

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755

Firefighting

SPONSOR(S): Reagan

TIED BILLS:

IDEN./SIM. BILLS: SB 2020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u></u>	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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. Finally, the bill 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.

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. This bill could be subject to a court challenge under this provision.

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.

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

Finally, the bill will exempt 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.

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: 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:

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.

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:

This bill could be subject to a court challenge pursuant to the constitutional single subject rule. 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

The proponents of the bill have indicated that they believe that all three provisions of the bill "deal with the operations and activities of fire control districts."

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

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

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.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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