

House Bill No. 1719

An act relating to Boca Grande Fire Control District, Charlotte and Lee Counties; codifying, reenacting, amending, and repealing special laws relating to the district; providing that the district is an independent special district; providing legislative intent; providing for applicability of chapters 191 and 189, Florida Statutes, and other general laws; providing a district charter; providing boundaries; providing for a district board; providing authority of the board; providing for staff; providing duties and powers of the board; providing for elections to the board; providing salary of board members; providing for the removal of board members; providing for revenue raising; providing for the levying of non-ad valorem special assessments; providing for capital improvement impact fees; providing severability; providing for liberal construction; amending chapters 87-447 and 97-340, Laws of Florida, and repealing section 1 of chapter 87-447, Laws of Florida, to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Pursuant to section 191.015, Florida Statutes, this act constitutes the codification of all special acts relating to the Boca Grande Fire Control District. It is the intent of the Legislature in enacting this law to provide a single, comprehensive special act charter for the district, including all current legislative authority granted to the district by its several legislative enactments, and to conform the charter to chapter 191, Florida Statutes, the Independent Special Fire Control District Act, and other provisions of general law. It is further the intent of this act to preserve all district authority, including the authority to annually assess and levy against the taxable property in the district an ad valorem tax not to exceed the limit as herein provided.

Section 2. Chapters 22372 (1943), 23382 (1945), 57-1514, 69-1239, 73-533, 74-523, 75-419, 79-500, and 97-340, Laws of Florida, relating to the Boca Grande Fire Control District, are codified, reenacted, amended, and repealed as herein provided.

Section 3. The charter for the Boca Grande Fire Control District is recreated and reenacted to read:

Section 1. Definitions.—As used in this act, unless otherwise specified:

(1) “Board” means the governing board of the Boca Grande Fire Control District.

(2) “District” means the Boca Grande Fire Control District.

(3) “Elector” means a person who is a resident of the district and is qualified to vote in a general election within the local general-purpose government jurisdiction in which the district is located.

(4) “Emergency medical service” means basic and advanced life support service as defined in section 401.23, Florida Statutes.

(5) “Rescue response service” means an initial response to an emergency or accident situation including, without limitation, a plane crash, trench or building collapse, swimming or boating accidents, and motor vehicle accidents.

Section 2. Creation; status; charter amendments; boundaries; district purposes.—There is hereby created an independent special taxing fire protection and rescue service district incorporating lands in Charlotte County and Lee County described in subsection (1) which shall be a public corporation having the powers, duties, obligations, and immunities herein set forth, under the name of the Boca Grande Fire Control District. The district is organized and exists for all purposes, and shall hold all powers, set forth in this act and chapters 189 and 191, Florida Statutes.

(1) The lands to be included within the district are the following described lands in Charlotte County and Lee County: all that portion of Gasparilla Island located within Lee County, Florida; all that portion of Gasparilla Island located within Charlotte County, Florida; and all of Cole Island (lying northerly of Gasparilla Island), Charlotte County, Florida.

(2) The purpose of the district and this act is to promote the health, welfare, and safety of the citizens and residents of Charlotte County and Lee County who reside within the geographical limits of that area known as the Boca Grande Fire Control District, by providing for: firefighting equipment; the establishment and maintenance of fire stations and fire substations; the acquisition and maintenance of all firefighting and protection equipment necessary for the prevention of fires or fighting of fires; the employment and training of such personnel as may be necessary to accomplish fire prevention and firefighting; the establishment and maintenance of emergency medical service; the establishment and maintenance of rescue response service; the acquisition and maintenance of rescue and other emergency equipment; and the employment and training of necessary emergency personnel. The district shall have all other powers necessary as to carry out the purposes of the district as otherwise provided by law, including, but not limited to, the power to adopt all necessary measures, rules, and regulations and policies relating to said purposes.

(3) Nothing herein shall prevent the district from cooperating with the state or other local governments to render such services to communities adjacent to the land described in this section, or other such places as from time to time may be deemed desirable.

