

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1033 Lealman Special Fire Control District, Pinellas County

**SPONSOR(S):** Community & Military Affairs Subcommittee, Ahern

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Nelson	Hoagland
2) Finance & Tax Committee	20 Y, 0 N	Flieger	Langston
3) Economic Affairs Committee	16 Y, 0 N	Nelson	Tinker

### SUMMARY ANALYSIS

The CS for HB 1033 amends the special act charter for the Lealman Fire Control District in Pinellas County. The bill provides that if a municipality annexes unincorporated territory within district boundaries before July 1, 2016, the district will continue as the sole provider of fire and rescue services for the annexed area. A municipality may levy any applicable taxes, assessments, or fees on the annexed territory, but is required to pay the district an amount equal to the amount of taxes, assessments, or fees that would have been collected by the district. These payments continue in perpetuity unless the district is relieved of all fire, rescue or emergency medical service responsibilities in the annexed territory. If litigation is required to enforce these provisions, the prevailing party is entitled to an award of attorney fees and costs.

The bill also lowers the millage cap of the district from 10 to 5.75 mills, and provides an effective date of upon becoming law.

**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. The provisions of House Rule 5.5(b) appear to apply to this bill.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

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

An "independent special fire control district" is defined as an independent special district<sup>1</sup> created by a special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district.<sup>2</sup> Currently, there are 56 such districts in Florida.<sup>3</sup>

Chapter 191, F.S., the "Independent Special Fire Control District Act," provides general and special powers for fire control districts, and addresses district creation, expansion and merger, and funding mechanisms. Section 191.002, F.S., sets forth the act's purpose, which is to:

- provide standards, direction and procedures concerning district operations and governance;
- provide greater uniformity in operations and authority;
- provide greater uniformity in financing authority without hampering the efficiency and effectiveness of currently authorized and implemented methods and procedures of raising revenue;
- improve communication and coordination between special fire control districts and other local governments with respect to short-range and long-range planning to meet the demands for service delivery while maintaining fiscal responsibility; and
- provide uniform procedures for electing members of district governing boards to ensure greater accountability to the public.

Unless otherwise exempted by special or general law, this 1997 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 and which address the same subjects as the act, except where such laws address district boundaries and geographical subdistricts for the election of governing board members. Chapter 191, F.S., also does not repeal any authorizations providing for the levying of ad valorem taxes, special assessments, non-ad valorem assessments, impact fees or other charges.

#### 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 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 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

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<sup>1</sup> See, s. 189.403, F.S., for a definition of "independent special district."

<sup>2</sup> Section 191.003(5), F.S. 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.

<sup>3</sup> <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm>, last visited January 24, 2012.

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 also 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. 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.

### *User Charges*

A district may provide a reasonable schedule of user charges for the following services:

- special emergency services, including firefighting occurring in structures outside the district;
- fighting fires occurring in or at refuse dumps or as a result of an illegal burn;
- responding to or assisting or mitigating emergencies that 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 fire safety standards.

### *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, a district may establish a schedule of impact fees to pay for the cost of new facilities and equipment. A district also may enter into agreements with general purpose local governments to share the revenues from fire protection impact fees.

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.<sup>4</sup>

### Municipal Annexation within an Independent Special District

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.<sup>5</sup> If the municipality elects to assume the special district's service responsibilities, 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 rights of any adversely affected employees.<sup>6</sup>

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

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<sup>4</sup> See, s. 191.012, F.S.

<sup>5</sup> See, s. 171.093, F.S.

<sup>6</sup> If the municipality elects to assume the district's responsibilities pursuant to an interlocal agreement, the district's boundaries contract to exclude the annexed area at the time and in the manner as provided in the agreement.

would have been collected had the property remained in the district.<sup>7</sup> By the end of the four-year period, or any mutually agreed-upon extension, the municipality and the district are required to enter into an agreement for the equitable distribution of the district's property and associated indebtedness, or the matter proceeds to circuit court.

During the four-year period, or any mutually agreed upon extension, district service and capital expenditures within the annexed area must be rationally related to the annexed area's service needs. Service and capital expenditures within the annexed area also must be rationally related to the percentage of district revenue received on behalf of the residents of the annexed area when compared to the district's total revenue. A capital expenditure greater than \$25,000 cannot be made by the district for use primarily within the annexed area without the express consent of the municipality.

