

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 885 Independent Special Fire Control Districts

**SPONSOR(S):** Local and Federal Affairs Committee, Caldwell

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Lukis	Rojas
2) Finance & Tax Subcommittee	15 Y, 0 N	Tarich	Langston
3) State Affairs Committee	15 Y, 0 N, As CS	Stramski	Camechis

### SUMMARY ANALYSIS

HB 885 amends s. 191.009, F.S. and s. 191.011, F.S. to expand the authorization of independent special fire control districts to levy non-ad valorem assessments.

Currently, independent special fire control districts may levy non-ad valorem assessments to “construct, operate, and maintain district facilities and services.” The assessments may only be levied on property that benefits from such services, and the rate of the assessments must be based on the specific benefit accruing to such benefitted property.

This bill expands the ability of independent special fire control districts to levy non-ad valorem assessments and specifies that independent special fire control districts may levy non-ad valorem assessments for the following:

- emergency rescue services;
- first response medical aid;
- emergency medical services; and
- emergency transport services.

However, the bill stipulates that if an independent special fire control district chooses to levy a non-ad valorem assessment for any of the abovementioned services, that district must cease charging an ad valorem tax for that particular service. The bill also recognizes that the above mentioned services constitute a benefit to real property.

Lastly, the bill removes the requirement that assessments be levied on benefitted property and the requirement that the rate of the assessments be based on the specific benefit accruing to such benefitted property.

The bill does not impose any new non-ad valorem assessment on residents living in an independent special fire control district. Rather, the bill authorizes fire control districts to seek authorization of a special assessment for services in addition to those for which a special assessment is authorized by law. Section 191.009(2), F.S., requires that an independent special fire control district board receive elector approval via referendum before it levies any new non-ad valorem assessment within its district.

The bill will be effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background on Independent Special Fire Control Districts**

###### Formation of Independent Special Fire Control Districts

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 special fire control 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.”

###### *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. These provisions relate to issues that must be addressed in a district’s charter,<sup>1</sup> election of district governing board members,<sup>2</sup> bond referenda,<sup>3</sup> public records and meetings, and reporting requirements.<sup>4</sup>

###### *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. Unless otherwise exempted by special or general law, the Act requires each district, whether created by special act or general law of local application, to comply with the Act. Currently, there are 57 districts in Florida.

###### 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 business affairs of each district shall be conducted and administered by a five-member board. Each member must be elected for a term of four 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.

The electors of a new 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 that 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.

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.

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<sup>1</sup> Section 189.404(3), F.S.

<sup>2</sup> Section 189.4051, F.S.

<sup>3</sup> Section 189.408, F.S.

<sup>4</sup> Section 189.412, F.S.

## 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:

- 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 fire safety 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 fire safety 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.

### **Present Situation**

Section 191.009, F.S., authorizes independent special fire control districts to levy ad valorem taxes, non-ad valorem assessments, user charges, and impact fees.

### Non-ad Valorem Assessments

A district may levy non-ad valorem assessments to construct, operate, and maintain district facilities and services. Sections 191.009 and 119.011, F.S., lay out the following provisions and procedures related to non-ad valorem assessments:

- Non-ad valorem assessments may be levied only on benefited real property at a rate of the cost thereof.<sup>5</sup>
- The rate of such assessments must be fixed by resolution of the board pursuant to statutory procedures.<sup>6</sup>
- 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.<sup>7</sup>
- 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.<sup>8</sup>
- Proposed non-ad valorem assessment increases that 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.<sup>9</sup>
- 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.<sup>10</sup>
- Non-ad valorem assessments must be imposed, collected, and enforced pursuant to general law.<sup>11</sup>

#### “Assessment” vs. “Tax”

The Florida Supreme Court has held that a legally imposed special assessment is not a tax.<sup>12</sup> In *Klemm v. Davenport*, the Florida Supreme Court explained the difference as follows:

A ‘tax’ is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. A ‘special assessment’ is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax, but it is inherently different and governed by entirely different principles. It is imposed upon the theory that that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity, and may be determined legislatively or judicially.<sup>13</sup>

More simply, special assessments require the following two characteristics that are not necessarily required by a tax:<sup>14</sup>

- 1) “the property assessed must derive a special benefit from the service provided;” and

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<sup>5</sup> Section 191.011, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 191.009, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> There is a technical difference with “non-ad valorem” assessments and “special” assessments—unlike special assessments, non-ad valorem assessments will usually be filed as a lien against property if not paid. However, this difference is not meaningful for purposes of this analysis.

<sup>13</sup> 129 So. 904, 907-08 (1930).

<sup>14</sup> *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla. 1992).

- 2) “the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.”

In order to determine whether a special benefit is conferred on property by the provision of a service, a determination is made as to whether there is a “logical relationship” between the services provided and the benefit to real property.<sup>15</sup> Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include, but are not limited to, the following:

- garbage disposal;<sup>16</sup>
- sewer improvements;<sup>17</sup>
- fire protection;<sup>18</sup>
- fire and rescue services;<sup>19</sup>
- street improvements;<sup>20</sup>
- parking facilities;<sup>21</sup> and
- downtown redevelopment.<sup>22</sup>

Conversely, Florida courts have acknowledged that the following services do *not* specifically benefit real property (emphasis added):

- law enforcement services;<sup>23</sup>
- indigent health care;<sup>24</sup> and
- emergency medical services.<sup>25</sup>

However, Florida courts have also held that the judiciary traditionally defers to the legislative body’s determination of special benefits.<sup>26</sup> In *Sarasota County v. Sarasota Church of Christ*, the Florida Supreme Court held that: “[t]he standard is the same for both prongs; that is, the legislative determination as to the existence of special benefits and as to the apportionment of costs of those benefits should be upheld unless the determination is arbitrary.”<sup>27</sup> In order for the deference to apply, there must be actual facts in the record to support a legislative determination of a special benefit.<sup>28</sup>

See the Constitutional Issues portion of the COMMENTS section below for further discussion of when a special assessment may be levied.

### **Effect of Proposed Changes**

HB 885 amends s. 191.009, F.S. and s. 191.011, F.S. to expand independent special fire control districts’ power to levy non-ad valorem assessments.

Specifically, the bill provides that districts may levy such assessments to construct, operate, and maintain district facilities and services “*provided pursuant to the general powers listed in s. 191.006, the special powers listed in s. 191.008, any applicable general laws of local application, and a district’s*

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<sup>15</sup> *Lake County v. Water Oak Management Corp.*, 695 So.2d 667, 669 (Fla. 1997) (citing *Whisnant v. Stringfellow*, 50 So. 2d 885 (Fla. 1951)).

<sup>16</sup> *E.g., Harris v. Wilson*, 693 So.2d 945 (Fla. 1997).

<sup>17</sup> *E.g., Meyer v. City of Oakland Park*, 219 So.2d 417 (Fla. 1969).

<sup>18</sup> *E.g., South Trail Fire Control Dist., Sarasota County v. State*, 273 So.2d 380 (Fla. 1973).

<sup>19</sup> *E.g., Lake County v. Water Oak Management Corp.*, 695 So.2d 667 (Fla. 1997).

<sup>20</sup> *E.g., Bodner v. City of Coral Gables*, 245 So.2d 250 (Fla. 1971).

<sup>21</sup> *City of Naples v. Moon*, 269 So.2d 355 (Fla. 1972).

<sup>22</sup> *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

<sup>23</sup> *Lake County v. Water Oak Management Corp.*, 695 So.2d 667, 670 (Fla. 1997).

<sup>24</sup> *Id.*

<sup>25</sup> *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002).

<sup>26</sup> *Id.* at 347.

<sup>27</sup> 667 So.2d 180, 184 (Fla. 1995).

<sup>28</sup> *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d at 347-8.

*enabling legislation* (emphasis added) . . .” In particular, the bill provides that these district services include the following:

- emergency rescue services;
- first response medical aid;
- emergency medical services; and
- emergency transport services.

However, the bill stipulates that if an independent special fire control district chooses to levy a non-ad valorem assessment for any of the abovementioned services, that district must cease charging an ad valorem tax for that particular service.

The bill also expressly articulates a legislative determination that emergency rescue services, first response medical aid, emergency medical services, and emergency transport services constitute a benefit to real property “the same as any other improvement performed by a district, such as fire suppression services, fire protection services, and fire prevention services.”

Lastly, the bill removes the requirement that assessments be levied on benefitted property and the requirement that the rate of the assessments be based on the specific benefit accruing to such benefitted property.

The bill does not impose any new non-ad valorem assessment on residents living in an independent special fire control district. Rather, the bill authorizes fire control districts to seek authorization of a special assessment for services in addition to those for which a special assessment is authorized by law. Section 191.009(2), F.S., requires that an independent special fire control district board receive elector approval via referendum before it levies any new non-ad valorem assessment within its district.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 191.009, F.S.; authorizing under a certain condition that independent special fire control districts may levy non-ad valorem assessments for emergency rescue services, first response medical aid, emergency medical services, and emergency transport services; providing that emergency rescue services, first response medical aid, emergency medical services, and emergency transport services constitute a benefit to real property.

**Section 2:** Amends s. 191.011, F.S.; removing the requirement that non-ad valorem assessments be levied on benefitted property and the requirement that the rate of the assessments be based on the specific benefit accruing to such benefitted property.

**Section 3:** Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill authorizes an additional source of income for independent special fire control districts. However, as mentioned above, s. 191.009(2), F.S., requires electors in a district to approve by referendum any first-time levy of a non-ad valorem assessment.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other Issues: Authority to Impose Special Assessments for Emergency Medical Services

This bill in part authorizes special fire control districts to impose special assessments to fund emergency medical services. The Florida Supreme Court has on a previous occasion held that a city's ordinance that created a special assessment to fund emergency medical services in fact imposed an improper tax.<sup>29</sup> The Court examined the requirement that a valid assessment must fund a service that provides a direct benefit to real property, and concluded that while the city made a determination that the provision of emergency medical services provided a direct benefit to real property, there was no record evidence to support that determination. As no other evidence had been presented to support a finding of a direct benefit to real property stemming from emergency medical services, the special assessment was invalidated.<sup>30</sup> It is unclear if, in light of the *City of North Lauderdale* decision, a special fire control district could develop a sufficient evidentiary record to sustain a determination that the provision of emergency medical services provides a direct benefit to real property, as required to support a special assessment.

Another statute<sup>31</sup> that similarly authorizes counties to impose assessments for emergency medical services has been found by the Attorney General to properly authorize the imposition of assessments for such services.<sup>32</sup> However, that statute provides that the authorization to impose assessments is to be construed as a grant under the Legislature's power to authorize a local tax by general law pursuant to sections 1 and 9 of Article VII, Fla. Const.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>29</sup> *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002).

<sup>30</sup> *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d at 347.

<sup>31</sup> Section 125.271, F.S.

<sup>32</sup> Attorney General Opinion 2012-09.



#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2013, the Local and Federal Affairs Committee adopted one amendment to the bill.

- The amendment stipulates that if an independent special fire control district levies a non-ad valorem assessment for emergency rescue services, first response medical aid, emergency medical services, or emergency transport services, the district must cease charging an ad valorem tax for that particular service.

On April 9, 2013, the State Affairs Committee adopted one amendment to the bill. The amendment removed surplus words from the title and revised a “can” to “may” to provide drafting uniformity with other laws.

This analysis has been updated to reflect both amendments.