

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes

This bill provides that the Lealman Fire Control District will remain the taxing authority with respect to fire services over any land within its boundaries that is annexed by other fire control districts and municipalities. Residents living in areas that are annexed by taxing authorities with lower fire service taxes would be required to continue paying the district at its higher rate.¹ However, the bill may allow remaining district residents to continue receiving fire service without an increase in taxes.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Chapter 191, F.S., the Independent Special Fire Control District Act

Chapter 191, F.S., is known as the "Independent Special Fire Control District 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, and to provide greater uniformity in financing authority, operations and procedures for electing members of district governing boards. An "independent special fire control district" is defined as an independent special district (as defined in s. 189.403) created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district. Currently, there are 55 such districts in Florida.²

¹ Pinellas County Fire District Tax Information for Fiscal Year 2002

	Column 1	Column 2	Column 3	
	Millage	Taxable Value of 1 Mill	Budgeted Ad Valorem	
Belleair Bluffs	1.475	\$203,859	\$300,692	
Clearwater	3.001	\$769,775	\$2,310,095	
Dunedin	2.350	\$248,754	\$584,572	
Gandy	2.070	\$70,803	\$146,562	
Largo	2.615	\$528,412	\$1,381,797	
Pinellas Park	2.474	\$271,577	\$671,881	
Safety Harbor	3.167	\$54,918	\$173,925	
Tarpon Springs	1.236	\$133,482	\$164,984	
Seminole	2.219	\$1,884,296	\$4,181,253	
East Lake	1.505	\$1,874,025	\$2,820,408	
Lealman	5.323	\$677,324	\$3,605,396	
High Point	2.929	\$846,745	\$2,480,116	
Tierra Verde	1.190	\$501,212	\$596,442	
South Pasadena	2.186	\$75,449	\$164,932	
Totals		\$8,140,632	\$19,583,056	2.406

2.406 = Average Fire District Millage

² Department of Community Affairs: <http://floridaspecialdistricts.org>.

District Powers

Unless otherwise exempted by special or general law, the act requires each district to comply with its provisions. The act further provides that it is the intent of the Legislature that the act supersedes all special acts or general laws of local application provisions that contain the charter of a district. However, those provisions that address district boundaries and geographical subdistricts for the election of members of the governing board are exempted. Chapter 191, F.S., also does not repeal any authorization providing for the levying of ad valorem taxes, special assessments, non-ad valorem assessments, impact fees or other charges.

An independent special fire control district's general governmental powers include, but are not limited to, the following:

- to sue and be sued, to adopt a seal, and to make and execute contracts;
- to provide for a pension or retirement plan for its employees, and to provide for an extra compensation program;
- to contract for the services of consultants;
- to borrow money and accept gifts, and to apply for grants and loans;
- to adopt resolutions, procedures, ordinances and resolutions that are necessary to conduct district business;
- to maintain an office;
- to acquire real and personal property;
- 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 lease any facility or property as lessor or lessee;
- 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;
- to charge user and impact fees and to enforce their receipt and collection;
- to exercise the power of eminent domain;
- to cooperate or contract with other persons or entities, including other governmental agencies;
- to assess and impose ad valorem taxes and non-ad valorem assessments on real property in the district;
- to impose and foreclose non-ad valorem assessment liens or to impose, collect and enforce non-ad valorem assessments;
- to select a depository for its funds;
- to provide adequate insurance;
- and to organize, participate in, and contribute to monetarily to organizations or associations relating to the delivery of or improvement of fire control, prevention, emergency rescue services or district administration.

Independent special fire control districts also 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. Their boards are authorized to carry out the following such powers:

- to establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical and other emergency equipment, pursuant to ch. 401, F.S., and any certificate of public convenience and necessity or its equivalent issued for those purposes;
- to employ, train and equip firefighting and other personnel, including volunteer firefighters, as necessary to accomplish the duties of the district;

- to conduct public education to promote awareness of methods to prevent fires and reduce loss of life and property;
- to adopt and enforce fire safety standards and codes and enforce the rules of the State Fire Marshal;
- 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, as provided in ch. 252, F. S., and
- to contract with general-purpose local governments for emergency management planning and services.

District Funding Mechanisms

Section 191.009, F.S., authorizes special fire control 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 five 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 five 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.

Independent special fire control districts also 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.³

District Boundaries/ Municipal Annexation within an Independent Special District

Pursuant to s. 191.014, F.S., the boundaries of an independent special fire control district may be modified, extended or enlarged upon approval or ratification by the Legislature. 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.