If the municipality elects not to assume the district's responsibilities, the district remains the service provider for the annexed area, the geographical boundaries of the district continue to include the annexed area, and the district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area.

### Pinellas County

Pinellas County residents receive fire protection and emergency medical services through a complex system requiring cooperation between 14 municipalities and four independent special fire districts (East Tarpon Lake, Lealman, Palm Harbor and Pinellas Suncoast Fire and Rescue District). This system evolved over time as the county became more densely populated and developed.<sup>8</sup> Ad valorem taxes levied on property are the primary funding source for these local government services, which had an estimated countywide cost of \$210.9 million in Fiscal Year 2008-2009.<sup>9</sup>

An Office of Program Policy Analysis & Government Accountability report presented to the Joint Legislative Auditing Committee on March 8, 2010, recommended that Pinellas County would benefit from the establishment of a broad-based planning entity to oversee a more coordinated approach to planning for fire protection and emergency medical services, and the creation of a system for reporting and tracking related financial information.

### The Lealman Special Fire Control District

The Lealman Special Control Fire District was created by the Legislature in 2000. Pending referendum approval, ch. 2000-426, L.O.F, established geographic boundaries and an elected governing board for the district, provided the powers of the district, and authorized district ad valorem taxing authority of up to 10 mills. On November 7, 2000, district electors approved creation of the district.

The district serves an unincorporated area between St. Petersburg and Pinellas Park,<sup>10</sup> which consists of approximately 11 square miles and less than 50,000 residents, and presently employs 50 full-time personnel including staff and firefighters.<sup>11</sup>

Lealman is located in a relatively low-income area of unincorporated Pinellas County, and relies on commercial property within its boundaries to support its tax base. Since 2000, neighboring cities have selectively annexed the most tax-desirable properties in the community, such as industrial parks, restaurants, car dealerships and other businesses, and thus shifted approximately \$400,000 per year in

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<sup>7</sup> 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.

<sup>8</sup> Office of Program Policy Analysis & Government Accountability, February 2010, Report No. 10-25.

<sup>9</sup> *Ibid.* One of the independent special fire districts, Pinellas Suncoast Fire and Rescue District, receives its funding from a fire services assessment.

<sup>10</sup> Seminole is on the west end, and Kenneth City lies in the middle of the fire control district.

<sup>11</sup> <http://lealmanfire.com/statistics.html>.

fire taxes onto remaining district residents. As a direct result of the annexations, the district must levy a high millage rate.<sup>12</sup>

In 2002-2003, the district's millage rate was 5.32 mills, and in 2004-2005, the rate was 4.99. The district's millage rates and total revenues for the past six years were as follows:

<u>Year</u>	<u>Millage Rate</u>	<u>Total Revenues</u>
2005-2006	4.70	\$4,747,506
2006-2007	4.30	\$5,396,963
2007-2008	3.69	\$5,045,579
2008-2009	3.98	\$4,971,340
2009-2010	4.48	\$4,737,720
2010-2011	4.48	\$4,363,008

Thus, although the current district millage rate is less than it was in 2002, it has increased since Fiscal Year 2008-2009, while district revenues have correspondingly decreased. The average Pinellas County fire service millage rate has increased from 2.40 in 2002 to 2.72 in 2011, with the highest rates levied by Lealman. High Point and Feather Sound come in as close seconds, with millage rates of 4.1916.

