

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: CS/SB 760

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Fire Control Districts and Firefighter Pensions

DATE: February 5, 2020

REVISED: 2/5/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u></u>	<u></u>	<u>IS</u>	<u></u>
3.	<u></u>	<u></u>	<u>RC</u>	<u></u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 760 amends provisions of the Marvin B. Clayton firefighters Pension Trust Fund Act (Act) to expand the Act to cover municipalities providing fire protection services to a Municipal Service Taxing Unit (MSTU) through an interlocal agreement. Currently, the Act only provides an incentive – access to insurance premium tax revenues – to municipalities organized and established by law, and it does not apply to unincorporated areas of any county or counties. The bill expands the applicability of the Act to allow a municipality that provides fire protection services to an MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, to provide pension benefits to the municipality’s firefighters.

The bill also amends the general powers of independent special fire control districts to allow them to provide fire control and rescue services outside the geographical boundaries of a district. Fire control districts would be able to provide services outside of their district through an interlocal agreement with another governmental entity that shares powers in common with the district.

Although special districts occasionally provide services to other governmental entities outside of their geographic boundaries,¹ the Florida Supreme Court recently ruled that this practice is

¹ See Florida Auditor General, *Health Care District of Palm Beach* (Report No. 2019-011, August 2018), available at: https://flauditor.gov/pages/pdf_files/2019-011.pdf (last visited Jan. 28, 2020). In finding 4, the auditor general recommends

unauthorized by ch. 189, F.S., the Uniform Special District Accountability Act. In *Halifax Hospital Medical Center v. State* (decided April 18, 2019), the court ruled that special districts only have the power to provide services and operate within the specific geographic boundaries established for a district in its charter. As contemplated in the court ruling, the bill provides statutory authority for independent special fire control districts to operate outside established geographic boundaries through interlocal agreements.

II. Present Situation:

Municipal Firefighters Pension Trust Fund

Local firefighter pension plans are governed by ch. 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act (Act). The Act declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters.² All municipal and special district firefighter retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' pension trust funds.³

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive – access to premium tax revenues – to encourage the establishment of firefighter pension plans by cities. In 1993, special fire control districts became eligible to participate under ch. 175, F.S.

The Act sets forth the minimum benefits or minimum standards for pensions for municipal firefighters. Municipalities may not reduce the benefits provided in the Act; however, the benefits provided in a local plan may vary from the provisions in the Act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:⁴

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city of the normal cost of the plan.

The Firefighters' Pension Trust Fund is funded in part through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.⁵ It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (division). The division, in coordination with the Municipal Police Officers' and Firefighters' Retirement Trust Funds Office, then distributes the

that the district enter into cooperative agreements with other government authorities to provide services outside the district's boundaries, *id.* at 4.

² Section 175.021(1), F.S.

³ *Id.*

⁴ Section 175.091(1), F.S.

⁵ Section 175.101, F.S.

retirement trust funds to the appropriate local taxing jurisdiction. The Florida Department of Financial Services performs all trust fund market conduct exams.⁶

As of 2017, the Department of Management Services recorded that the membership of the pension plan consisted of 26,942 individual firefighters.⁷ In 2018, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$77.1 million.⁸

To qualify for insurance premium tax dollars, municipalities and districts must develop pension plans that meet the requirements found in ch. 175, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees.⁹ The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., unless specifically authorized to vary from the law. If the division deems that a firefighter pension plan created under ch. 175, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.¹⁰

Firefighter's Supplemental Compensation Trust Fund

Every firefighter is entitled to supplemental compensation from the employing agency when specified circumstances are met.¹¹ The Firefighters' Supplemental Compensation Trust Fund, created under the Department of Revenue, provides the funds necessary for firefighters to receive supplemental compensation under Florida law.¹² Supplemental compensation is provided to firefighters who pursue higher educational opportunities that directly relate to the improvement of the health, safety, and welfare of firefighters and those who firefighters protect.¹³ The Firefighters' Supplemental Compensation Trust Fund is funded by certain amounts appropriated from the Police and Firefighter's Premium Tax Trust Fund.¹⁴

