

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Firefighting
SPONSOR(S): Government Efficiency & Accountability Council and Reagan
TIED BILLS: IDEN./SIM. BILLS: SB 2020

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on Urban & Local Affairs, 7 Y, 0 N, Nelson, Kruse. Row 2: 2) Government Efficiency & Accountability Council, 13 Y, 0 N, As CS, Nelson, Cooper. Rows 3-5 are blank.

SUMMARY ANALYSIS

This bill excuses full-time firefighters from jury duty, thus expanding current statutory exemptions extended to certain Florida citizens. It also authorizes the governing board of an independent special fire control district to recover court costs and attorney's fees from nonprevailing parties in civil actions brought to enforce fire suppression and prevention provisions, and the firesafety code.

The bill additionally exempts property owned or operated by religious institutions and used primarily as a place of worship from non-ad valorem assessments if the governing board of an independent special fire control district decides to exempt all religious institutions in the district from such assessments.

Finally, the bill exempts fire control districts with certain charter provisions from a specific process by which annexation matters are handled within an independent special district to allow a fire district to continue to be the service provider to property which has been annexed from its district; contains language that serves to provide an exemption to a statutory provision relating to the state excise tax on property insurance premiums, to allow a fire district to claim such taxes after annexation of district property until the completion of four years, or other extension or the termination of an interlocal agreement; and prescribes a date by which an annexing municipality must pay any such district an amount equal to the taxes or assessments that would have been collected had the property remained in the district, and the applicability of the fire control district's regulations during any term that the district provides services to annexed properties.

The bill is effective upon becoming law.

This bill will have an indeterminate fiscal impact on independent special fire control districts.

Section 6 of Art. III of the State Constitution imposes a single subject restriction on laws enacted by the Legislature. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES, for a discussion of how this requirement may be construed with regard to the provisions of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Jury Service Exemptions

The American justice system is premised on the notion of a lay person jury that is representative of the community and capable of reaching fair, unbiased decisions regarding the fate of their peers. Jury service is a civic responsibility. Traditionally, exceptions from jury duty have been made for persons who have hardships or those that, because of the nature of their official positions, may find their impartiality compromised.

Under s. 40.01, F.S., jurors are chosen from “the male and female persons at least 18 years of age who are citizens of the United States and legal residents of this state and their respective counties and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles...” The Florida Legislature has disqualified certain persons from jury service pursuant to s. 40.013, F.S. These exemptions include:

- (1) persons who are under prosecution for any crime, or who have been convicted of bribery, forgery, perjury, larceny, or any other offense that is a felony (unless such persons have had their civil rights restored);
- (2) the Governor, Lieutenant Governor, Cabinet officers, clerk of courts, and judges, and full-time federal, state or local law enforcement officers or such entities' investigative personnel (unless such persons choose to serve);
- (3) persons interested in the issue being tried;
- (4) expectant mothers and any parent who is not employed full-time and who has custody of a child less than six years of age (upon such person's request);
- (5) in the discretion of the presiding judge, a practicing attorney, a practicing physician, or a person who is physically infirm;
- (6) persons upon a showing of hardship, extreme inconvenience, or public necessity;
- (7) persons who were summoned and reported as a prospective juror in any court in that person's county of residence within the past year;
- (8) persons 70 years of age or older (upon such person's request); and
- (9) persons who are responsible for the care of a person who, because of mental illness, mental retardation, senility, or other physical or mental incapacity, is incapable of caring for himself or herself.

Section 251.13, F.S., also exempts officers and enlisted individuals of the Florida State Defense Force from jury duty during such person's service.

Independent Special Fire Control Districts

Pursuant to s. 191.003, F.S., an independent special fire control district is defined as a special district, created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district. This section specifies that the term does not include a municipality, a county, a dependent special district as defined in s. 189.403, F.S., a district providing primarily emergency medical services, a community development district established under ch.190, F.S., or any other multiple-power district performing fire suppression and related services in addition to other services.

Chapter 191, F.S., is entitled the "Independent Special Fire Control District Act." The Act's purpose is to establish standards and procedures concerning the operations and governance of Florida's 57¹ independent special fire control districts, and to provide greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of such districts to ensure greater accountability to the public. The Act requires each district, whether created by special act, general law of local application, or county ordinance, to comply, and provides that it is the intent of the Legislature that the Act supersedes all special acts or general laws of local application provisions that contain the charter of an independent special fire control district, with specified exceptions. The general provisions of the Act include those relating to district boards of commissioners, general and special powers, taxes and assessments, and district issuance of bonds.