Recently, the drop in property values has reduced annexation pressure from the cities. However, it is assumed that annexation activity will increase along with property values. Another problem associated with annexation is the fact that the original fire control district, Lealman Fire/Rescue Company, entered into a 1990 countywide mutual aid agreement under which the closest fire unit goes to a fire or accident regardless of the jurisdiction. This agreement requires Lealman to respond to events in areas that have been annexed from the district and from which it receives no tax revenues.<sup>13</sup>

The original charter for the district provided that property within its boundaries annexed by a municipality would be treated as lying within the corporate boundaries of the municipality, and no longer subject to a levy of ad valorem taxes by the district. This act also provided that the property was excluded from the district effective the next January 1 following annexation.<sup>14</sup>

The charter was amended in 2002<sup>15</sup> by the Legislature effective January 1, 2003, to protect the district from annexation in that it provided that the district would continue to provide services to any annexed area and continue as the sole taxing authority (although a municipality or fire control district that annexed district land could collect the tax and pay the district for such services at its annually adopted standard rate). These provisions were scheduled to essentially revert to original charter language effective January 1, 2008.<sup>16</sup>

In 2007, the Legislature created the Lealman Special Fire Control District Task Force to review the foregoing provisions governing district land annexation, and consider whether the future repeal of those changes should be rescinded. The Legislature also amended the district charter to reflect original charter language effective July 1, 2008, rather than January 1 of that year.<sup>17</sup> The Task Force issued a report to the Pinellas County Legislative Delegation on October 29, 2007, which recommended that the

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<sup>12</sup> Chris Lyon, Lewis, Longman & Walker, P.A, attorney for the district.

<sup>13</sup> It is noted that, pursuant to Section 9 of this agreement, a party may withdraw upon 90 days written notice.

<sup>14</sup> Chapter 2000-426, L.O.F.

<sup>15</sup> Also, this year, the Pinellas County Planning Department issued a "Lealman Incorporation Feasibility Study," responding to requests from Lealman residents to the Board of County Commissioners, to determine the feasibility of incorporating Lealman. The residents wanted to preserve the integrity of their community, and to protect the tax base of the special fire control district. Taxable values in Lealman were found to be significantly lower (approximately one-half) than those in the rest of the unincorporated county. The study found that if Lealman were to incorporate, the new government would have to look at other revenue sources for basic operating expenses that ad valorem revenues would not cover. The report estimated that if Lealman were to incorporate, taxes and fees would increase significantly, between 3.6 and 68.6 percent.

<sup>16</sup> Chapter 2002-352, L.O.F.

<sup>17</sup> Chapter 2007-288, L.O.F.

most productive way to move forward was to pursue interlocal agreements between the various parties covering the issues of annexation and reimbursement for fire services.

Lealman entered into a settlement agreement with the City of Pinellas Park dated February 7, 2007, resolving *Lealman Special Fire Control District v. City of St. Petersburg and City of Pinellas Park*, Case Number: 05-3587-CI-013, pending in the Pinellas County Circuit Court, which provides that the city will not annex property within the district for a period of 10 years.<sup>18</sup>

Additionally, Lealman entered into an interlocal agreement with the City of Seminole on November 13, 2007, which provides that the city will not annex within the district for a period of 15 years.

On August 13, 2010, Lealman filed a two-count petition against the Town of Kenneth City. *Lealman Special Fire Control District v. Town of Kenneth City*, Case No. 10-000046AP-88B, was assigned to the appellate division of the Sixth Judicial Circuit in Pinellas County. The actions filed by the district seek to quash the town's annexation of 16 properties that were formerly within the district's boundaries on grounds that the annexations violated applicable laws. Specifically, the district has alleged that the town's annexations failed to comply with procedural requirements; created enclaves, pockets or finger areas; failed to result in a reasonable, compact, urban municipal boundary; and deprived the district of revenue and increased the tax burden on the district's remaining taxpayers as the district continues to be obligated under existing mutual aid agreements to respond to many of the annexed properties. Additionally, the district seeks to compel the town to comply with the provisions in ch.171, F.S. Specifically, the district has requested the court compel the town to coordinate with the district on the orderly transition of fire and rescue services within the annexed properties, and pay the district its lost ad valorem revenue for fire district services for a four-year period pursuant to s. 171.093, F.S.<sup>19</sup>

At the time of the filing of the action, the district requested abatement of the suit so the parties could participate in the intergovernmental dispute resolution process provided for in ch. 164, F.S. The court entered an order abating the action pending the parties' full participation in that process. To date, the parties have participated in the initial phase of dispute resolution, conflict assessment. The parties have made several attempts to engage in the second phase of the process, the joint public meeting, but have experienced scheduling difficulties.<sup>20</sup>