The amount of supplemental compensation for a firefighter is determined as follows:

- Fifty dollars is paid monthly to a firefighter who receives an associate degree from a college if the degree is applicable to fire department duties; and
- One hundred and ten dollars is paid monthly to a firefighter who receives a bachelor's degree from a college or university, regardless of whether the firefighter earned an associate degree earlier if the bachelor's degree is applicable to fire department duties.¹⁵

⁶ Department of Revenue, Florida Insurance Premium Taxes and Fees, *available at*: <https://floridarevenue.com/taxes/taxesfees/Pages/jpt.aspx> (last visited Feb. 3, 2020).

⁷ Department of Management Services, Police & Fire Pension Funds Membership Information, *available at*: https://www.rol.frs.state.fl.us/forms/Membership_Information.pdf (last visited Feb. 3, 2020).

⁸ Department of Management Services, Municipal Police and Fire Plans, *available at*: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited Feb. 3, 2020).

⁹ *See* s. 175.071, F.S.

¹⁰ *See* s. 175.341(1), F.S.

¹¹ Section 633.422, F.S.

¹² *Id.*

¹³ *Id.* at (1)

¹⁴ *Id.* at (3)

¹⁵ *Id.* at (2)

Municipal Services Taxing Units

A Municipal Service Taxing Unit (MSTU) is a funding mechanism for community members to create, through approval of the Board of County Commissioners, a special taxing unit to make improvements to a community area or provide additional services based on community needs.¹⁶

The legislative and governing body of a county has the power to carry on the county government.¹⁷ This power includes the power to establish MSTUs for any part or all of the unincorporated areas of a county.¹⁸ The creation of an MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to 10 mills.¹⁹

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.²⁰

Special Districts

A “special district” is “a unit of local government created for a special purpose... operat[ing] within a limited geographic boundary and is created by general law, special act, local ordinance, or rule of the Governor and Cabinet.”²¹ Special districts are created to provide a wide variety of services, such as mosquito control,²² beach facilities,²³ children's services,²⁴ fire control and rescue,²⁵ or drainage control.²⁶

Special districts are classified as “dependent special districts” or “independent special districts.” For a special district to be classified as a dependent special district, the district must meet at least one of the following criteria:

- Membership of its governing body is identical to that of the governing body of a single county or a single municipality;
- All members of its governing body are appointed by the governing body of a single county or a single municipality;

¹⁶ See Collier County, MSTU Information, available at: <https://www.colliercountyfl.gov/your-government/divisions-f-r/public-transit-neighborhood-enhancement/our-services/mstu-information> (last visited Feb. 3, 2020).

¹⁷ Section 125.01(1), F.S.

¹⁸ *Id.* at (q)

¹⁹ Section 200.071(3), F.S.

²⁰ Section 125.01(1)(q), F.S.

²¹ Section 189.012(6), F.S.

²² Section 388.021(1), F.S., (however, new independent mosquito control districts are prohibited, *see* s. 388.021(2), F.S.).

²³ *See* Section 189.011, F.S.

²⁴ Section 125.901(1), F.S.

²⁵ Section 191.002, F.S.

²⁶ Section 298.01, F.S.

- The members of its governing body are subject to removal at will by the governing body of a single county or single municipality, during their unexpired terms; or
- The district has a budget that requires approval or can be vetoed by the governing body of a single county or a single municipality.²⁷

Alternatively, an independent special district is any special district that does not meet the definition of a “dependent special district.”²⁸ Furthermore, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely within the borders of a single municipality.²⁹

Excluding community development districts, the charter creating an independent special district must contain the following information:

- The purpose of the special district;
- The powers, functions, and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- Method for establishing the district and amending the district charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- Method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.³⁰

Special districts may enter into interlocal agreements with one or more other local governmental units, provided that the special district is authorized to operate in the geographic bounds of the other local government unit.³¹ Under such an agreement, the special district may exercise jointly with the other participating local governments, those powers, privileges, or authorities which they have in common, and each may exercise separately.³²

²⁷ Section 189.012(2), F.S.

