



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### 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., the "Independent Special Fire Control District Act," was enacted in 1997. The act's purpose is to establish standards and procedures concerning the operations and governance of Florida's 57<sup>1</sup> independent special fire control districts,<sup>2</sup> 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 or general law of local application, to comply, and provides that it is the intent of the Legislature that the act supersedes all special acts or general laws of local application provisions containing the charter of such a district which address the same subjects of the act, except for provisions which address district boundaries and geographical subdistricts for the election of members of the governing board. Additionally, the act does not require any modification to district financing or operations which would impair existing contracts, including collective bargaining agreements, debt obligations, or covenants and agreements relating to bonds validated or issued by the district. 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. The general provisions of the act include those relating to district boards of commissioners, general and special powers, taxes and assessments, and district issuance of bonds.

##### *District Board of Commissioners*

Section 191.005, F.S., provides for the election of the district board of commissioners, including its membership, officers and meetings. This section requires the business affairs of each district to be conducted and administered by a five-member board that is elected in nonpartisan staggered elections by the electors of the district. Although a special act enacted after 1997 is necessary to have fewer than five members, a district may have more than five commissioners on its governing board. Pursuant to s. 191.005(1)(c), F.S., the board of any district may request its local legislative delegation to create geographical subdistricts for board seats by special law. Any board of five members or larger elected on a subdistrict basis as of the effective date of the act is to continue to elect board members from such

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<sup>1</sup> [Http://floridaspecialdistricts.org/OfficialList/report.asp](http://floridaspecialdistricts.org/OfficialList/report.asp).

<sup>2</sup> Pursuant to s. 191.003, F.S., an independent special fire control district is defined as a special district, created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district. This section specifies that the term does not include a municipality, a county, a dependent special district as defined in s. 189.403, F.S., a district providing primarily emergency medical services, a community development district established under ch.190, F.S., or any other multiple-power district performing fire suppression and related services in addition to other services.

previously designated subdistricts, and the act does not require the elimination of board seats from these boards.

Board candidates are required to qualify with the county supervisor of elections. Except as specifically provided in ch. 191, F.S., elections must be held at the same time and in the same manner as prescribed by law for holding general elections in accordance with s. 189.405(2)(a) and (3), F.S. Each member is elected for a term of four years and serves until the member's successor is chosen and qualified. Candidates for a board must qualify by paying a filing fee of \$25, or by submitting a petition that contains the signatures of at least 25 of the district's registered electors. The forms are to be submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates pursuant to s. 105.035, F.S. When a vacancy occurs on a 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.

Each elected member of a board is required to assume office 10 days following the member's election. Annually, within 60 days after newly elected members have taken office, a board must organize by electing a chair, a vice chair, a secretary and a treasurer. The positions of secretary and treasurer may be held by one member. Members of a board may each be paid a salary or honorarium that is determined by a supermajority of the board. Such salary or honorarium is prohibited from exceeding \$500 per month for each member. Separate compensation for a board member serving as treasurer may be authorized as long as total compensation for the board member does not exceed \$500 per month. Members may be reimbursed for travel and per diem expenses pursuant to s.112.061, F.S.

The board is required to maintain records of all meetings, resolutions, proceedings, certificates, bonds given by commissioners, and corporate acts. The records are open to inspection in the same manner as state, county and municipal records are open under ch. 119, F.S. All meetings of the board are open to the public and governed by ch. 286, F.S., s. 189.417, F.S., and other applicable general laws.

#### *Powers of the District*

The district's general governmental powers, pursuant to s. 191.006, F.S., which may be exercised by majority vote, include the following:

- (1) To sue and be sued in the name of the district, to adopt and use a seal, and to make and execute contracts and other instruments.
- (2) To provide for a pension or retirement plan for its employees, and to provide for an extra compensation program.
- (3) To contract for the services of consultants.
- (4) To borrow money and accept gifts, to apply for and use grants or loans, and to hold, use, sell and dispose of such moneys or property for any district purpose.
- (5) 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; and to adopt ordinances and resolutions that are necessary to conduct district business.
- (6) To maintain an office at places it designates within a county or municipality in which the district is located.
- (7) To acquire, by purchase, lease, gift, dedication, devise or otherwise, real and personal property or any estate therein for any purpose authorized by the act.
- (8) 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.
- (9) To lease as lessor or lessee to or from any person, firm, corporation, association or body, public or private, any facility or property of any nature for the use of the district when necessary.

