

West Florence Fire District bill gets through Senate on last day

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FLORENCE, S.C. -- A bill to strengthen the West Florence Fire District special purpose district was approved on the last day of the General Assembly's session Thursday.

The bill received second reading when it was recalled without objection by Sen. Larry Martin, from the Judiciary Committee he heads, on Wednesday. It had sat untouched in committee since the House sent it to the Senate in March.

Sen. Gerald Malloy (D-Darlington) added a five-year sunset amendment to the bill before the Senate gave third-reading approval. The House concurred with Malloy's amendment.

Rep. Phillip Lowe (R-Florence), the bill's primary sponsor, said the sunset provision gives Darlington County future flexibility with the 90 homes in the High Gate subdivision on Hoffmeyer Road that will move from the Darlington County Fire District into the West Florence Fire District special purpose district.

"Darlington is passing a tax increase for their fire department so you never know they may build one closer or start staffing 24 hours a day," Lowe said. "So we thought we'd take a look back at it again and see if it's in the best interest of the people in five years."

A county-led lawsuit over the constitutionality of the special purpose district, created last year, was put on hold by a judge earlier this year pending the outcome of the bill. County attorney Malloy McEachin said last month that the county would proceed with the lawsuit regardless of whether the bill made it through.

Expect a court date soon.

West Florence fire district bill slowed in Senate

http://www.scnow.com/news/local/article_6a09a2c2-01a8-11e5-9535-3f2942923ab3.html

Posted: Sunday, May 24, 2015 3:00 am BY GAVIN JACKSON Morning News gjackson@florencenews.com

FLORENCE, S.C. – With just six days left in the legislative session this year, county officials are criticizing state lawmakers for slowing legislation on the West Florence Fire District that has delayed a lawsuit filed by the county last September.

Rep. Phillip Lowe (R-Florence) introduced a bill in February to address several concerns that a lawsuit filed by Florence County outlined. The bill was sent to the Ways and Means Committee in an unrelated political move by Rep. Jerry Govan (D-Orangeburg) and was later recalled, by Lowe, in early March.

The House approved it on March 24 and sent it to the Senate, where it has sat in the Judiciary Committee.

"I think the bill would strengthen the fire service," Lowe said. "I don't think it's critical for the bill to pass to prevail in the lawsuit."

Lowe checked on the bill in the Senate last week and was told that a meeting was scheduled with several officials in Darlington County on the bill. His bill takes about 90 parcels from Darlington County fire district, right on the other side of the county line on Hoffmeyer Road, and adds them to the original three parcels in the West Florence Fire special purpose district.

Lowe said unifying that area into just the West Florence Fire District will limit confusion and it will be closer to a fire station when the new Hoffmeyer Road station is built. The land grab will remove fire tax base from Darlington County, something that Lowe believes could be offset, but is causing some heartburn, he said.

Sen. Gerald Malloy (D-Darlington), who sits on the Judiciary Committee, is waiting to hear from others in the area on the issue, after which he could ask Judiciary Chairman Larry Martin to move the bill before the committee.

“At this level in the session the priorities are the budget, roads and matters in special order,” Malloy said. “Every bill has opportunity to come before the body, especially with House bills. I’m very familiar with legislation and I anticipate reviewing it with some other interested parties.”

The West Florence Fire special purpose district isn’t in Malloy’s district, but it is in his home county. Senate President Pro Tem Hugh K. Leatherman Sr. (R-Florence) says that’s why he has deferred to Malloy and the Judiciary Committee to handle the bill.

“I suggested he (Chairman Martin) recall it at one time,” Leatherman said. “That was probably three or four weeks ago. Senators don’t give reasons why they run their committees like they do; I don’t, they don’t.”

The bill hasn’t been assigned to a subcommittee. But if a majority of committee members support pulling it out, the bill could go to the Senate floor before adjournment on June 4 or after, if the legislature goes into extra innings.

Florence County attorney Malloy McEachin said Tuesday that if the bill doesn’t move by then, the county will not wait for session to start again next January to pursue a hearing.

“The attorney general raised the issue of not going forward with the hearing until they find out if they (the legislature) pass it or anything,” McEachin said. “I don’t think the county is going to be interested in waiting to see what they do next year. If they don’t do something this year we’ll try and get the court to hear the case.”

Deputy Solicitor General J. Emory Smith Jr., representing the state, declined to comment at this time.

