

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill authorizes the Cedar Hammock Fire Control District to establish impact fee rates consistent with general law. The bill states that the district's elector's approved a referendum authorizing the District to increase impact fees on new construction.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Special Fire Control Districts and Impact Fees Generally

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. There are currently 59 independent fire districts in Florida.

Section 191.004, F.S., of the Act provides that it is the intent of the Legislature that the Act supersede all special acts or general laws of local application provisions that contain the charter of a district. Therefore, unless otherwise exempt by special or general law, each district is required to comply with the Act.

Typically, the business affairs of each district are governed by a board whose five members are elected by qualified electors of the district. A district governing board may exercise its powers by a majority vote of its members. Section 191.006, F.S., lists the general powers of a district, which include the power "[t]o 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."

Section 191.009, F.S., authorizes districts to levy ad valorem taxes, special assessments, user charges, and impact fees. With respect to impact fees, if the general purpose local government has not adopted an impact fee for fire services which is distributed to a district for construction within its jurisdictional boundaries, a district may establish a schedule of impact fees to pay for the cost of new facilities and equipment, the need for which is a result of new construction. The impact fees collected by the district must be kept separate from other revenues of the district and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof needed to provide fire protection and emergency services to new construction. The term "new facilities" is defined as land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles, radiotelemetry equipment, and other firefighting or rescue equipment. Districts must maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment and may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by the governments.

Under Florida case law, an impact fee must meet what is referred to as the "dual rational nexus test" in order to withstand legal challenge.¹ First, there must be a reasonable connection, or rational nexus, between the anticipated need for additional capital facilities and the growth in population generated by the new development. Second, there must be a reasonable connection, or rational nexus, between the

¹ *Local Government Financial Information Handbook*, Florida Legislative Committee on Intergovernmental Relations, Dec. 2003.

expenditure of the funds collected and the benefits accruing to the new development from those expenditures.²

Cedar Hammock Fire Control District

The Cedar Hammock Fire Control District (District) is an independent special fire control district and public municipal corporation, and the boundaries of the district are all the unincorporated lands in Manatee County described in the charter. The District is organized and exists for all purposes set forth in the charter and Chs. 189 and 191, F.S. The District was created by special act in 1957³ and its charter may be amended only by special act of the Legislature.

The District is authorized by s. 191.009, F.S., and its charter to levy non-ad valorem assessments with the rate of such assessments to be determined annually by a resolution. The District's budget for FY 2004-05 is approximately \$5.785 million (\$4,096,329 in non-ad valorem assessments). The District currently charges 1 mill in ad valorem taxes.

The District is authorized to levy impact fees. The District's budget for FY 2004-05 reflects \$15,000 in impact fees under the current rate.

Effect of Proposed Changes

This bill allows the District to establish impact fee rates consistent with general law. The bill states that "on August 31, 2004, the district's electors approved a referendum authorizing the District to increase impact fees on new construction."

The bill provides that any increase in impact fees must be accomplished through action by the Board of Fire Commissioners of the District in accordance with ch. 191, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 6 of s. 3 of ch. 2000-391, L.O.F.

Section 6. Provides for impact fees; states on August 31, 2004, the district's elector's approved a referendum authorizing the district to increase impact fees on new construction; provides the developer will pay impact fees to the district according to a schedule established by the board in accordance with chapter 191, F.S., as amended from time to time, removing certain dollar amounts paid per certain square footage for new residential dwelling units and commercial or industrial structures and new recreational or travel trailer park developments or permitted spaces.

Section 2. Provides that the bill shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 13, 2005

WHERE? *The Herald*, Bradenton, Manatee County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

² *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983); See also *St. Johns County v. N.E. Fla. Builders Assoc.*, 583 So.2d 635 (Fla. 1991).

³ Chapter 57-1546, L.O.F.

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

According to the Economic Impact Statement, while the bill incorporates voter approval to authorize the District to increase the maximum allowable rates that may be levied for non-ad valorem assessments, it does not increase the District's levies at this time. However, the bill, which addresses impact fees and not non-ad valorem assessments, provides that any increase impact fees must be accomplished through action by the Board of Fire Commissioners of the District in accordance with ch. 191, F.S.

A referendum was held on August 31, 2004, authorizing the district to increase impact fees on only new construction to pay for new facilities and equipment as necessary to accommodate new growth, passed by 72.82%.

During the 2002 Legislative Session, House Bill 979, an act relating to the Cedar Hammock Fire Control District, was vetoed by the Governor. The veto letter, dated April 29, 2002, stated "the bill makes substantive changes to the act including a substantial increase in the current maximum allowable non-ad valorem assessment rates without a referendum. Given the diverse nature of issues addressed in local bills, I have developed standard criteria by which to evaluate these bills. The criteria generally provide that citizens impacted by revisions to the authority of the special district should be provided an opportunity for expressing their views by referendum. As stated before, this bill increases the maximum non-ad valorem assessment rates which may be levied. The special district failed to seek the consent of its taxpayers who could be significantly and adversely impacted by the changes. House Bill 979 does not afford an opportunity for citizens to vote on the matter of taxation."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.