Chapter 171, F.S., the "Municipal Annexation or Contraction Act," contemplates a municipality's annexation of property within the jurisdictional boundaries of an independent special district.⁴ In such an instance, the municipality may elect to assume the special district's service responsibilities. Upon such an election, the municipality and the district may enter into an interlocal agreement which provides for the orderly transfer of service responsibilities. This agreement also must address the prevention of loss of any district revenues which may be detrimental to the continued operations of the district, and the status and employee rights of any adversely affected employees. If the municipality and the district are unable to enter into an interlocal agreement, the district remains the service provider in the annexed area for a period of four years. During the four-year period, the municipality is required to pay the district an amount equal to the ad valorem taxes or assessments that would have been collected had the property remained in the district. The district and the municipality can mutually agree upon an extension for the provision of services at the end of four years.

Three possible scenarios for district boundaries are contemplated in the case of a municipal annexation:

³ See, s. 191.012, F.S.

⁴ See, s. 171.093, F.S.

1. If the municipality elects not to assume the district's responsibilities, the district remains the service provider for the annexed area and the geographical boundaries of the district continue to include the annexed area.
2. If the municipality elects to assume the district's responsibilities pursuant to an interlocal agreement, the districts boundaries contract to exclude the annexed area at the time and in the manner as provided in the agreement.
3. If the municipality elects to assume the district's responsibilities and the municipality and the district are unable to enter into an interlocal agreement, and the district continues to remain the service provider in the annexed area, the geographical boundaries of the district contract to exclude the annexed area on the effective date of the beginning of the four-year period. The district may not levy ad valorem taxes on the annexed property in the calendar year in which its boundaries contract, but may assess user charges and impact fees within the area while it remains the service provider.

The Lealman Special Fire Control District

The Lealman Special Fire Control District is an independent special district located in Pinellas County which employs over 50 firefighters and staff. The district's charter states that any land within the district's boundaries that is annexed by a municipality will be excluded from the district, effective the following January 1st. In 2002, the Legislature passed a local bill⁵ which amended the district's charter to provide that if a municipality or another fire control district annexed land within the district's boundaries, the district would continue as the sole taxing, enforcing and service providing authority for fire control purposes to this property. Pursuant to the bill, a municipality could choose to collect the applicable tax or assessment for fire services and remit it to the district at the district's standard rate.⁶ These provisions sunset effective January 1, 2008.

EFFECT OF PROPOSED CHANGES

HB 819 repeals the sunset language contained in ch. 2002-352, L.O.F., thereby allowing the Lealman Special Fire Control District to remain the sole taxing, enforcing and service providing authority for fire control purposes for property within its boundaries which is annexed by a municipality or another fire control district.⁷ According to district representatives, the district relies heavily upon commercial property to support its tax base, and has requested this bill due to the annexations of commercial properties within its boundaries by neighboring cities in recent years. Since 2000, the district has lost over \$85 million in taxable properties as a result of municipal annexations. This equates to over \$425,000 in lost revenue and represents approximately 13 percent of the district's annual budget. Since the enactment of the 2002 bill, no annexations of lands within the district have occurred. If the current sunset provision is not repealed, the district fears that municipalities will resume annexing property, further eroding its tax base.

C. SECTION DIRECTORY:

Section 1: Provides for repeal of sections of previous special act.
Section 2: Provides for an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 6, 2005

⁵ See ch. 2002-352, L.O.F.

⁶ The District's current millage rate is 5.323.

⁷ While the ch. 2002-352, L.O.F., contemplates the annexation of district land by another fire control district, such a district does not have the power to "annex" property, although its boundaries may be extended upon Legislative approval and ratification.

WHERE? The *St. Petersburg Times*, a daily newspaper of general circulation, published in Pinellas County.

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 provides that this bill will not increase ad valorem levies or non-ad valorem assessments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 9(b), art. VII, of the State Constitution, provides for special districts to levy a millage authorized by law approved by the vote of the electors who are owners of freeholds within the district. This bill would authorize a special district to levy ad valorem taxes outside of the district, if such property were annexed by a municipality or became part of another fire control district pursuant to an act of the Legislature. If the authorized ad valorem millage were increased, subject to referendum approval of the district's electors, the owners of property within an annexed area could be subject to the new tax without a vote.

This bill also could also result in the owners of property within the annexed area being subjected to double taxation. If a municipality incorporated fire service charges into its ad valorem taxes, and an annexed property was subject to the district's ad valorem taxes, an owner could be taxed twice for fire control services.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. In this case, the bill appears to provide an exemption from s. 171.093, F.S., in that it eliminates a municipalities' ability to elect to assume an independent special district's responsibilities when the municipality annexes land within the district's boundaries. The bill also allows the district to continue to provide its services indefinitely in lieu of an interlocal agreement, rather than for a four-year period as provided by s. 171.093(4)(a), and to levy taxes within the municipality, rather than receiving payment from the municipality equal to the amount of the ad valorem taxes that would have been collected had the property remained in the district. Further, the bill may provide an exemption to s. 191.0091, F.S., which authorizes the board of an independent special fire control district to levy and assess ad valorem taxes on all taxable property within its district in that it would allow the district to serve as the taxing authority outside the district.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.