One month vs. three months

Last year Lowe and others were scrambling to get the special purpose district signed into law after the County Council created the Florence County Fire Protection District in May.

The bill was on the fast-track from the start.

Lowe sponsored the bill along with then Rep. Kris Crawford (R-Florence), Rep. Robert Williams (D-Darlington) and now Speaker Jay Lucas (R-Darlington).

But Florence Democrats Rep. Terry Alexander and former Rep. Lester Branham Jr. got the votes to force debate on the bill. Days later on May 13 the second reading vote was 69-33 for the special purpose district. Two days later a 50-38 third reading vote sent the bill to the Senate.

In the Senate, Leatherman got it through in two days.

Gov. Nikki Haley signed it into law on May 28 and the residents of the unincorporated section of west Florence were spared from a tax increase that would be “redistributed” to strengthen fire protection in other parts of the county.

“I think we heard a lot last (Tuesday) night, how members of council who live in essentially unaffected districts are in favor of taxing the West Florence district more,” Crawford said last year. “And other areas will be subsidized and redistributed.”

Fast forward to present day when, three months into H. 3670’s life, it’s still just a bill.

"It seems to be languishing in the Judiciary Committee of the Senate," said County Council Vice Chairman James Schofield. "I think that may be by design. It may not be. It certainly moved through the legislature real quick last year and this year it's gotten slowed down for some reason."

Debt repayment delay

By creating the fire district, Florence County agreed to take on the \$3.5 million in outstanding debt from several of the fire districts. Since many of the rural departments don't have dense tax bases like the West Florence Fire District, for example, they were hamstrung by state law governing how much millage they could raise. Therefore, many used bonds to replace small portions of their still outdated fire apparatus.

When Gov. Haley signed the bill into law last May, West Florence was immediately pulled out of the fire district, leaving a substantial revenue hole in the unified fire district's budget that would help pay off that old \$3.5 million debt.

The council stabilized the \$4 million budget by increasing millage from 22.4 mills to 27.5 mills. The council issued a bond anticipation note to prevent millage from going into the 30s at the time and to buy time for a soon-to-be-filed lawsuit to shake out.

"We expected the lawsuit with West Florence to be over by this time. That's why it was a bond anticipation note," Schofield said. "It's not over...we will deal with that."

The county's 2016 fiscal year budget, starting July 1, had a 3.9-mill increase in it to cover the \$3.5 million fire debt. The council amended the budget Thursday to eliminate that increase, and a 3.5-mill increase for \$8.1 million in fire equipment replacements, in favor of lowering district millage to 19.5 mills and a \$25 fee per land parcel in the district. "If West Florence comes back into the fire district by the courts, I think the millage will be something like 15 mills. That's about a two mill increase from where they are today and a \$25 fee," Schofield said. "I want to get the mills down. I wasn't comfortable with 27 mills; I wasn't comfortable with it last year, but we had to because they (West Florence) were not in."

Rep. Jay Jordan (R-Florence) who is representing the West Florence special purpose district in the lawsuit, said the Senate may make moves in the next two weeks, despite a slog of last-minute legislation and filibusters.

"Given that the calendar is passing quickly I'm guessing the Senate will have some resolution with it in the next couple weeks," Jordan said. "Everyone's understanding is to be patient with the process."

West Florence Fire district debate heating up again

Lowe introduces bill to clarify special purpose district, changes lawsuit prospects

http://www.scnw.com/news/local/article_d0c709aa-bd51-11e4-948e-57581b8db6f4.html

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FLORENCE, S.C. – Some of the same Florence County legislators who sponsored legislation that created the West Florence Fire special purpose district last year and called it legally solid have introduced a bill to amend that law ahead of a courtroom showdown.

"It certainly would clarify any confusion from original intentions. I don't think it alters what we're trying to do," said the bill's sponsor, Rep. Phillip Lowe (R-Florence). "That was a hurried bill last time; if there were imperfections we should get a bill to be clear to county council what we're talking about."

County officials say the bill, filed last week, illustrates how weak the current law, Act 183, is and is an attempt to strengthen it before a judge hears the county's suit against the district that Act 183 created last May. The county asserts that the West Florence Fire special purpose district was created to prevent taxpayers in the wealthy, densely populated

area of west Florence County from being hit with a tax increase to fund fire service improvements throughout the county.

County attorney Malloy McEachin expected a county lawsuit to go before a judge in March, but now thinks that date will be delayed. Furthermore, if the bill is passed in its current form, it would weaken part of the county's assertions.

"The bill may slow things down before (the lawsuit) is heard," McEachin said. "The bill, substantively, changes Act 183 so it could very well delay it."

Some of the changes in the bill address points made by the county in a lawsuit it filed last September, such as the district's boundaries and annexation concerns, and it even adds several more parcels in Darlington County to the three original lots in Act 183—which are closer to Darlington's Palmetto Rural Fire than West Florence Fire. Act 183 included part of another county, Darlington, to make it constitutional.

"This will improve some fire service to a community on the edge of Darlington County where it splits with Florence County," Lowe said. "It will provide clarity to the special purpose district to serve that area so we don't have fire trucks and emergency services wondering which county these people should be served by."

"We also want to make it clear that if proprieties were annexed into the city that we would not be taxing them from west Florence; they would only get a tax bill from the city at that point."
More than 100 properties were annexed into the city last year.

The bill, H. 3670, was introduced on Feb. 17 and is co-sponsored by Reps. Roger Kirby (D-Florence) and Robert Williams (D-Darlington). It resides in the House Ways and Means Committee after Rep. Jerry Govan (D-Orangeburg) objected to Lowe's request to put it on the House's calendar without reference. Both Govan and Lowe said the move was political and not related to the merits of the bill.

Lowe said the bill likely won't make it out of committee until the budget is finished.
That trajectory differs from bill H. 5225, which later became Act 183.

Introduced on May 7, days before the county council approved its consolidated fire protection district, it was placed on the calendar without reference and several unsuccessful attempts by Florence Democrats Rep. Terry Alexander and then Rep. Lester Branham Jr. (Kirby's predecessor) to stop the bill culminated in a 50-38 vote that sent it to the Senate eight days later.

The bill sailed through the Senate and Gov. Nikki Haley signed it on May 28.

County attorney McEachin said the changes still don't address one of the county's primary arguments that the special purpose district provides services where services are already being provided.

"The act violates a fundamental principle in South Carolina and most jurisdictions against having two overlapping government bodies both exercising the same governmental power and serving the same governmental function," the county's lawsuit reads.

McEachin said the proposed legislation takes more property from Darlington County's tax base and gives equipment and land, purchased with Florence County taxpayer dollars, to the special purpose district without financial compensation to Florence.

"If it said pay compensation for it (land and equipment) that's one thing," McEachin said. "But to outright say the property goes to the special purpose district and to not reimburse citizens of Florence County what they paid for it, that's like the old supply bill days."

That includes property on Hoffmeyer Road where a new fire station will be built, funded by the capital project sales tax. The bill strikes language requiring an agreement between the county and district commission.

Many critics of the county's plan, which consolidated the county's six rural fire taxing districts, point out that South Lynches Fire District in southern Florence County was not included in the consolidated district and that it too is its own special purpose district. Sam Brockington, county fire and rescue services coordinator and former South Lynches fire chief, points out that when that district was formed in 1983, it was in reaction to poor county fire service funding for the southern, rural part of the county.

Furthermore, it became the only fire service for part of northern Williamsburg County.

The council sought to raise the tax rate in the West Florence Fire District from 8 mills to a unified 22.4 millage rate in its consolidated fire protection district, primarily to fund full and part-time daytime firefighters for the volunteer-dependent stations. That rate was determined by the council after attempting to work with local legislators and reviewing other options. That unified rates, which varied from eight mills in the West Florence Fire District to 38 mills in Johnsonville; rates that were all tied to Act 388, which only allows tax rate increases equal to the consumer price index plus the increase in population.

Since West Florence left the consolidated district, the council adjusted the tax rate to 27.5 mills on the remaining districts, which was a bigger hit for Sardis-Timmonsville and a slight increase for Hannah-Salem-Friendfield and Howe Springs. The 3.5 mills of debt service were rolled into a bond anticipation note. Similarly, the West Florence Fire District commission voted to raise district millage to 12.7 mills, something it had been prevented from doing for years due to Act 388, despite rapid growth in the area.

In June the county filed a lawsuit seeking original jurisdiction with the state Supreme Court and an injunction. However, the county was stuck suing three county offices (treasurer, auditor and election commission) instead of the special purpose district since the district's new board wasn't set to be elected and formed until Sept. 2.