(4) The district was created by special act of the Legislature in 1943. Its charter may be amended only by special act of the Legislature.

Section 3. Board of commissioners.—

(1) Pursuant to chapter 191, Florida Statutes, the business and affairs of the district shall be governed and administered by a board of three commissioners. The commissioners shall serve a term of 4 years each, subject

to the provisions of chapter 191, Florida Statutes, and this act. Each commissioner shall hold office until his or her successor is elected and qualified under the provisions of this act. The procedures for conducting district elections and for qualification of candidates and electors shall be pursuant to chapters 189 and 191, Florida Statutes, as they may be amended from time to time.

(2) The board may employ such personnel as deemed necessary for the proper function and operation of a fire department. The salaries of commissioners, fire department and emergency service personnel, and any other wages, shall be determined by the board.

Section 4. Officers; board compensation; bond.—

(1) In accordance with chapter 191, Florida Statutes, each elected member of the board shall assume office 10 days following the member's election. Annually, within 60 days after the election of new members of said board, the members shall organize by electing from their number a chair, vice chair, secretary, and treasurer. However, the same member may be both secretary and treasurer, in accordance with chapter 191, Florida Statutes, as amended from time to time.

(2) The commissioners shall receive reimbursement for actual expenses incurred while performing the duties of their offices in accordance with general law governing per diem for public officials.

(3) Each commissioner, upon taking office and in accordance with chapters 189 and 191, Florida Statutes, shall execute to the Governor, for the benefit of the district, a bond conditioned upon the faithful performance of the duties of the commissioner's office. The premium for such bonds shall be paid from district funds.

Section 5. Powers; duties; ad valorem assessments; non-ad valorem assessments.—

(1) The district shall have and the board may exercise all the powers and duties set forth in this act, and chapters 189, 191, and 197, Florida Statutes, as they may be amended from time to time, including, but not limited to, ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements. The district shall have the authority to access and utilize the public water supply system at no charge for the purposes of firefighting and fire prevention. The district may be financed by any method established in this act or chapter 189 or chapter 191, Florida Statutes, as amended from time to time.

(2) The board shall have the right, power, and authority to levy annually an ad valorem tax against the taxable real estate within the district to provide funds for the purposes of the district, in an amount not to exceed the limit provided in chapter 191, Florida Statutes, as amended from time to time. Although the district is authorized to levy a maximum millage rate as provided for in section 191.009(1), Florida Statutes, the district must receive

referendum approval, as required by the State Constitution and section 191.009, Florida Statutes, for any increase in the millage rate above 2 mills.

(3) The methods and procedures for assessing and collecting non-ad valorem assessments, fees, or service charges shall be as set forth in this act, chapter 170, chapter 189, chapter 191, or chapter 197, Florida Statutes, as amended from time to time.

(4) The district shall levy and collect ad valorem taxes in accordance with chapter 200, Florida Statutes, as amended from time to time.

(5) The district is authorized to levy and enforce non-ad valorem assessments in accordance with chapters 170, 189, 191, and 197, Florida Statutes, as amended from time to time.

(6) The district's planning requirements shall be as set forth in this act and chapters 189 and 191, Florida Statutes, as amended from time to time.

(7) Requirements for financial disclosure, meeting notices, reporting, public records maintenance, and per diem expenses for officers and employees shall be as set forth in this act and chapters 112, 119, 189, 191, and 286, Florida Statutes, as amended from time to time.

Section 6. Impact fees.—

(1) Pursuant to section 191.009(4), Florida Statutes, it is hereby declared that the cost of new facilities for fire protection and emergency service should be borne by new users of the district's services to the extent new construction requires new facilities, but only to that extent. It is the legislative intent of this section to transfer to the new users of the district's fire protection and emergency services a fair share of the costs that new users impose on the district for new facilities. This section shall only apply in the event that the general purpose local government in which the district is located has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries.

(2) The impact fees collected by the district pursuant to this section shall be kept as a separate fund from other revenues of the district and shall be used exclusively for the acquisition, purchase, or construction of new facilities or portions thereof required to provide fire protection and emergency service to new construction. "New facilities" means land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles and radio telemetry equipment. The fees shall not be used for the acquisition, purchase, or construction of facilities which must be obtained in any event, regardless of growth within the district. The board shall maintain adequate records to ensure that impact fees are expended only for permissible new facilities. The board may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by such governments.

Section 7. Ad valorem taxes a lien.—The taxes levied and assessed by the district shall be a lien upon the land so assessed along with the county taxes assessed against such land until said assessments and taxes have been paid,

and if the taxes levied by the district become delinquent, such taxes shall be considered a part of the county tax subject to the same penalties, charges, fees, and remedies for enforcement and collection and shall be enforced and collected as provided by general law, including but not limited to chapter 191, Florida Statutes, for the collection of such taxes.

Section 8. Deposit of taxes, assessments, fees; authority to disburse funds.—

(1) The funds of the district shall be deposited in qualified public depositories, in accordance with chapters 191 and 280, Florida Statutes, as they may be amended from time to time.

(2) All warrants for the payment of labor, equipment, and other expenses of the board, and in carrying into effect this act and the purposes thereof, shall be payable by the treasurer of the board on accounts and vouchers approved and authorized by the board.

Section 9. Authority to borrow money.—

(1) The board of commissioners shall have the power and authority to borrow money or issue other evidences of indebtedness, including, but not limited to bonds, for the purpose of the district in accordance with chapters 189 and 191, Florida Statutes, as amended from time to time.

(2) The board of commissioners shall not be personally or individually liable for the repayment of such loan. Such repayment shall be made out of the tax receipts of the district subject to the provisions of chapters 189 and 191, Florida Statutes.

Section 10. Use of district funds.—No funds of the district shall be used for any purposes other than the administration of the affairs and business of the district; the construction, care, maintenance, upkeep, operation, and purchase of firefighting and rescue equipment or a fire station or stations; the payment of public utilities; and the payment of salaries of district personnel as the board may from time to time determine to be necessary for the operations and effectiveness of the district.

Section 11. Record of board meetings; authority to adopt policies and regulations; annual reports; budget.—

(1) A record shall be kept of all meetings of the board, and in such meetings concurrence of a majority of the commissioners present shall be necessary to any affirmative action by the board.

(2) The board shall have the authority to adopt and amend policies and regulations for the administration of the affairs of the district under the terms of this act, chapters 189 and 191, Florida Statutes, and all other applicable provisions of Florida law, which shall include, but not be limited to, the authority to adopt the necessary policies and regulations for the administration and supervision of the property and personnel of the district and for the prevention of fires, fire control, and rescue work within the district. Said commissioners shall have all the lawful power and authority

necessary to implement the purposes for which the said fire district is created, which power and authority shall include, but not be limited to, the power to purchase or lease all necessary fire equipment, rescue equipment, and all other equipment necessary to carry out the purposes of said fire district; to purchase all necessary real and personal property; to purchase and carry standard insurance policies on all such equipment; to employ such personnel as may be necessary to carry out the purpose of said fire district; to provide adequate insurance for said employees; to purchase and carry appropriate insurance for the protection of all firefighters and personnel as well as all equipment and personal property on loan to the district; to provide benefits to employees and commissioners, to sell surplus real and personal property in the same manner and subject to the same restrictions as provided for such sales by counties; and to enter into contracts with qualified service providers, other fire departments, municipalities, and state and federal governmental units for the purpose of obtaining financial aid, assistance, or benefits, expanding services, providing effective mutual aid, and for otherwise carrying out the purposes of the district. The commissioners shall adopt a fiscal year for said fire district which shall be October 1 to September 30.

(3) For the purposes of carrying into effect this act, the board shall annually prepare, consider, and adopt a district budget pursuant to the applicable requirements of chapters 189, 191, and 200, Florida Statutes, as they may be amended from time to time.