²⁸ Section 189.012(3), F.S.

²⁹ *Id.*

³⁰ FLA. CONST. Art. VII, s. 9(a),.

³¹ Sections 163.01(2) and (3)(b), F.S.

³² Section 163.10(4), F.S.

Independent Special Fire Control Districts

Chapter 191, F.S., the “Independent Special Fire Control District Act” (Fire Control Act or Act), establishes standards and procedures for the operation and governance of independent special fire control districts and provides greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of districts.³³ There are currently 64 fire control districts established by ch. 191, F.S., operating across Florida.³⁴

Unless otherwise exempted by special or general law, each district, whether created by special act, a general law of local application, or county ordinance, must comply with the Fire Control Act. The Act supersedes any special act or general law of local application containing the charter of a district, excluding provisions addressing district boundaries and geographical sub-districts for the election of members of the governing board.³⁵

The Fire Control Act prescribes procedures for the election, composition, and general administration of a district’s governing board, and contains a broad list of the district’s general powers to be exercised by a majority vote of the governing board.³⁶ The Act grants districts special powers related to facilities and duties, and are required to provide for fire suppression and prevention by establishing and maintaining fire stations and substations, and by acquiring and maintaining firefighting and fire protection equipment necessary to prevent or fight fires. All construction must comply with applicable state, regional, and local regulations, including applicable comprehensive plans and land development regulations.³⁷

A fire control district may levy ad valorem taxes up to 3.75 mills unless a greater millage rate is authorized by law, subject to a referendum as required by the Florida Constitution and the Fire Control Act. Districts may also be authorized to levy special assessments, user charges, and impact fees under the Fire Control Act.³⁸

Boundaries of a district may be modified, extended, or enlarged only upon approval or ratification by the Legislature.³⁹ New independent fire control districts may be created only by the Legislature under s. 189.031, F.S.

Fire control districts are authorized to cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or the purpose authorized by the Fire Control Act.⁴⁰ Additionally, the Act affords districts the right to issue usage charges for special emergency services, including firefighting occurring in or to structures outside the district, if called to render such emergency services.⁴¹

³³ Section 191.002, F.S.

³⁴ See Florida Department of economic Opportunity, Official List of Special Districts Online, *available at*: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 30, 2020).

³⁵ Section 191.004, F.S.

³⁶ Section 191.006, F.S.

³⁷ Section 191.008, F.S.

³⁸ Section 191.009, F.S.

³⁹ Section 191.014, F.S.

⁴⁰ Section 191.006(13), F.S.

⁴¹ Section 191.009(3)(a), F.S.

Florida Interlocal Cooperation Act of 1969

The Florida Interlocal Cooperation Act provides local governmental units the right to enter into mutually advantageous agreements to provide services or facilities to other localities.⁴² This section of the law allows public agencies of the state to exercise jointly with any other public agency of the state, of any other state, or the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.⁴³ To effectuate interlocal cooperation under this section, local governmental units jointly exercising power must form and execute a contract detailing the terms and conditions of the interlocal relationship.⁴⁴

Halifax Hospital Medical Center v. State, 278 So.3d 545 (Fla. 2019)

Created in 1925 as the Halifax Hospital District,⁴⁵ the Halifax Hospital Medical Center (commonly known as Halifax Health)⁴⁶ is an independent special district located in a portion of Volusia County.⁴⁷ As originally adopted, the charter for Halifax Hospital District authorized the establishment, construction, operation, and maintenance of hospitals as necessary for the use of the people in the district.⁴⁸ The 1925 enabling act and subsequent amendments⁴⁹ were recodified in 1979.⁵⁰ Halifax Hospital Medical Center interpreted a change in the first sentence of the basic authorization section in the 1979 charter⁵¹ as allowing the district to provide services and open facilities outside the borders of the district.⁵²

Applying this interpretation, the district established and operated extra-territorial facilities and services for several years.⁵³ The text on which the district relies was substantially unchanged

⁴² Section 163.01, F.S.

