and equipment; provides that all construction must be in compliance with applicable state, regional, and local regulations. Provides additional power to:

- (1) establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment;
- (2) employ, train, and equip firefighting, and other personnel including volunteer firefighters, as necessary to accomplish the duties of the District, and employ and fix the compensation of a fire chief or chief administrator -- provides that the board must prescribe the duties of fire chief, and grants the fire chief or chief administrator power to employ or terminate the employment of other personnel, and provides that the compensation and other conditions of employment of the officers and employees of the District are provided by the board;
- (3) conduct public education to promote awareness of methods to prevent fire and reduce loss of life and property;
- (4) adopt and enforce fire safety standards and codes and enforce the rules to the State Fire Marshall;
- (5) conduct arson investigations and cause-and-origin investigations;
- (6) adopt hazardous material safety plans and emergency response plans in coordination with county emergency management agency; and
- (7) contract with general purpose local governments for emergency management planning and services.

Section 9: Provides for Ad valorem taxation -- authorizes the right, power, and authority to levy ad valorem taxes for the construction, operation, and maintenance of District facilities and services; provides that the rate set by the District may not exceed 3.75 mills; requires that the levy of ad valorem taxes must be approved by referendum; provides that nothing in said act will require a referendum on the levy of ad valorem taxes in the amount previously authorized by special act, general law of local application, or county ordinance approved by referendum; provides that such tax must be assessed, levied, and collected in the same manner as county taxes; and provides that the levy of ad valorem taxes approved by referendum must be reported within 60 days after the vote to DCA.

Provides for non-ad valorem assessments -- authorizes the board to levy non-ad valorem assessments to provide funds for the purposes of the District; provides the rate of such assessments are set by the board and may not exceed the maximum rates established by this Act; provides that the rate set by the District may exceed the maximum rates established by this Act, the previous year's resolution, or a referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous 5 years; provides that the non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition; requires referendum approval if non-ad valorem assessment exceeds the growth rate; and provides that non-ad valorem assessments must be imposed, collected, and enforced.

Provides for user charges -- authorizes the board to provide a reasonable schedule of charges for special emergency services; authorizes the board to provide user charges for fighting fires occurring in or at refuse dumps or as a result of an illegal burn; authorizes the board to provide a user charge for responding to, assisting with, or mitigating emergencies that either threaten or could threaten the health and safety of persons, property, or the environment; authorizes the board to provide user charges for inspecting structures, plans, and equipment to determine compliance with fire safety codes and standards; and provides that the failure to pay any charge assessed is a lien against property under this section.

Provides for impact fees -- Provides that impact fee proceeds must be kept separate from other revenues and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof; requires the board to maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment; allows the District to enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by such governments; requires that adequate records must be maintained to ensure the proper use of impact fees.

Section 10: Provides for the procedures for the levy and collection of non-ad valorem assessments:

- (1) Authorizes the right and power to levy of non-ad valorem assessments; provides that non-valorem assessments will be imposed, collected, and enforced pursuant to ch. 191, F.S.;
- (2) provides the rate of assessment must be fixed by resolution of the board of commissioners on or before June 1; provides for a \$150 annual assessment against commercial buildings and businesses, provides for the definition and evidence of existence of commercial business; provides for exclusions of commercial buildings; provides for a flat fee of \$75 annually for a residential dwelling; provides for annual increases, as approved by the board of commissioners;
- (3) provides for a tax roll to be compiled and prepared by the tax assessor and delivered before June 1; provides assessments must be made against the land subject to such assessments and the roll will set forth the names of the respective owners of such lands; allows land owners to file a protest against the proposed assessments between June 10 and 20 of each year;
- (4) provides protest procedures;
- (5) provides that it is the duty of the county tax collector to collect the District's assessments and deliver the proceeds of such collection, less the fee, monthly to the board of commissioners, and taking their receipts

- of such funds; provides that the tax collector furnish a description of the lands for which such payments are made;
- (6) provides that special assessments are a lien and treated with the county's lien in regards to collection and enforcement;
 - (7) provides that special assessments will be of equal benefit to all property with fire protection being provided by the District pursuant to this Act; and
 - (8) provides a fiscal year for the District.

Section 11: Provides for the issuance of bonds, notes, bond anticipation notes, or other evidences of indebtedness.

Section 12: Provides that the boundaries of the District may be modified, extended, or enlarged upon approval or ratification by the Legislature; provides that the merger of the District with all or portions of other independent or dependent fire control districts is effective only upon ratification by the Legislature; provides the District may not increase ad valorem taxes on property within the original limits of the District beyond the maximum established by this Act, unless approved by referendum.

C. SECTION DIRECTORY:

- Section 1:** Provides that this Act constitutes the District's codification of all ordinances relating to the District; provides legislative intent.
- Section 2:** Recreates and reenacts the Dorcas Fire District.
- Section 3:** Provides that the validity of remaining portions of the Act should any part of the Act be held invalid or unconstitutional.
- Section 4:** Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 16, 2004

WHERE? *Daily News*, Fort Walton Beach, Okaloosa, Santa Rosa and Walton Counties, 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:

EXEMPTIONS FROM AD VALOREM TAXATION

Section 7 of s. 3 of the bill provides:

Exemption from taxation. Since the exercise of the powers conferred by this act constitutes action by a political subdivision performing essential public functions and since the property of each district constitutes public property used for public purposes, all assets and properties of the district, including property acquired through the foreclosure of any tax or assessment lien, are exempt from all taxes imposed by the state or any political subdivision, agency, or instrumentality of the state.

Property owned by governmental entities is subject to ad valorem taxation unless immune or exempt, and such exemptions are strictly construed against party claiming them. Immunity from taxation precludes the power to tax, while an exemption from taxation presupposes the existence of the power to tax but the power is limited by a constitutional or statutory provision. *Orange State Oil Co. v. Amos*, 139 So.2d 707 (Fla. 1930). The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

Special districts are not immune from taxation. Therefore, property owned by special districts is taxable unless the Legislature enacts an exemption from taxation that is consistent with the Florida Constitution. Section 189.403(1), F.S., provides that special districts are treated as municipalities for purposes of s. 196.199(1), F.S., which exempts from ad valorem taxation property owned by a municipality and used for "governmental, municipal, or public purposes". Accordingly, property owned by a municipality or special district is entitled to exemption only if used for a governmental or public purpose.

If a private entity leases government owned property from an exempt governmental entity, such as a special district, the actual use of the property determines whether a valid exemption from ad valorem taxation continues to apply. If public property is leased to a private entity, but is not used for a "public purpose", the fee interest in the property is taxable. The "public purpose" standard applicable in tax exemption cases is the "governmental-governmental" standard under which property leased to private entities for "governmental-proprietary" activities is not tax exempt. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). Non-exempt "governmental-proprietary" use occurs when a nongovernmental lessee utilizes public property for proprietary and for-profit aims to promote the comfort, convenience, safety and happiness of citizens. Conversely, exempt "governmental-governmental" use occurs when a lease of public property concerns the administration of some phase of government. It should be noted that the leasehold interest in leased public property may be subject to the intangibles tax regardless of whether the leased property itself is subject to ad valorem taxation. *See Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.