

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1537 CS Walton County
SPONSOR(S): Brown
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Local Government Council, 8 Y, 0 N, w/CS, Smith, Hamby.

SUMMARY ANALYSIS

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.

This bill creates the Glendale Fire District (District), an independent special fire control district, in Walton County, Florida. The bill specifies that the purpose of the District includes providing fire protection and firefighting services, rescue services, and emergency medical services. The District is granted all the powers under ch. 191, F.S.

The Economic Impact Statement projects revenues of \$85,500 in FY 05-06 and \$85,750 in FY 06-07. The revenues are generated by a non-ad valorem assessment rate of \$25 per residential unit, and a per square foot rate for commercial, industrial/warehouse property, and institutional property, the rates levied by the municipal service taxing unit that currently provides fire rescue and emergency medical services for the area.

The bill is effective upon its approval by a majority vote of those qualified electors of the District voting in a referendum.

House Rule 5.5(b) states that 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. This bill appears to create such an exemption. (See Comments Section "C. DRAFTING ISSUES OR OTHER COMMENTS:")

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government and Ensure lower taxes** - This bill creates an independent special fire control district with the power to levy non-ad valorem special assessments and impact fees. The revenues are generated by a non-ad valorem assessment rate of \$25 per residence, the rate levied by the municipal service taxing unit that currently provides fire rescue and emergency medical services for the area.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

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 district's governing 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.

### Effect of Proposed Changes

This bill creates the Glendale Fire District (District), as an independent special fire control district, in Walton County, Florida. The bill specifies that the purpose of the District includes providing fire protection and firefighting services, rescue services, and emergency medical services. The District is granted all the powers under ch. 191, F.S., as more fully set forth above.

The bill authorizes the District to levy non-ad valorem assessments of \$25 per residential unit, and a per square foot rate for commercial, industrial/warehouse property, and institutional property. The bill also authorizes the District to levy impact fees.

The District's charter as codified in this bill comports with the requirements of ch. 191, F.S., with one exception. Section 191.005, F.S., requires board members to be elected at a general election. The next general election is in 2006. Section 3(1) of the District charter exempts the District from this requirement by allowing the election of board members at a special election. Providing an exemption to the requirement in s. 191.005, F.S., allows for board election in 2005, rather than 2006.

The bill is effective upon its approval by a majority vote of those qualified electors of the District voting in a referendum.

#### C. SECTION DIRECTORY:

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- Section 1. Provides definitions.
- Section 2. Creates the District specifying that it has all powers provided in chs. 189 and 191, F.S., and those granted by the Legislature; describes the boundaries of the District; specifies the District's purpose; specifies that the District charter may only be amended by special act.
- Section 3. Provides for the composition and election of the District's governing board.
- Section 4. Provides for the administration of the District's governing board.
- Section 5. Specifies the District's powers, duties, and responsibilities regarding reporting, planning, and non-ad valorem assessments and collection methods.
- Section 6. Authorizes the District to levy impact fees on new users of services to the extent new construction requires new facilities.
- Section 7. Authorizes the District to levy non-ad valorem assessments.
- Section 8. Provides for duties of the property appraiser.
- Section 9. Provides special assessments levied by the District will be a lien on property until assessments have been paid.
- Section 10. Provides for the deposit of District funds in any qualified public depository as defined by general law which meets all the requirements of ch. 280, F.S.
- Section 11. Authorizes the District to borrow money.
- Section 12. Specifies permissible uses of District funds.
- Section 13. Provides for recording keeping, adoption of rules and regulations, annual reporting, and budgeting.
- Section 14. Provides for adoption of fire prevention ordinances, and appointment of a District fire chief; authorizes the District to acquire land, enter into contracts and establish salaries; and provides for general and special powers of the District, and for inspection of property by the fire chief of the District.
- Section 15. Specifies that municipal annexations will follow procedures in s. 171.093, F.S.
- Section 16. Specifies that dissolution of the District must be accomplished by special act.
- Section 17. Provides for immunity from liability to the same extent as other subdivisions of the state.
- Section 18. Provides for expanding the boundaries of the District by Legislative enactment.
- Section 19. Provides for liberal construction of the act.
- Section 20. Provides for severability of the act.
- Section 21. Provides for a referendum regarding the creation of the District with the authority to impose impact fess and special assessments.
- Section 22. Provides that the act is effective upon approval by a majority vote of qualified electors voting in a referendum.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 27 and February 3, 10, 17, 2005

WHERE? *The Breeze* combined with *The Defuniak Springs Herald* , DeFuniak Springs, Walton County, Florida

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? On or before December 30, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

**III. COMMENTS**



A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Section 13(2) authorizes the District to adopt and amend policies and regulations for the administration of the affairs of the District under its charter and chs. 189 and 191, F.S., which includes the authority to adopt the necessary rules and regulations for the administration and supervision of the property and personnel of the district; for the prevention of fires, fire control, fire hydrant placement, and flow testing in accordance with current NFPA rules; and for rescue work within the district. Section 13(3) provides that any policies, rules, and regulations adopted and made by the board will have the force and effect of law after copies thereof, signed by the secretary and chair or vice chair, are posted in three public places within the district in conspicuous locations and advertised by title once per week for 2 consecutive weeks in a newspaper of general paid circulation in the district.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

*Exemption from General Law*

Section 191.005, F.S., requires board members to be elected at a general election. The next general election is in 2006. Section 3(1) of the District charter exempts the District from this requirement by allowing the election of board members at a special election called by the District. Providing an exemption to the requirement in s. 191.005, F.S., allows the Board to be elected at a special election held in 2005.

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*. In s. 18 of the charter, regarding District expansion, the bill states that lands within municipal boundaries of cities contiguous to district boundaries may be included in the district upon request by the governing board of the municipality, approval of said request by affirmative vote of no fewer than three members of the district board, and referendum approval of inclusion by the electors of the municipality. The referendum shall be conducted by the municipality at the next available special or general election. {emphasis added}

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Council on Local Government adopted a strike-all amendment on April 6, 2006. The strike-all amendment:

- removes subsection (4) of s. 18 from the charter of the District, relating to District expansion, allows lands within municipal boundaries of cities contiguous to the District boundaries may be included in the District upon request by the governing board of the municipality, approval of said request by affirmative vote of no fewer than three members of the District board, and referendum approval of inclusion by the electors of the municipality; provides the referendum must be conducted by the municipality at the next available special or general election; and
- provides for a referendum to create the District and levy impact fees and special assessments.

The bill, as amended, was reported favorably with committee substitute.