In August, the court denied the county's request for original jurisdiction because it felt the county's rights were not materially prejudiced by the court not hearing the case over a circuit court first; even though a special election to elect members to the new West Florence Fire Commission was less than a month away.

County officials also felt that a sham lawsuit, as they called it, lodged by Rebecca Crawford and John C. Floyd challenging County Council's authority to create the unified fire protection district played a role in deterring the Supreme Court from taking the case. Shortly after the high court denied original jurisdiction the Crawford suit was heard before a Charleston judge, who poked several holes in attorney Jay Jordan's appeal.

Before another hearing could be held in September, Jordan dropped the appeal. Five days later the West Florence Fire District commissioners were elected.

With the commission formed, the council reinforced the county to pursue legal action against the district. County attorney McEachin and lawyer Steve Matthews adjusted the original lawsuit and filed a new one against the five commissioners, the district and the state in September.

Judge J.C. Nicholson Jr., a retired 10th Circuit Court judge, was selected to hear the Crawford appeal, due to the political sensitivity surrounding the case. The county, Jordan (representing the fire district) and the state attorney general's office are expected to go before Nicholson in March. An exact date has not been announced.

Lawsuit to stop West Florence Fire District could cost Florence County more than \$200,000

<http://www.carolinalive.com/news/story.aspx?id=1098054#.VYAoSvVhBc>

by Tonya Brown

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Florence County taxpayers could pay more than \$200,000 for a lawsuit to stop the creation of the West Florence Fire District.

Florence County Council argues the separate fire district, created in May when State House Bill H. 5225 was passed into law, is unconstitutional, and council filed a second lawsuit against it Tuesday. The council also filed a suit earlier with the SC Supreme Court, but the Court ruled it was out of their jurisdiction.

Florence County Council Chairman James Schofield said between the second and first lawsuits, taxpayers could spend more than \$100,000.

"I've seen figures well over a 100 grand. It's a lot of money. It's a serious matter. It deserves serious attention. It's just one of those costs that's gonna be borne to get to the right answer, and court is where the right answer will come from," said Schofield.

Florence taxpayers will also be paying for the West Florence Fire District to fight the suit.

West Florence Fire District Commission Chairman Dustin Fails said the district anticipated the lawsuit and raised taxes last week within their district to fight the suit.

"We're unfortunate that we've come to this situation where we have to spend \$110,000 to \$125,000 on a lawsuit. Money that could be better spent equipping our firefighters, upgrading our equipment, and also better money that the county could be using to better equip the other departments, not only fire, EMS and even their own employees. But instead they're having to spend on this lawsuit," Fails said.

The State House bill created a special purpose fire district and removed the West Florence community from Florence County's new consolidated fire district, which had merged six districts into one.

Fails said they're perfectly within the law to operate as a special purpose district.

"There are 75 other special purpose fire districts in this state. South Lynches being one of them in the county, so, and our bill was copied just as South Lynches was. So, we're not sure why they think it's unconstitutional," Fails said.

Schofield said a court of law will ultimately determine who's right and who's wrong.

"I certainly hope that the court doesn't rule that it's legal. Because we will set up a system that says county government is not in charge of trying to provide public safety," said Schofield.

Fails said West Florence Fire District commissioners will meet Monday to discuss hiring an attorney to represent the District.

It could be more than a year before the lawsuit is heard.

Lawsuit lights a fire under the county

http://www.scnow.com/news/politics/article_c2092e62-fb13-11e3-839b-0017a43b2370.html

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Gavin Jackson Morning News gjackson@florencenews.com

FLORENCE, S.C. – Florence County and County Council filed an injunction request and lawsuit Monday against three county agencies that are responsible for implementing actions of a recent bill signed by the governor creating a special purpose fire district in west Florence.

The injunction, if granted, would prevent the Florence County Voter Registration and Elections Commission from holding a fire district commissioners election, prevent Florence County Auditor Wayne Joye and Florence County Treasurer Dean

Fowler, Jr., from levying and collecting taxes in the district as well as for fire protection services; and prevents Fowler from disbursing any tax funds without the county's authorization.

"For numerous reasons, petitioners believe the act is in direct contravention of the powers vested in the county by Home Rule and cannot stand," the injunction reads. "Petitioners believe preliminary relief is required in order to protect the public interest in continued efficient fire protection for the areas in question and to prevent any unnecessary disruption to those services.

As drafted, the act places the new SPD in limbo as to its fire protection services until Sept. 2, 2014 at the earliest. Therefore, injunctive relief is necessary to protect the legal rights of the petitioners and the residents of the new SPD through the course of this litigation."

The county filed a petition for original jurisdiction to be heard in the state Supreme Court and has given the agencies 20 days to respond to the complaint. The agencies are authorized to seek outside legal counsel, but Florence County Council Chairman James Schofield said if the S.C. Attorney General's Office gets involved the agencies could enjoin the office's defense.

"We're hoping that the AG says because the legislature passed this act we're going to represent it on the defense side and stand for the legislature and try to defend what the legislature did," Schofield said. "If that's acceptable to dean and them then maybe they won't hire an attorney, if it's not they can go hire an attorney."

State Rep. Phillip Lowe (R-Florence) sees such action as a conflict of interest, similar to finding a divorce attorney for your spouse.

"Suing and picking counsel for the other side?" Lowe said. "There's no possible way that the fix isn't in when you've called up the other side's attorney and then go see them."

Schofield said the AG's office, which he believes may have an interest in the case, is evaluating it. One of the biggest issues with the SPD is that it is not clearly defined, Schofield said. The law uses a definition of the district that the county abolished and even if it was interpreted correctly, it would include other fire districts like Howe Springs and Windy Hill.

"There's no such thing as a sub-district of the Florence County Fire District as established by 1972," Schofield said. "So Dean and Wayne and the elections commission have a quandary. It doesn't say it's District 1 in that act, but one would assume that's what they're saying. You can't go on what they intended to do."

Lowe said that the boundaries were not meant to be anything other than what is known as the West Florence Fire District.

"When referring to Act of 1972 that was basically just naming what the fire district was cut out of," Lowe said. "We're saying it's the current Rural West Florence (Fire) District, plus the interstate, plus the portion of Darlington County."

A 2007 ordinance clarified the current county fire districts.

The 23-page complaint states eight reasons voiding Act 183 (formerly H. 5225):

1. The act violates *Wagener v. Smith*. The act "seeks to create a new political subdivision to provide and to impose and collect ad valorem property taxes for fire protection services in the area in which the local county governments are already providing and imposing ad valorem property taxes for such services."

2. The creation of a special purpose district in a single county violates Home Rule. "The act seeks to create a special purpose district that is effectively entirely within one county. The inclusion of three parcels in another county is

inconsequential and is wholly unnecessary to the accomplishment of the stated objective of fire protection and is moreover counterproductive to the provision of crucial fire protection service in the most direct and efficient manner.”

3. The act’s unique exemption given to the new SPD from general annexation law is impermissible special legislation. “The act purports to supersede that general law and to override its authorization of local government bodies to determine proper term and conditions on a case-by-case basis.”

4. The act’s removal from one or a very few cities of important annexation powers violates Home Rule. The act purports to supersede the general law that allows, at the local level, the terms of transfer of service rights and area from a special purpose district to an annexing municipality.

5. The act’s exemption from Act 388 is impermissible special legislation. The act creates an exemption for the new SPD from Act 388, a general law codified at S.C. Code Ann. 6.-1-320 and which is otherwise applicable to every other local government in the state including counties, cities towns, special purpose districts and school districts.

6. The act violates S.C. Constitution article X, 3 in three distinct ways. The act immediately prohibits the continuation of the county tax on property in the new SPD, but delays any new taxing authority for the purpose of fire protection, which service will not be correspondingly disrupted or discontinued. The act is not a general law, it is not applicable uniformly to property throughout the state and it did not achieve a two thirds majority in the South Carolina House of Representatives.

7. The act was not lawfully enacted because it lacked the two-thirds majority of each house. The act prohibits the continuation of the county tax on property in the new SPD and thereby diminishes the authority that the county has to raise revenues. The act was passed in the House by a vote of 50-38. S.C. Code 4-9-55(B) says, “except upon the approval of each house of the General Assembly by a two-thirds of the members voting in each house, the General Assembly may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties have to raise revenues in the aggregate, as the authority exists on July 1, 1993.”

8. If exempted from S.C. Code 4-9-55(B) the act is impermissible special legislation. If the act is considered to have granted exemption to a single local government body from that code provision’s requirements, that act of exemption violates S.C. Constitution Article III, 34.

The complaint was filed by Steve Matthews, of Haynsworth Sinkler Boyd, P.A., and county attorney Malloy McEachin Jr.