⁴³ *Id.* at (4)

⁴⁴ *Id.* at (5)

⁴⁵ Chapter 11272, Laws of Fla. (1925).

⁴⁶ See Halifax Health, “Our History,” at <https://www.halifaxhealth.org> (last visited Jan. 30, 2020). The official name of the district in the current charter is “Halifax Hospital Medical Center” and is so referenced in this analysis.

⁴⁷ Chapter 2003-374, Laws of Fla.

⁴⁸ Chapter 11272, s. 5, Laws of Fla. (1925).

⁴⁹ Chapters 13489 & 13490, Laws of Fla. (1927); ch. 16037, Laws of Fla. (1933); ch. 17977, Laws of Fla. (1937); chapter 19097, Laws of Fla. (1939); chapters 21748 & 21749, Laws of Fla. (1943); chapters 22688 & 22689, Laws of Fla. (1945); chapters 26280, 26283, 26292, Laws of Fla. (1949); chapter 27944, Laws of Fla. (1951); chapters 29579 & 29580, Laws of Fla.; chapter 31333, Laws of Fla. (1955); chapters 57-1925, 59-1952, 59-1953, 59-1954, 61-2961, 61-2963, 61-2964, 63-2019, 65-2353, 65-2354, 65-2356, 67-2155, 67-2156, 72-710, 72-711, 72-712, 74-622, 77-661, 77-662, Laws of Fla.

⁵⁰ Chapter 79-577, Laws of Fla.

⁵¹ Chapter 79-577, s. 5, Laws of Fla.

⁵² See Amended Brief of Halifax Hospital Medical Center, 17-18, 20, *Halifax Hospital Medical Center v. State of Fla., et al.*, Case No. SC18-683 in the Florida Supreme Court (filed 6/19/2018) [herein Appellant’s Initial Brief]; Reply Brief of Halifax Hospital Medical Center, 3-5, *Halifax Hospital Medical Center v. State of Fla., et al.*, Case No. SC18-683 in the Florida Supreme Court (filed 9/19/2018) [herein Appellant’s Reply Brief]. At the time these arguments were made, the legal standard for reviewing an agency’s determination of its operative law required the court to give deference to the agency’s interpretation if further interpretation was necessary. On November 6, 2018, the voters of Florida approved proposed Amendment 6 to the Florida Constitution, creating art. V, s. 21, which prohibits a reviewing court from deferring to an agency’s interpretation of law and requiring an original, or *de novo* review by the court. That amendment was effective on January 8, 2019. Art. XI, s. 5(e), Fla. Const. The Supreme Court found the laws at issue were unambiguous and could be applied by the Court without need for other rules of interpretation. *Halifax Hospital Medical Center v. State of Florida*, No. SC18-683 (Fla. Apr. 18, 2019), 4.

⁵³ Appellant’s Initial Brief, 8.

when the 1979 charter and subsequent amending acts⁵⁴ were again recodified in 2003.⁵⁵ Each version of the charter for the Halifax Hospital Medical Center required the act to be liberally interpreted to achieve its stated purposes.⁵⁶

