

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill creates a firefighters' pension trust fund and board of trustees for each community development district providing fire suppression services.

B. EFFECT OF PROPOSED CHANGES:

Community Development Districts

Chapter 190, F.S., the "Uniform Community Development District Act of 1980," sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.¹ There currently are 489 active CDDs in Florida.²

The general powers granted to a CDD include: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts (donations), adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.³

CDDs also have special powers related to the following systems, facilities, and basic infrastructures: water management, water supply, sewer, wastewater management, roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.⁴

Additionally, CDDs may be authorized by local governments to address issues such as: parks and facilities for indoor and outdoor recreational, cultural, and educational issues; fire prevention and control, including fire stations, water mains and plugs, fire trucks and other vehicles and equipment; school buildings and related structures; security; mosquito and other insect control; and waste collection and disposal.⁵

This bill relates only to those CDDs that are providing "fire prevention and control" with the consent of the local government⁶ (fire CDDs). Information was not available on how many fire CDDs currently exist. It is estimated that only a small percentage of fire CDDs exist. The pay and benefits of any firefighter working for a fire CDD are determined by the fire CDD.

Municipal and Special District Firefighter Pensions

Firefighters working for municipalities or special districts that have a constituted fire department or an authorized volunteer fire department,⁷ which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase,⁸ have pension plans pursuant to chapter 175, F.S.

¹ Section 190.002, F.S.

² Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, *Create Your Own List of Special Districts* (search "community development" under "functions to include")(visited February 16, 2007) <www.floridaspecialdistricts.org/officialist/criteria.asp>

³ Section 190.011, F.S.

⁴ Section 190.012(1), F.S.

⁵ Section 190.012(2), F.S.

⁶ Section 190.012(2)(b), F.S.

⁷ Section 175.041(1), F.S.

⁸ Section 175.041(2), F.S.

Chapter 175, F.S., refers to local government firefighters' pension plans⁹ and is known as the "Marvin B. Clayton Firefighters Pension Trust Fund Act."¹⁰ The plans are not part of the Florida Retirement System. They are available only to employees of participating municipalities and special fire control districts.¹¹ Currently, there are 21 special independent fire control districts and 157 municipalities that participate under chapter 175, F.S. The chapter 175, F.S., revenues for calendar year 2005 amounted to \$76.7 million. Of that amount, \$6.3 million represents revenues generated by the special independent fire control districts.¹² Chapter 175 Plans are funded by the following sources:

- Payment from the "premium tax" – the net proceeds of the 1.85 percent excise upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies covering real or personal property within the legal boundaries of the fire CDD;
- Payment of a designated percentage deducted from the salary of each uniformed firefighter;
- Payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;
- Mandatory payment from the fire CDD of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112, F.S.;
- All gifts, bequests, and devises when donated;
- All increases in the fund by way of interest or dividends on bank deposits; and
- All other sources of income authorized by law for the augmentation of such firefighters' pension trust fund.¹³

The day-to-day operational control of the individual trust funds is vested in respective boards of trustees¹⁴ created at the local level, subject to administrative oversight by the Division of Retirement of the Department of Management Services.¹⁵ Actuarial deficits are not, however, obligations of the state.¹⁶

Proposed Changes

Section 175.032, F.S., provides definitions for the Firefighters Pension Trust Fund Act, including a definition for "special fire control district." This bill adds fire CDDs to the definition of special fire control district. As a result, fire CDDs which have a constituted fire department or an authorized volunteer fire department and the required equipment¹⁷ will be bound by the Firefighters Pension Trust Fund Act and must establish a special firefighters' pension trust fund for the firefighters,¹⁸ requiring the fire CDD to

⁹ As of January 22, 2007, 178 municipalities or fire control districts had ch. 175 plans.

(http://dms.myflorida.com/human_resource_support/retirement/municipal_police_and_fire/facts_figures)

¹⁰ Section 175.025, F.S.

¹¹ Section 175.021(2), F.S.

¹² Dept. of Mgmt. Svcs., HB 241 (2007) Substantive Bill Analysis at 1. (Feb. 1, 2007) (on file with dept. and the Committee on State Affairs) [hereafter referred to as DMS Analysis].

¹³ Section 175.091, F.S.

¹⁴ Section 175.071, F.S. – The powers of the board include: investing and reinvesting the assets of the firefighter pension fund in certain authorized investments; issuing drafts; keeping required records; retaining a qualified independent consultant every three years; and employing legal counsel, independent actuaries, and other advisors.

¹⁵ Section 112.665, F.S.

¹⁶ Section 175.051, F.S.

¹⁷ Section 175.041(1) and (2), F.S.

¹⁸ Section 175.041(1), F.S.

establish and maintain a board of trustees, pursuant to s. 175.061(1), F.S.,¹⁹ and making them eligible for state premium tax revenues to fund the pension.

C. SECTION DIRECTORY:

Section 1 amends s. 175.032, F.S., to expand the definition of "special fire control district."

Section 2 amends s. 190.012, F.S., providing fire community development districts the power to assess and impose the state excise tax authorized under s. 175.101, F.S.

Section 3 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill is expected to have a negative fiscal impact on the state's general revenue receipts. When a new district is allowed to receive funds from the insurance premium tax for a firefighters pension plan under ch.175, F.S., these funds are redirected from premium tax funds that would otherwise be deposited into the state general revenue fund.

The expected negative fiscal impact on state general revenue fund includes a 7.3 percent growth rate, which is projected to decline in future years:

- \$3,834,103 in FY 2007-2008
- \$4,098,656 in FY 2008-2009
- \$4,332,280 in FY 2009-2010²⁰

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on the revenues of counties, municipalities, or special districts. It is expected, however, to have a fiscal impact on the revenues of fire CDDs from the funds generated by state premium taxes against insurers that this bill will allow them to collect. The Department of Management Services stated it is unknown how much revenue may be associated with premium taxes for property located within the boundaries of fire CDDs.²¹

2. Expenditures:

This bill does not appear to have a fiscal impact on the expenditures of counties, municipalities, or special districts. This bill may have a fiscal impact on the expenditures of fire CDDs.

¹⁹ The section provides that the membership of the board of trustees for a chapter 175, F.S. pension plan must consist of five members: two members must be legal residents of the fire CDD and be appointed by the fire CDD; two must be full-time firefighters elected by a majority of the active firefighters who are members of the plan; the fifth member must be chosen by a majority of the other four members. The board of trustees must meet quarterly.

²⁰ Based on findings by the Revenue Estimating Conference, reported at the Impact Conference of March 30, 2007. (on file with the Government Efficiency and Accountability Council)

²¹ DMS Analysis at 2.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

State premium taxes are derived from a statewide excise tax on all insurers writing property insurance. Insurance companies are obligated to report and remit the excise tax on property insurance premiums pursuant to s. 175.101, F.S.²² This premium tax levied against the insurers by participating municipalities and fire control districts is not an additional tax, but rather places a reporting requirement on the insurance companies to show the amount of premiums sold covering property within the boundaries of a municipality/fire control district participating under chapter 175, F.S.²³ Inclusion of fire CDDs in chapter 175, F.S., pension trust funds would not impose or trigger an additional tax, but would place an additional reporting requirement on the insurance companies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

Benefit changes to the state retirement system are governed by Article X, section 4 of the Florida Constitution. Changes to chapter 175, F.S., are not changes to the state retirement system as governed by this provision.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 21, 2007, the Committee on State Affairs adopted an amendment to this bill. The amendment specifically authorizes fire CDDs to levy the premium taxes against insurers as provided in s. 175.101, F.S. This amendment appears to resolve a prior drafting concern.

On March 28, 2007, the Government Efficiency & Accountability Council reported HB 241 favorably with a council substitute to incorporate the amendment adopted by the Committee on State Affairs.

²² The section provides that a special fire control district may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Office of Insurance Regulation of the Financial Services Commission an excise tax in addition to any lawful license or excise tax now levied by each of the municipalities or special fire control districts, respectively, amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities or within the legally defined boundaries of special fire control districts, respectively.

²³ Section 175.141, F.S.