- (10) 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.
- (11) 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.
- (12) To exercise the right and power of eminent domain, pursuant to chs. 73 or 74, F.S., over any property within the district, except municipal, county, state, special district or federal property used for a public purpose.
- (13) To cooperate or contract with other persons or entities, including other governmental agencies, in connection with providing effective mutual aid and furthering any power, duty or purpose authorized by the act.
- (14) To assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments.
- (15) To impose, collect and foreclose non-ad valorem assessment liens.
- (16) To select a qualified public depository for its funds.
- (17) To provide adequate insurance on all real and personal property, equipment, employees, volunteer firefighters and other personnel.
- (18) 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.
- (19) To provide housing or housing assistance for its employed personnel whose total annual household income does not exceed a prescribed amount.

#### *Special Powers of the District*

Independent special fire control districts are granted "special powers" pursuant to s. 191.008, F.S., 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 exercise the following special powers:

- (1) 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.
- (2) Employ, train and equip firefighting and other personnel, including volunteer firefighters, as necessary to accomplish the duties of the district.
- (3) Conduct public education to promote awareness of methods to prevent fires and reduce loss of life and property.
- (4) Adopt and enforce fire safety standards and codes and enforce the rules of the State Fire Marshal.
- (5) Conduct arson investigations and cause-and-origin investigations.
- (6) Adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency, as provided in ch. 252, F.S.
- (7) Contract with general-purpose local government for emergency management planning and services.

#### *District Funding Mechanisms*

Section 191.009, F.S., authorizes independent 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*—A 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.

### Codification

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 often can be a difficult and time-consuming process for persons interested in determining the status of a charter. Codification of special district charters is important because it permits readers to easily locate and identify such a charter. 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.

### **Effect of Proposed Changes**

The North River Fire District in Manatee County is an independent fire control district that was created by special act in 1989. This bill codifies, amends and reenacts previous special acts, chs. 89-502, 91-406 and 96-452, L.O.F., relating to the District's charter, into a single act. The updated charter provisions generally conform to those previously granted to the District, except that the bill:

- removes language which provided that the board chairman was not entitled to make or second a motion, and could not vote on any matter except to break a tie;
- changes a requirement for the treasurer to execute a bond of \$1,000, and now requires all commissioners to execute bonds of \$5,000, thus conforming the charter to the provisions in s. 191.005(6), F.S.;
- adds language which clarifies when commissioners are elected, i.e., that district seats two, four, five and six are elected at the general election during each U.S. presidential election year, and that district seats one, three and at-large seat seven are elected at the general election during each Florida gubernatorial election year;
- adds a reference to s. 633.025, F.S., which requires the Florida Fire Prevention Code and the Life Safety Code adopted by the State Fire Marshal, which shall operate in conjunction with the Florida Building Code, to be deemed adopted by each special district with firesafety responsibilities, and removes references to various city building codes;
- updates statutory references for financial reporting for units of local government;
- removes language which specified impact fees, and adds language which states that any impact fees shall comply with the requirements of ss. 163.31801 (the "Florida Impact Fee Act") and 191.009(4), F.S., or any other applicable general law; and
- adds language which confirms that the district has powers, functions and duties pursuant to other applicable laws, in addition to those granted in its charter.

The bill provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

**Section 1:**

(1) Restates s. 189.429(2), F.S., language relating to codification.

(2) Restates s. 189.429(3), F.S., language relating to codification.

**Section 2:** Provides for the codification, amendment, reenactment and repeal of chs. 89-502, 91-406 and 96-452, L.O.F.

**Section 3:** Provides for the re-creation of the North River Fire District, and the re-creation and reenactment of its charter:

Section 1: Provides for incorporation.

Section 2: Provides for jurisdiction.

Section 3: Provides for board of fire commissioners.

Section 4: Provides for election of commissioners.

Section 5: Provides authority to levy non-ad valorem assessments.

Section 6: Provides for deposit of funds.

Section 7: Use of funds.

Section 8: Provides for borrowing power.

Section 9: Provides for authority and power to acquire property.

Section 10: Provides for duties of officers and authority of commissioners.

Section 11: Provides authority to employ qualified personnel.

Section 12: Provides for financial reporting.

Section 13: Provides for existence of district.

Section 14: Provides for definitions.

Section 15: Provides for a schedule of non-ad valorem assessments.

Section 16: Provides for impact fees.

Section 17: Provides for other district powers, functions and duties.

**Section 4:** Provides a severability clause.

**Section 5:** Provides for liberal interpretation of act.

**Section 6:** Repeals ch. 89-502, 91-406, and 96-452, L.O.F.

**Section 7:** Provides an effective date.

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

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 4, 2006

WHERE? The *Bradenton Herald*, a daily newspaper of general circulation published in Manatee 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 indicates that the bill will not have a fiscal effect.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Drafting Issues**

Sections 3 and 4 of the bill contain language which does not comply with ch. 191, F.S., regarding when members assume office and the election of officers.

#### **Other Comments**

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES