

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1151 Lehigh Acres Fire Control and Rescue District and Alva Fire Protection and Rescue Service District, Lee County

SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Caldwell

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Oversight, Transparency & Administration Subcommittee	15 Y, 0 N	Moore	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Alva Fire Protection and Rescue Service District (Alva District) and Lehigh Acres Fire Control and Rescue District (Lehigh Acres FCRD) are 2 of the 16 independent fire control districts in Lee County. Currently, an area under the Lehigh Acres FCRD extends north to State Road 80 and then to the Caloosahatchee River. This area has some development but is separated from the main developed area of the Lehigh Acres subdivision by an undeveloped area. As an Alva District fire station is much closer to this area, emergency services for the subject area are more readily dispatched from the Alva District.

The bill transfers the above described area from the Lehigh Acres FCRD to the Alva District. The bill provides for its liberal construction to act in the interest of the health, welfare, and safety of the people served by the respective districts.

The economic impact statement submitted with the bill shows an expected increase in revenues for the Alva District as a result of receiving the new lands.

The act takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Independent Special Fire Control Districts

An independent special fire control district is a type of independent special district¹ created by the Legislature for the purpose of providing fire suppression and related activities within the territorial jurisdiction of the district.² Chapter 191, F.S., the “Independent Special Fire Control District Act,” is intended to provide standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards for greater public accountability.³ Chapter 191, F.S., controls over more specific provisions in any special act or general law of local application creating an independent fire control district’s charter.⁴ The statute requires every independent fire control district to be governed by a five-member board⁵ and provides for:

- General powers;⁶
- Special powers;⁷
- Authority and procedures for the assessment and collection of ad valorem taxes;⁸
- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;⁹ and
- Issuance of district bonds and evidences of debt.¹⁰

As a type of independent special district,¹¹ independent special fire control districts are also subject to applicable provisions of ch. 189, F.S., the “Uniform Special District Accountability Act.”¹² That Act prohibits special laws or general laws of local application that:¹³

¹ A “special district” is a local government unit of “special purpose, as opposed to general purpose, operat[ed] within a limited boundary and created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.” S. 189.012(6), F.S. An “independent special district” is any special district that is not a “dependent special district,” which is defined as a special district in which: the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the special district’s governing body are removable at will during their unexpired terms by the governing body of a single county or municipality, or the district’s budget is subject to the approval of the governing body of a single county or municipality. S. 189.012(3), F.S.

² Section 191.003(5), F.S.

³ Section 191.002, F.S.

⁴ Section 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section. *Id.*

⁵ Section 191.005(1)(a), F.S. A fire control district may continue to be governed by a three-member board if authorized by special act adopted in or after 1997.

⁶ Section 191.006, F.S. (such as the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain).

⁷ Section 191.008, F.S.

⁸ Sections 191.006(14) and 191.009(1), F.S.

⁹ Sections 191.006(11), (15), 191.009(2)-(4), and 191.011, F.S.

¹⁰ Section 191.012, F.S.

¹¹ Section 191.014(1), F.S., providing that new districts are created by the Legislature pursuant to s. 189.031, F.S.

¹² Section 189.031, F.S.

¹³ Article III, s. 11(a)(21), Fla. Const. (enabling the prohibition of any special law or general law of local application on a subject, if such prohibition is passed as a general law approved by three-fifths vote of the membership of each house. A general law passed in this manner may be amended or repealed by “like vote.” The “Uniform Special District Accountability Act” (ch. 89-169, s. 67, Laws of Fla.) was originally passed by a three-fifths majority in both the House and the Senate.

- Create special districts which do not conform with the minimum requirements for district charters under s. 189.031(3), F.S.;¹⁴
- Exempt district elections from the requirements of s. 189.04, F.S.;¹⁵
- Exempt a district from the requirements for bond referenda under s. 189.042, F.S.;¹⁶
- Exempt a district from the requirements for reporting, notice, or public meetings under ss. 189.015, 189.016, 189.051, or 189.08, F.S.;¹⁷
- Create a district for which a statement documenting the following is not submitted to the Legislature:
 - The purpose of the proposed district;
 - The authority of the proposed district;
 - An explanation of why the district is the best alternative; and
 - A resolution or official statement from the local general-government jurisdiction where the proposed district will be located stating that the proposed district is consistent with approved local government plans and the local government does not object to creation of the district.¹⁸