Building and Firesafety Standards/Enforcement

Chapter 553, F.S., establishes minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity, mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. Chapter 633, F.S., establishes fire prevention and control standards applicable to buildings and structures in the state. All buildings in the state are required to meet these standards as a minimum. Each local jurisdiction may add more restrictive requirements.²

Fire inspection personnel are authorized to enforce these statutory provisions. For example, fire inspection personnel conduct annual, specialized fire protection system inspections, such as standpipe and automatic fire sprinkler protection system testing, smoke evacuation systems testing, and general fire alarm system testing. Section 633.052, F.S., provides that firesafety inspectors, who have probable cause to believe that a person has committed a civil infraction in violation of a duly enacted firesafety ordinance, may issue a citation to appear before the county court. If the applicable county or municipality has created a code enforcement board or special magistrate system pursuant to ch.162, F.S., the citation may be referred to that body for hearing. Section 633.052, F.S., stipulates that an ordinance implementing firesafety codes must provide:

- that a violation of such an ordinance is a civil infraction;
- a maximum civil penalty not to exceed \$500;

¹ [Http://floridaspecialdistricts.org/OfficialList/report.asp](http://floridaspecialdistricts.org/OfficialList/report.asp).

² Section 633.025, F.S., provides that "[t]he Florida Fire Prevention Code and the Life Safety Code adopted by the State Fire Marshal, which shall operate in conjunction with the Florida Building Code, shall be deemed adopted by each municipality, county and special district with firesafety responsibilities. The minimum firesafety codes shall not apply to buildings and structures subject to the uniform firesafety standards under s. 633.022, F.S., and buildings and structures subject to the minimum firesafety standards adopted pursuant to s. 394.879, F.S. Each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code and the Life Safety Code as the minimum firesafety code required by this section."

- a civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation;
- for the issuance of a citation by an officer who has probable cause to believe that a person has committed a violation of an ordinance relating to firesafety;
- for the contesting of a citation in the county court; and
- such procedures and provisions necessary to implement any ordinances enacted under the authority of this section.

Section 162.30, F.S., provides that in addition to other provisions of law authorizing the enforcement of county and municipal codes and ordinances, a county or municipality may enforce any violation of a county or municipal code or ordinance by filing a civil action in the same manner as instituting a civil action. The action may be brought in county or circuit court, depending on the relief sought. The county or municipality shall bear all court fees and costs of any such action, and may, if it prevails, recover the court fees and costs and expense of the court-appointed counsel as part of its judgment.

Non-Ad Valorem Special Assessments

Special assessments are a revenue source that may be used to fund local improvements or essential services. As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.³ The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service is “whether there is a ‘logical relationship’ between the services provided and the benefit to real property.”⁴ If a local government’s special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax.⁵

Pursuant to s. 191.009(2), F.S., an independent special fire control district may levy non-ad valorem assessments to construct, operate, and maintain district facilities and services. The rate of such assessments must be fixed by resolution of the board. Section 191.011, F.S. provides that an independent special fire control district may provide for the levy of non-ad valorem assessments on the lands and real estate benefited by their exercise of powers. Non-ad valorem assessments may be levied only on benefited real property at a rate of assessment based on the special benefit accruing to such property from such services or improvements.

Religious institutions generally are exempt from taxation, but subject to payment of special assessments.⁶ Florida courts have upheld the use of special assessments imposed upon churches to fund fire services.⁷ Previously, the Florida Legislature has exempted property owned or occupied by a religious institution and used as a place of worship or education from municipal special assessments if the municipality so desires.⁸

³ City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992).

⁴ Lake County v. Water Oak Management Corp., 695 So.2d 667 (Fla. 1997).

⁵ The Local Government Formation Manual, Committee on Urban & Local Affairs, Florida House of Representatives, January 2007.

⁶ Section 3(a) of Art. VII of the State Constitution, and ss. 196.012(1) and 196.192(1), F.S.

⁷ Sarasota County v. Sarasota Church of Christ, 641 So.2d 900 (Fla. 2d DCA 1994).

⁸ Section 170.201, F.S.

Municipal Annexation within Independent Special Districts

Section 171.093, F.S., provides for an orderly transition of special district service responsibilities in an annexed area from an independent special district which levies ad valorem taxes to a municipality following the municipality's annexation of property located within the jurisdictional boundaries of an independent special district, if the municipality elects to assume such responsibilities. The municipality may make such an election by adopting a resolution. In addition, the municipality may incorporate its election into the annexation ordinance.