Section 12. Authority to enact fire prevention ordinances; appoint fire marshal; acquire land; enter contracts; establish salaries; general and special powers; authority to provide emergency medical and rescue services.

(1) The board of commissioners shall have the right and power to enact fire prevention ordinances in the same manner provided for the adoption of policies and regulations in section 11(2), and 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 chapter 775, Florida Statutes, as a misdemeanor of the second degree. The cost of such prosecution shall be paid out of the district funds unless otherwise provided by law.

(2) The board shall have the power to appoint a fire marshal, who shall be a person experienced in all types of firefighting and fire prevention and who shall work with and cooperate with the Florida State Fire Marshal in which the district is situated in the prevention of fires of all types. The district fire marshal shall be authorized to enter, at all reasonable hours, any building or premises for the purpose of making any inspection or investigation which the State Fire Marshal is authorized to make pursuant to state law and regulation. The owner, lessee, manager, or operator of any building or premises shall permit the district fire marshal to enter and inspect the building or premises at all reasonable hours. The district fire marshal shall report any violations of state fire safety law or regulations to the appropriate officials.

(3) The board shall have the power to acquire, by gift, lease or purchase, lands or rights in lands, and any other property, real and personal, tangible or intangible, necessary, desirable, or convenient for carrying out the purposes of the district, and to pay any and all costs of same out of the funds of the district.

(4) The board shall have the power to enter into contracts or to otherwise join with any other district, city, town, the United States of America, or any agency or authority thereunder, for the purpose of expanding services, providing effective mutual aid, and accomplishing and carrying out the purposes for which the district was created and for the further purpose of specifically obtaining financial aid, assistance, or subsidy.

(5) The district is authorized to establish and maintain emergency medical and rescue response services and to acquire and maintain rescue, medical, and other emergency equipment, subject to the provisions of chapter 401, Florida Statutes.

Section 13. Annexations.—If any municipality or other fire control district annexes any land included in the district, such annexation shall follow the procedures set forth in section 171.093, Florida Statutes, as amended from time to time.

Section 14. Immunity from tort liability.—

(1) The district and its officers, agents, and employees shall have the same immunity from tort liability as other agencies and subdivisions of the state. The provisions of chapter 768, Florida Statutes, as from time to time amended, shall apply to all claims asserted against the district.

(2) The district commissioners and all officers, agents, and employees of the district shall have the same immunity and exemption from personal liability as is provided by general law of the state for state, county, and municipal officers.

(3) The district shall defend all claims against the commissioners, officers, agents, and employees which arise within the scope of employment or purposes of the district and shall pay all judgments against said persons, except where said persons acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 15. District expansion; merger; dissolution.—The district boundaries may be modified, extended, or enlarged as follows:

(1) Lands may be added or deleted from the district only by special act of the Legislature, subject to a referendum vote. Lands added to the district shall also require a board resolution approving the addition of lands to the district. The addition or deletion of lands may be effective only upon an affirmative majority vote of the electors in the lands to be included or deleted in the district.

(2) The merger of the district with all or portions of another independent special district or dependent fire district is effective only upon ratification

by the Legislature. The district may not, solely by merger with another governmental entity, increase ad valorem taxes on property within the original limits of the district beyond the maximum established by chapter 191, Florida Statutes, unless approved by the electors of the district by referendum.

(3) The district may only be dissolved by special act of the Legislature, subject to referendum vote of the electors of the district, which may be conducted by mail ballot. If legislative dissolution of a district is proposed in order to consolidate fire services under a county or municipal government, the county or municipality shall prepare a report setting forth the plans for merger, and the report shall address the following factors in evaluating the proposed merger:

(a) Whether, in light of independent fiscal analysis, level-of-service implications, and other public policy considerations, the proposed merger is the best alternative for delivering fire services and facilities to the affected area.

(b) Whether the fire services and facilities to be provided pursuant to the merger will be compatible with the capacity and uses of existing local services and facilities.

(c) Whether the merger is consistent with the applicable provisions of the state comprehensive plan, the strategic regional policy plan, and the local government comprehensive policy plans of the affected area.

(d) Whether the proposed merger adequately provides for the assumption of all indebtedness.

Section 4. This act shall be construed as remedial and shall be liberally construed to promote the purpose for which it is intended.

Section 5. In the event that any part of this act should be held void for any reason, such holding shall not affect any other part thereof.

Section 6. Chapters 22372 (1943), 23382 (1945), 57-1514, 69-1239, 73-533, 74-523, 75-419, and 79-500, Laws of Florida, are repealed.

Section 7. Paragraph (a) of subsection (1) of section 5 of chapter 97-340, Laws of Florida, is amended to read:

Section 5. District boards of commissioners; membership, officers, meetings.—

(1)(a) The business affairs of each district shall be conducted and administered by a five-member board, except that Captiva Fire Control District, ~~Boca Grande Fire Control District~~, and Sanibel Fire Control District shall remain governed by three-member boards. The board seats shall be designated seats 1, 2, and 3 in the case of the three-member boards and seats 1, 2, 3, 4, and 5 for all five-member boards. Board elections shall be staggered with no more than two members of a three-member board or three members of a five-member board elected during an election year. The board shall be elected in nonpartisan elections by the electors of the district. Such elections

shall 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), Florida Statutes, and each member shall be elected for a term of 4 years except as provided herein and serve until a successor assumes office. Candidates for the board of a district shall qualify for a specified seat with the county supervisor of elections. Such candidates may qualify by paying a filing fee of \$25 or by obtaining the signatures of at least 25 registered electors of the district on petition forms provided by the supervisor of elections which petitions shall be submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates pursuant to s. 105.035, Florida Statutes.

Section 8. Section 1 of chapter 87-447, Laws of Florida, is repealed.

Section 9. Sections 4, 5, and 6 of chapter 87-447, Laws of Florida, are amended to read:

Section 4. Any special or general law to the contrary notwithstanding, the provisions of chapter 81-414, Laws of Florida, prescribing uniform regulations for elections, qualification of candidates, and filling of vacancies for certain special districts in Lee County shall also apply to the ~~Boca Grande Fire Control District, chapter 22372, Laws of Florida;~~ Captiva Island Fire Control District, chapter 30929, Laws of Florida,; and North Fort Myers Fire Control District, chapter 30925, Laws of Florida.

Section 5. For the purpose of implementing the provisions of ss. 1-4, each member of the ~~Boca Grande Fire Control Board,~~ the Captiva Island Fire Control Board, and the North Fort Myers Fire Control Board, or a person appointed to fill a vacancy, shall continue to hold that office until the expiration of the present term and thereafter until an election is held pursuant to the provisions of chapter 81-414, Laws of Florida, at which election the office will be filled.

Section 6. Notwithstanding any provision of general or special law to the contrary, any board member of any of the following districts may be removed from office pursuant to recall election: Alva Fire Protection and Rescue Service District, Bayshore Fire Protection and Rescue Service District, ~~Boca Grande Fire Control District,~~ Bonita Springs Fire Control and Rescue District, Captiva Island Fire Control District, Estero Fire Protection and Rescue Service District, Fort Myers Beach Fire Control District, Fort Myers Shores Fire Protection and Rescue Service District, Iona-McGregor Fire Protection and Rescue Service District, Lehigh Acres Fire Control and Rescue District, Matlacha-Pine Island Fire Control District, North Fort Myers Fire Control District, San Carlos Park Fire Protection and Rescue Service District, Sanibel Island Fire Control District, South Trail Fire Protection and Rescue Service District, and Tice Fire Protection and Rescue Service District. The procedure for conducting a recall election shall be the same as for conducting a municipal recall election pursuant to s. 100.361, Florida Statutes.

Section 10. This act shall take effect upon becoming a law.

Approved by the Governor June 17, 2004.

Filed in Office Secretary of State June 17, 2004.