

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1147

Spring Hill Fire Rescue and Emergency Medical Services District,

Hernando County

SPONSOR(S): Schenck

TIED BILLS:

IDEN./SIM. BILLS: SB 2710

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Local Affairs Policy Committee		Rojas	Hoagland
2) Civil Justice & Courts Policy Committee			
3) Economic Development & Community Affairs Policy Council			
4) Finance & Tax Council			
5)			

SUMMARY ANALYSIS

With limited exceptions, 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.

HB 1147 creates the Spring Hill Fire Rescue and Emergency Medical Services District of Hernando County, an independent special fire control district, with all powers under ch. 189 and 191, F.S., with two notable exceptions.

- The board of fire commissioners is empowered to enact fire prevention ordinances as provided by general law. When the provisions of such fire prevention ordinances are determined by the board to be violated, the office of the state attorney, upon written notice of such violation issued by the board, is authorized to prosecute such person or persons held to be in violation thereof. Any person found guilty of a violation may be punished as provided in ch. 775, F.S., as a misdemeanor of the second degree.
- The district and its officers, agents, and employees are extended the same immunity from tort liability as other agencies and subdivisions of the state. The provisions of chapter 768, Florida Statutes, shall apply to all claims asserted against the district. Additionally, the district fire commissioners and all officers, agents, and employees of the district shall have the same immunity and exemption from personal liability as is provided by ch. 768, F.S.

These two provisions may be unconstitutional. The first provision may be in violation of Article III, section 11, Fla. Const., which prohibits any special law pertaining to punishment for crime. The second provision may be unconstitutional because it seeks to grant sovereign immunity, when such grants must be provided for in general law.

This bill is effective upon becoming law except for the provisions of Section 6, which become effective upon approval by a majority vote of qualified electors in a referendum.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

With limited exceptions provided in general law, 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 57 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. The statutes require 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 therefore 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

The Spring Hill Fire Department was established in 1968. In January of 1974, after a special referendum election, the Spring Hill Fire Department became the Spring Hill Fire & Rescue District. This was a special fire tax district, voted for by the citizens and making Spring Hill Fire & Rescue, still today, the first and only government body in Spring Hill.

In the early 1990's they were part of the county's total millage cap. The county wanted to raise their taxes so they turned them into a MSTU. At around this time they allowed the district to become independent but they lost the election. So basically they operated as a quasi-dependent district. On November 4th of this year the people in the district voted for them to become independent.

This bill creates the Spring Hill Fire Rescue and Emergency Medical Services District (District), as an independent special fire control district, in Hernando County, Florida. The bill specifies the purposes of the district as providing fire prevention services. The bill also grants the District the methodologies for tax collections, sales, and liens provided for in Chapter 197, F.S.

The District is granted all the powers under chs. 189 and 191, F.S., as more fully set forth above, with two notable exceptions:

- The board of fire commissioners is empowered to enact fire prevention ordinances as provided by general law. When the provisions of such fire prevention ordinances are determined by the board to be violated, the office of the state attorney, upon written notice of such violation issued by the board, is authorized to prosecute such person or persons held to be in violation thereof. Any person found guilty of a violation may be punished as provided in ch. 775, F.S., as a misdemeanor of the second degree.
- The district and its officers, agents, and employees are extended the same immunity from tort liability as other agencies and subdivisions of the state. The provisions of chapter 768, Florida Statutes, shall apply to all claims asserted against the district. Additionally, the district fire commissioners and all officers, agents, and employees of the district shall have the same immunity and exemption from personal liability as is provided by ch. 768, F.S.

B. SECTION DIRECTORY:

Section 1: Provide definitions.

Section 2: Provides the purpose of the district, specifies it as an independent special district under ch. 189 and ch. 191, F.S., and provides boundaries.

Section 3: Provides for the Board of Commissioners.

Section 4 Provides for officers, bonds, and board compensation.

Section 5: Provides powers, duties and responsibilities.

- Section 6:** Authorizes the District to levy ad valorem taxes with a referendum.
- Section 7:** Establishes user charges.
- Section 8:** Authorizes the District to levy impact fees.
- Section 9:** Authorizes the District to special assessments.
- Section 10:** Directs property appraiser to furnish tax rolls.
- Section 11:** Authorizes the special assessment levied to be a lien on real property.
- Section 12:** Directs deposit of district funds and grants authority to disburse.
- Section 13:** Grants district authority to borrow money.
- Section 14:** Restricts use of district funds.
- Section 15:** Directs board to maintain records of meetings, annual reports, budgets and adopt rules.
- Section 16:** Grants authority to enact fire prevention ordinances and enter land.
- Section 17:** Provides for annexations.
- Section 18:** Provides for dissolution of the district.
- Section 19:** Provides immunity from tort liability.
- Section 20:** Provides for district expansion.
- Section 21:** Provides for construction of provisions of the charter.
- Section 22:** Provides for severability of the act.
- Section 23:** Provides that this act is the exclusive charter of the district.
- Section 24:** Provides that the provisions of Section 6 are effective only upon approval by a majority vote of qualified electors in a referendum.
- Section 25:** Provides that this act takes effect upon becoming law except for the provisions of Section 6, which become effective upon approval by a majority vote of qualified electors in a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 21, 2009

WHERE? Hernando Today/Hernando Sunday

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

The Board of County Commissioners of Hernando County shall call and the Supervisor of Elections of Hernando County shall conduct a referendum at the next election of the district or at a special election called by the board for that purpose.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

The Economic Impact Statement indicates an increase of medical billing revenue of \$2.4 million for FY 2009-10 and an increase of ad valorem tax revenues of \$9.1 million in FY 2010-2011.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

The bill provides the district with the protections of sovereign immunity under section 768.28, F.S. However, Article X section 13, Fla. Const., requires that waiver of sovereign immunity be provided for in general law. Moreover, the district already enjoys the protection of sovereign immunity under section 768.28, F.S., as an independent subdivision of the state. See *Eldred v. North Broward Hospital District*, 498 So. 2d 911 (Fla. 1986); see also *Op. Atty. Gen.*, 2000-52, September 11, 2000; *Op. Atty. Gen.*, 078-42, March 9, 1978; s. 768.28(2), F.S.

Article III, section 11, Fla. Const., prohibits any special law pertaining to punishment for crime. Section 16 of the bill makes any violation of the district's fire prevention code punishable as provided in ch. 775, F.S., as a misdemeanor of the second degree.¹ This provision appears to be prohibited by the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 7 of the charter allows the district to provide firefighting services occurring in or to structures outside the district. This would only occur pursuant to an agreement with the state or other local government pursuant to paragraph 3 of section 2. Consequently, this provision may be unnecessary.

There appears to be a typographical error on line 781 referring to chapter 19 I. This should refer to chapter 191, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹ Section 663.052(2), F.S., provides for civil infractions of ordinances enacted by counties and municipalities relating to fire safety codes.