Upon a municipality's election to assume the district's responsibilities, the municipality and the district may enter into an interlocal agreement addressing the orderly transfer of service responsibilities, real assets, equipment and personnel. The agreement is required to address allocation of responsibility for special district services, avoidance of double taxation of property owners for such services in the area of overlapping jurisdiction, prevention of loss of district revenues which may be detrimental to the continued operations of the independent district, avoidance of impairment of existing district contracts, disposition of property and equipment of the independent district and any assumption of indebtedness for it, the status and employee rights of any adversely affected employees of the independent district, and any other matter reasonably related to the transfer of responsibilities.

If the municipality and the district are unable to enter into an interlocal agreement, the municipality must advise the district and the property appraiser and tax collector of the county in which the annexed property is located. Effective October 1 of the calendar year immediately following the year in which the municipality declares its intent, the district remains the service provider in the annexed area for a period of four years. During the four-year period, the municipality must pay the district an amount equal to the ad valorem taxes or assessments that would have been collected had the property remained in the district.

By the end of the four-year period, or any extension mutually agreed upon, the municipality and the district are required to enter into an agreement that identifies the existing district property located in the municipality or primarily serving the municipality that will be assumed by the municipality, the fair market value of such property, and the manner of transfer of such property and any associated indebtedness. If the municipality and district are unable to agree to an equitable distribution of the district's property and indebtedness, the matter proceeds to circuit court. In equitably distributing the district's property and associated indebtedness, the taxes and other revenues paid the district by or on behalf of the residents of the annexed area are taken into consideration.

During the four-year period, or during any mutually agreed upon extension, district service and capital expenditures within the annexed area are to continue to be rationally related to the annexed area's service needs. Service and capital expenditures within the annexed area also must continue to be rationally related to the percentage of district revenue received on behalf of the residents of the annexed area when compared to the district's total revenue. A capital expenditure greater than \$25,000 may not be made by the district for use primarily within the annexed area without the express consent of the municipality.

If the municipality elects not to assume the district's responsibilities, the district remains the service provider in the annexed area, the geographical boundaries of the district continue to include the annexed area, and the district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area. If the municipality elects to assume the district's responsibilities, the district's boundaries contract to exclude the annexed area at the time and in the manner provided in the agreement.

If the municipality elects to assume the district's responsibilities and the municipality and the district are unable to enter into an interlocal agreement, and the district continues to remain the service provider in the annexed area, the geographical boundaries of the district contract to exclude the annexed area on the effective date of the beginning of the four-year period. The district may not levy ad valorem taxes or

assessments on the annexed property in the calendar year in which its boundaries contract and subsequent years, but may continue to collect and use all ad valorem taxes and assessments levied in prior years. The district may assess user charges and impact fees within the annexed area while it remains the service provider. A municipality is authorized to levy assessments on property located in an annexed area to offset all or a portion of the costs incurred by the municipality in assuming district responsibilities.

State Excise Tax on Property Insurance Premiums

Section 175.101, F.S., provides that each municipality or special fire control district having a lawfully established firefighters' pension trust fund or municipal fund or special fire control district fund, providing pension benefits to firefighters, may assess and impose on every insurance company, corporation, or other insurer an excise tax amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies within their boundaries. Whenever the boundaries of a special fire control district that has established a firefighters' pension trust fund encompass a portion of the corporate territory of a municipality that has established a firefighters' pension trust fund, that portion of the tax receipts attributable to insurance policies covering property situated both within the municipality and the special fire control district are given to the fire service provider. The tax is payable annually on March 1 of each year after the passage of an ordinance, in the case of a municipality, or resolution, in the case of a special fire control district, assessing and imposing the tax.

Effect of Proposed Changes

This bill excuses full-time firefighters, as defined in s. 112.81, F.S.,⁹ from jury duty, unless such persons choose to serve. This will expand exemptions currently extended to certain Florida citizens pursuant to s. 40.013, F.S. The bill also authorizes the governing board of an independent special fire control district to recover court costs and attorney's fees from the nonprevailing party in any civil action brought to enforce the provisions of ch. 553, F.S., ch. 633, F.S., or s. 191.008, F.S., concerning fire suppression and prevention and the enforcement of the firesafety code. Florida law currently provides for the recovery of court costs and attorney's fees in numerous instances by prevailing parties in civil actions.¹⁰

The bill additionally exempts property owned or operated by religious institutions and used primarily as a place of worship from non-ad valorem assessments levied by independent special fire control districts pursuant to ch. 191, F.S., if the governing board decides to exempt all religious institutions in the district from such assessments. The term "religious institution" means any church, synagogue, or other established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on.

