

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1196
INTRODUCER: Senator Richter
SUBJECT: Independent Special Fire Control Districts
DATE: March 16, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1196 clarifies provisions that authorize a fire control district to levy non-ad valorem assessments to construct, operate, and maintain specified district facilities and services. This bill also revises provisions relating to district authority to provide for the levy of non-ad valorem assessments on lands within the district rather than benefited real property.

This bill amends the following sections of the Florida Statutes: 191.009 and 191.011.

II. Present Situation:

Chapter 191, F.S., the “Independent Special Fire Control District Act”

An “independent special fire control district” is defined as an independent special district¹ created by a special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district.² Currently, there are 52 such districts in Florida.³ Chapter 191, F.S., the “Independent Special Fire Control District Act” (Fire Control Act) provides general and special powers for fire control districts, and addresses district creation, expansion and merger, and funding mechanisms.

¹ See, s. 189.403, F.S., for a definition of “independent special district.”

² Section 191.003(5), F.S. 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.

³ Florida Department of Economic Opportunity, Special District Information Program, *Official List of Special Districts Online*, available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/index.cfm> (last visited Mar. 16, 2013).

Unless otherwise exempted by special or general law, this 1997 act requires each district to comply with its provisions. The act further 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 a district and which address the same subjects as the act, except where such laws address district boundaries and geographical subdistricts for the election of governing board members. Chapter 191, F.S., also does not repeal any authorizations providing for the levying of ad valorem taxes, special assessments, non-ad valorem assessments, impact fees or other charges.

District Funding Mechanisms

Section 191.009, F.S., authorizes special fire control districts to levy ad valorem taxes, non-ad valorem assessments, user charges, and impact fees.⁴ They are also authorized to issue various types of bonds, including general obligation bonds, assessment bonds, revenue bonds, notes, bond anticipation notes, or other evidences of indebtedness.⁵

Ad Valorem Taxes

An elected board may levy ad valorem taxes on all taxable property in the district to construct, operate and maintain district facilities and services, to pay the principal of, and interest on, general obligation bonds of the district, and to provide for any sinking or other funds established in connection with such bonds. An ad valorem tax levied by the board may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and the act. The levy of ad valorem taxes must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. The tax is assessed, levied and collected in the same manner as county taxes.

Non-Ad valorem Assessments

Section 191.009(2), F.S., authorizes a district to 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 pursuant to statutory procedures. Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous five years.

Proposed non-ad valorem assessments, which exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last five years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum.

User Charges

A district may provide a reasonable schedule of user charges for the following services:

⁴ An ad valorem tax may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and the act.

⁵ See, s. 191.012, F.S.

- special emergency services, including firefighting occurring in structures outside the district,
- fighting fires occurring in or at refuse dumps or as a result of an illegal burn,
- responding to or assisting or mitigating emergencies that could threaten the health and safety of persons, property or the environment, to which the district has been called, including a charge for responding to false alarms, and
- inspecting structures, plans and equipment to determine compliance with fire safety standards.

Impact Fees

If the general purpose local government has not adopted an impact fee for fire services, which is distributed to the 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. A district also may enter into agreements with general purpose local governments to share the revenues from fire protection impact fees.

Statutory Definitions of Emergency Related Services

“Emergency medical services” is defined in s. 401.107, F.S., to mean “the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.”⁶ The singular “emergency medical service” is defined in the Fire Control Act and “emergency rescue services” is referenced in the Act’s section on general powers.⁷

Special Assessments, Benefited Property and Emergency Medical Services

In *Lake County v. Water Oak Management Corp.*, the Florida Supreme Court reiterated the test for determining the validity of a special assessment:

In reviewing a special assessment, a two-prong test must be addressed: (1) whether the services at issue provide a special benefit to the assessed property; and (2) whether the assessment for the services is properly apportioned.⁸

The Court traditionally defers to the legislative body’s determination of special benefits as one of fact for the body and the apportionment of the assessments is deemed a legislative function.⁹

In *SMM Properties v. City of North Lauderdale*, the 4th DCA concluded that the city’s integrated fire rescue and emergency medical services program did not provide a special benefit to the assessed property because such services benefit *people*, not *property*.¹⁰ This decision was upheld

⁶ Chapter 401, Part II, F.S., is known as the “Florida Emergency Medical Services Act.”

⁷ See ss. 191.003 and 196.006, F.S.

⁸ *Lake County v. Water Oak Management Corp.*, 695 So. 2d 667, 669 (Fla.1997).

⁹ See *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla.1992); *South Trail Fire Control Dist. v. State*, 273 So. 2d 380, 383 (Fla.1973).

¹⁰ *SMM Properties, Inc. v. City of North Lauderdale*, 760 So. 2d 998 (Fla. 4th DCA 2000). Emphasis added. The court stated there was no evidence that the availability of emergency medical services decreased insurance premiums or enhanced the value of real property.

upon appeal to the Florida Supreme Court.¹¹ In the opinion, the Court cited a test for determining whether a special benefit is conferred to property as set out in *Lake County*:

In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a “unique” benefit or are different in type or degree from the benefit provided to the community as a whole; rather the test is whether there is a “logical relationship” between the services provided and the benefit to real property.¹²

The opinion also cited distinctions between a special assessment and a tax and how benefit and improvement relate to an assessment:

A special assessment is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax but it is inherently different and governed by entirely different principles. *It is imposed upon the theory that that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment.* It is limited to the property benefitted, is not governed by uniformity and may be determined legislatively or judicially.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 191.009, F.S., on fire control district non-ad valorem assessments to clarify that an independent special fire control district may levy non-ad valorem assessments consistent with existing laws, the district’s general and special powers, the district’s enabling legislation and assessments related to emergency rescue services, first response medical aid, emergency medical services, and emergency transport services.

Section 2 amends s. 191.011, F.S., on fire control district levy and collection procedures for non-ad valorem assessments to have assessments apply to lands within the district rather than to benefitted real property. The section recognizes that the provision of emergency rescue services, first response medical aid, emergency medical services, and emergency transport services constitutes a benefit to real property the same as any other improvement performed by a district.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ *City of North Lauderdale v. SMM Properties, Inc* 825 So. 2d 343 (Fla. 2002).

¹² See *Whisnant v. Stringfellow*, 50 So. 2d 885 (Fla.1951); *Crowder v. Phillips*, 146 Fla. 440, 1 So. 2d 629 (1941) (on rehearing).

¹³ See *Klemm v. Davenport*, 100 Fla. 627, 631-34, 129 So. 904, 907-08 (1930). Emphasis in *City of North Lauderdale v. SMM Properties, Inc*.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Residents in fire control districts may be subject to non-ad valorem assessments for the provision of emergency rescue services, first response medical aid, emergency medical services, and emergency transport services. Existing referendum provisions for such assessments would apply.

C. Government Sector Impact:

Fire control districts may consider levying non-ad valorem assessments for the provision of emergency rescue services, first response medical aid, emergency medical services, and emergency transport services. Such assessments would be subject to current referendum provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.