An independent special district, as an entity created by the Legislature, only possesses the powers granted by the authorizing law.¹⁹ Therefore, any boundary expansion must be approved by the Legislature.²⁰ A special district may not levy ad valorem taxes without approval by the affected voters in a referendum.²¹

Alva Fire Protection and Rescue Service District

The Alva Fire Protection and Rescue Service District (Alva District) was created in 1976 to provide fire protection and other services in an area of northeast Lee County.²² The charter of the Alva District was recodified in 2000²³ and provides for the district to levy special assessments as well as ad valorem taxes not to exceed 2 mills annually, except as otherwise provided in ch. 191, F.S.,²⁴ ch. 97-340, Laws of Florida,²⁵ or other applicable general law.²⁶ The maximum millage rate authorized in general law is 3.75 mills.²⁷ According to a budget amendment the Alva District posted for its fiscal year ending 2015, the district levied ad valorem taxes at the rate of 3.0 mills.²⁸

Lehigh Acres Fire Control and Rescue District

The Lehigh Acres Fire Control and Rescue District (Lehigh Acres FCRD) was created in 1963 to provide fire protection and related services in the Lehigh Acres subdivision lying within Lee County.²⁹ The charter of Lehigh Acres FCRD also was recodified in 2000³⁰ and provides for the district to levy

¹⁴ Section 189.031(2)(a), F.S.

¹⁵ Section 189.031(2)(b), F.S.

¹⁶ Section 189.031(2)(c), F.S.

¹⁷ Section 189.031(2)(d), F.S.

¹⁸ Section 189.031(2)(e), F.S.

¹⁹ *Bd. of Comm'rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 531 (Fla. 4th DCA 2007).

²⁰ Section 191.014(2), F.S. ("The territorial boundaries of [an independent special fire control] district may be modified, extended, or enlarged with the approval or ratification of the Legislature.").

²¹ Article VII, s. 9(b), Fla. Const.

²² Ch. 76-413, Laws of Fla.

²³ Ch. 2000-455, Laws of Fla.

²⁴ Enacted as ch. 97-256, Laws of Fla.

²⁵ This local law standardized practices and powers for all 16 fire control districts in Lee County.

²⁶ Ch. 2000-455, s. 6, Laws of Fla.

²⁷ Section 191.009(1), F.S.

²⁸ At <http://alvafirecontrol.webs.com/apps/blog/entries/show/24506735-budget-amendment-1-fiscal-year-end-2015> (last accessed 3/12/2017).

²⁹ Ch. 63-1546, Laws of Fla.

³⁰ Ch. 2000-406, Laws of Fla.

special assessments as well as ad valorem taxes not to exceed 3.5 mills annually except as otherwise provided by ch. 191, F.S., ch. 97-340, Laws of Florida, or other applicable general law.³¹ Lehigh Acres FCRD currently does not levy ad valorem taxes but instead imposes an annual assessment on each parcel of real property in the district, subject to certain exemptions.³² Apparently based in part on a decline in ad valorem tax revenues from fiscal year 2013 – 2014 to fiscal year 2014 – 2015,³³ the district projected the conversion would raise an estimated \$13,428,352 in assessments alone, eliminating a potential revenue shortfall of \$7 million from ad valorem taxes.³⁴

Current Status of Area Described in the Bill

The Alva District and Lehigh Acres FCRD are 2 of the 16 independent fire control districts in Lee County. Currently, an area under the Lehigh Acres FCRD extends north to State Road 80 and then to the Caloosahatchee River. This area has some development but is separated from the main developed area of the Lehigh Acres subdivision by an undeveloped area. As an Alva District fire station is much closer to this area, emergency services for the subject area are more readily dispatched from the Alva District.

The area described in the bill is comprised in large part of land owned by Lee County and forms part of Hickey Creek Park. That part of the area requiring fire protection and emergency response services already receives such services from the Alva District because of its location. At its meeting on January 17, 2017, the Board of Fire Commissioners for Lehigh Acres FCRD concurred that the boundary change was logical and would have a minimal effect on district revenues, and the board supported transferring the area to the Alva District.³⁵

The boundaries of a fire control district may be modified, extended, or enlarged upon approval or ratification by the Legislature.³⁶

Effect of Proposed Changes

The bill adjusts the boundary between the Alva District and the Lehigh Acres FCRD by removing land from the Lehigh Acres FCRD and transferring the described area to the Alva District. The bill requires its provisions to be liberally construed in the interests of the public health, welfare, and safety of the people served in the Alva District and those served in the Lehigh Acres FCRD. The bill also provides that in the event of a conflict with any other act, the provisions of the bill must control to the extent of such conflict.

³¹ Ch. 2000-406, s. 9, Laws of Fla.

³² In 2014, the electors in the district approved a referendum for the district to cease imposing ad valorem taxes and instead begin imposing a special assessment. *See* Presentation in Support of Assessment at <http://www.lehighfd.com/wp-content/uploads/2015/05/Fire-Fee-Assessment-Presentation.pdf> (last accessed 3/12/2017). Prior to the conversion to special assessments the district imposed ad valorem taxes at a rate of 3.0 mills. *See* “Lehigh Acres Fire Control and Rescue District Basic Financial Statements Together with Reports of Independent Auditor, Year Ended September 30, 2015,” pg. i, at <http://www.lehighfd.com/wp-content/uploads/2012/04/FY-2014-2015-Audit-Report-LAFCRD.pdf> (last accessed 3/12/2017).

³³ Total revenues, including grants, reported by Lehigh Acres FCRD to Dept. of Financial Services for FY 2013-2014 were \$13,952,984 and for FY 2014-2015 were \$12,429,195. *See* annual local government reports at <https://apps.fldfs.com/LocalGov/Reports/AdHoc.aspx> (last accessed 3/12/2017).

³⁴ *See* Presentation in Support of Assessment at <http://www.lehighfd.com/wp-content/uploads/2015/05/Fire-Fee-Assessment-Presentation.pdf> (last accessed 3/12/2017).

³⁵ Board of Commissioners Meeting Packet for January 17, 2017. Action item 2017-7 for the boundary change and area transfer to the Alva District is on pages 67-68. As of the date of this bill analysis the minutes for the January 17 meeting have not yet been approved and finalized. *See* at <http://www.lehighfd.com/wp-content/uploads/2010/10/January-17-2017-Agenda-Packet.pdf> (last accessed 3/12/2017).

³⁶ Section 191.014(2), F.S.

B. SECTION DIRECTORY:

- Section 1: Amends section 1 of section 3 of ch. 2000-406, Laws of Florida, by removing certain described lands from the Lehigh Acres Fire Control and Rescue District.
- Section 2: Amends section 1 of section 1 of ch. 2000-455, Laws of Florida, by annexing certain described lands into the Alva Fire Protection and Rescue Service District.
- Section 3: Requires the provisions of the act to be created by the bill to be liberally construed to carry out the purposes of the act for the benefit of the health, welfare, and safety of the people served by the Lehigh Acres Fire Control and Rescue District and by the Alva Fire Protection and Rescue Service District.
- Section 4: Provides that in the event of a conflict between the act to be created by the bill and any other act, the provisions in the act created by the bill must prevail to the extent of such conflict.
- Section 5: Provides the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 26, 2017

WHERE? Ft. Myers News-Press in Lee County, Florida

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:

Special districts authorized to impose ad valorem taxes may do so only at the millage authorized by law approved by the electors in the district.³⁷

Those in the area to be transferred to the Alva District may see a reduction in the annual imposition of taxes or assessments by the district on their property, as the Alva District has been levying ad valorem taxes at the rate of 3.0 mills. The current amount of non-ad valorem assessments imposed by the Lehigh Acres FCRD apparently exceeds what would be the amount of ad valorem taxes levied at 3.0 mills. In both districts, the electors previously approved maximum millage rates as provided in ch. 191, F.S., which would be up to 3.75 mills. The tax payers in the area to be transferred thus previously approved the imposition of ad valorem taxes up to a millage rate of 3.75 mills.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected several technical errors in the boundary description recited in the bill and entered the correct name for the Alva District.

This analysis is drawn to the bill as amended.