Finally, the bill adds a new section to ch. 191, F.S., exempting fire control districts with certain charter provisions from s. 171.093, F.S., (which provides a specific process by which annexation matters are handled within an independent special district) to allow a fire district to continue to be the service provider to property which has been annexed from its district; contains language that serves to provide an exemption to s. 175.101, F.S., relating to the state excise tax on property insurance premiums, to allow a fire district to claim such taxes after annexation of district property until the completion of four years, or other extension or the termination of an interlocal agreement; and prescribes a date by which an annexing municipality must pay any such district an amount equal to the taxes or assessments that

⁹ Section 112.81, F.S., defines "firefighter" as any person who is certified in compliance with s. 633.35, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires. This section defines "employing agency" as any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters. Thus, this provision would apply to a wide range of firefighters, including those not employed by independent special fire control districts.

¹⁰ See, e.g., s. 218.76, F.S.

would have been collected had the property remained in the district, and the applicability of the fire control district's regulations during any term that the district provides services to annexed properties.

The bill provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 40.013(2)(b), F.S., to excuse full-time firefighters from jury service.

Section 2: Renumbers ss. (5), (6), and (7) of s. 191.008, F.S., and creates a new s. (5) to provide for the recovery of court costs and attorney's fees by the governing board of an independent special fire control district in certain civil actions.

Section 3: Amends s. 191.011, F.S., to authorize an independent special fire control district to exempt property owned by religious institutions from non-ad valorem assessments.

Section 4: Creates a new s. 191.016, F.S., to exempt certain fire control districts from provisions relating to annexation.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Independent special fire control districts could recover court costs and attorney's fees when prevailing in code enforcement proceedings. Such a district may experience decreased revenues if it decides to exempt religious institutions from non-ad valorem assessments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities that challenge an enforcement action undertaken by an independent special fire district could be subject to the payment of court costs, including attorney's fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Section 6 of Art. III of the State Constitution imposes a single subject restriction on laws enacted by the Legislature: "Every law shall embrace but one subject and matter properly connected therewith...." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise or fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal under the single subject rule so long as the matters included in the enactment have a natural or logical connection.¹¹

It could be determined that this bill violates the constitutional single subject rule. While the bill generally involves issues regarding firefighters and fire control districts, its various provisions relate to a number of topics, including:

The proponents of the bill have opined that all provisions of the bill "deal with the operations and activities of fire control districts."

- jury duty service;
- the recovery of court costs and attorney's fees in civil actions;
- the exemption of religious properties from non-ad valorem assessments;
- annexation; and
- premium tax receipts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

See, "III. Comments, A. Constitutional Issues, 2. Other," above.

Other Comments

It is assumed that the proposed exception for firefighters is considered to be a "hardship" exception, rather than because of these individuals' official positions. Such an exception may open the door for other first responders, such as emergency medical technicians, to come forward and request similar treatment. Unfortunately, a jury's make-up may be significantly affected when there are permissible reasons for jury avoidance that are available to a select portion of society.

The Florida Association of Special Districts is a proponent of the bill.¹²

D. STATEMENT OF THE SPONSOR

The Sponsor has indicated that he does not wish to submit a statement.

¹¹ Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981).

¹² Chris Lyon of Lewis, Longman and Walker, P.A., in a March 2, 2007, e-mail.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its meeting on March 14, 2007, the Governmental Efficiency & Accountability Council adopted one amendment which:

- adds a new section to ch. 191, F.S., exempting fire control districts with certain charter provisions from s. 171.093, F.S., (which provides a specific process by which annexation matters are handled within an independent special district) to allow a fire district to continue to be the service provider to property which has been annexed from its district;
- contains language that serves to provide an exemption to s. 175.101, F.S., relating to the state excise tax on property insurance premiums, to allow a fire district to claim such taxes after annexation of district property until the completion of four years, or other extension or the termination of an interlocal agreement;
- prescribes a date by which an annexing municipality must pay any such district an amount equal to the taxes or assessments that would have been collected had the property remained in the district, and the applicability of the fire control district's regulations during any term that the district provides services to annexed properties.

This analysis has been updated to reflect the amendment.