The City of St. Petersburg does not propose to annex property within the district.<sup>21</sup>

### **Effect of Proposed Changes**

The CS for HB 1033 amends ch. 2000-426, L.O.F., as amended, the charter for the Lealman Fire Control District in Pinellas County. The bill provides that, notwithstanding s. 171.093, F.S., if a municipality annexes unincorporated territory within the boundaries of the district before July 1, 2016, the district will continue as the sole provider of fire and rescue services for the annexed area. A municipality may levy any applicable taxes, assessments, or fees on the annexed territory, but is required to pay the district an amount equal to the amount of taxes, assessments, or fees that would have been collected by the district, using the millage rate as of the effective date of the bill, or any lower rate that may be levied by the district. The payments continue in perpetuity unless the district is relieved of all fire, rescue or emergency medical service responsibility in the annexed territory. If litigation is

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<sup>18</sup> A later settlement stipulation executed by the parties on May 21, 2008, appears to make this moratorium effective until May 21, 2016.

<sup>19</sup> A letter provided to the legislature dated March 15, 2010, from the Town of Kenneth City Major, Teresa Zemaitis, indicated that the town had a contract with Lealman for fire services, after closing its own volunteer fire department almost 15 years earlier. During this time, Lealman was the first responder and the surrounding fire districts would assist as per the mutual aid agreement. When Kenneth City annexed approximately 20 properties worth approximately \$17,000 annually in ad valorem taxes, Lealman cancelled the contract, which was worth over \$200,000 annually for the next five years. The town currently is under contract with Pinellas Park for fire services, and has reopened its fire station in the center of town. If Kenneth City is to grow, i.e., annex, it must do so into the district, which surrounds the town.

<sup>20</sup> Draft memo to Chris Lyon from Maggie D. Mooney-Portale, Esq., Lewis, Longman & Walker, P.A. dated January 25, 2012.

<sup>21</sup> Chris Lyon, Lewis, Longman & Walker, P.A.

required to enforce these provisions, the prevailing party is entitled to an award of attorney fees and costs.

The bill creates an exception to s. 171.093, F.S., in that a municipality may not elect to provide fire and rescue services to any district property it annexes within the next four years and must make payments for these services to the district in perpetuity unless the district agrees otherwise. The bill is expected to discourage annexation within the boundaries of the Lealman Fire Control District, and thus prevent further erosion of the district's ad valorem tax base. The four-year sunset for the bill's requirements coincides with the expiration of the settlement agreement between the district and the City of Pinellas Park.<sup>22</sup>

This bill also lowers the district's millage cap from 10 to 5.75 mills. This revision continues to allow funding flexibility for the district as it currently has a millage rate of 4.48, and has never levied a greater rate than 5.32. See, the III. COMMENTS, A. CONSTITUTIONAL ISSUES, portion of this analysis regarding the need for a referendum when authorizing special district millage caps.

The bill provides an effective date of upon becoming law.

**B. SECTION DIRECTORY:**

Section 1: Amends ch. 2002-426, L.O.F., relating to the Lealman Special Fire Control District.

Section 2: Provides an effective date.

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

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 6, 2011

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

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

Section 9(b), Art. VII of the State Constitution, authorizes ad valorem taxes "for all other special districts a millage authorized by law approved by vote of the electors . . . ." It has been the practice of House Bill Drafting to advise that referendum approval be included not only in acts that raise a millage rate, but also in acts that reduce the rate of such authorized millage, as this, too, is a millage "authorized by law," arguably within the intent of the constitutional provision.

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<sup>22</sup> January 11, 2012, e-mail from Chris Lyon.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**Drafting Issues**

None.

**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. The provisions of House Rule 5.5(b) appear to apply to this bill in that it provides an exemption to s. 171.093, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 7, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that:

- corrects a supremacy clause, to provide a specific exemption to s. 171.093, F.S.;
- removes unnecessary language providing that the act did not require a referendum to approve the levy of an ad valorem tax at a millage rate less than previously approved by referendum;  
and
- allows an annexing municipality to cease making payments to the district if the district is relieved of all fire, rescue or emergency medical service responsibility in the annexed territory.

This analysis is drafted to the Committee Substitute.