On November 6, 2017, Deltona and the Halifax district entered into an interlocal agreement for the district to construct and operate health facilities within the City.⁵⁷ To finance the development and completion of the Deltona hospital, on January 8, 2018, the Board of the Halifax district adopted a resolution to issue \$115 million in bonds using the district's authority.⁵⁸ Following the statutory procedure,⁵⁹ the district filed a complaint in the Circuit Court to validate the bonds.⁶⁰ The Circuit Court found the district was not authorized to construct the Deltona hospital outside the geographical boundaries of the district, and accordingly refused to validate the proposed bond issue.⁶¹ On April 18, 2019, the Supreme Court affirmed the decision of the circuit court, holding that the district's enabling law and ch. 189, F.S., did not expressly authorize any operation outside the district boundaries.⁶²

III. Effect of Proposed Changes:

The bill expands the applicability of ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Act), to provide that the Act applies to municipalities providing fire protection services to an MSTU through an interlocal agreement. The bill authorizes municipalities to receive insurance premium taxes collected within the boundaries of an MSTU to afford pension benefits to firefighters serving the area. It conforms ch. 175, F.S., to authorize the levy and imposition of the insurance premium tax within an MSTU in the same manner as prescribed for municipalities and fire control districts. The bill requires that certain pension trust fund money not distributed to an MSTU be appropriated to the Firefighters' Supplemental Compensation Trust Fund.

The bill also amends s. 191.006, F.S., to expressly provide that independent special fire control districts have all powers and duties provided in ch. 189, F.S., (Uniform Special District Accountability Act), ch. 191, F.S., (Fire Control Act), and s. 163.01, F.S., (Florida Interlocal Cooperation Act), including the exercise of such powers within or without the independent special fire control district's boundary in cooperation with another governmental agency when such agency shares such powers in common with the district.

The bill takes effect on July 1, 2020.

⁵⁴ Chapters 79-578, 84-539, 89-409, 91-352, Laws of Fla.

⁵⁵ Chapter 2003-374, Laws of Fla.

⁵⁶ Chapter 11272, s. 20, Laws of Fla. (1925); chapter 79-577, s. 15, Laws of Fla.; chapter 2003-374, s. 15 of s. 3, Laws of Fla.

⁵⁷ Appellant's Initial Brief, 10. *See* s. 163.01, F.S.

⁵⁸ Appellant's Initial Brief, 10. *See* chapter 2003-374, s. 8 of s. 3, Laws of Fla.

⁵⁹ Chapter 75, F.S.

⁶⁰ *Halifax Hospital Medical Center v. State of Florida, et al.*, Case no. 2018 30059 CICI, in the 7th Judicial Circuit Court in and for Volusia County, Florida.

⁶¹ "Order on Motion for Final Judgment," Case no. 2018 30059 CICI (4/17/2018).

⁶² *Halifax Hospital Medical Center v. State of Florida*, 278 So.3d 545, No. SC18-683 (Fla. Apr. 18, 2019).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the provisions of the bill pertaining to the insurance premium tax will reduce General Revenue receipts by \$100,000 in fiscal year 2020-2021, with a recurring reduction of \$300,000 beginning in fiscal year 2021-2022. The bill will increase local government receipts by \$100,000 in fiscal year 2020-2021, with a recurring increase of \$300,000 beginning in fiscal year 2021-2022.⁶³

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill specifies that a municipality is entitled to premium tax distributions provided by chapter 175, F.S., for providing fire services to MSTUs. As a result, the bill will have a negative fiscal impact on state revenues. Premium taxes paid by an insurer to fund a municipal firefighter retirement plan are credited against the total premium taxes paid to the state by the insurance company.⁶⁴ Numerations allocated to MSTU firefighter pension

⁶³ Revenue Estimating Conference, *Fire Control District Surtax, HB 1331* (Jan. 30, 2020), available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page326-328.pdf (last visited Feb. 5, 2020).

⁶⁴ See s. 624.509(4), F.S.

funds would be deducted from the general revenue fund of the state and would not increase or decrease premium taxes paid by insurers.⁶⁵

The bill will result in a positive fiscal impact on local governments because the bill provides that a municipality may collect insurance premium tax revenues within the MSTU boundary receiving firefighter services if the municipality provides a municipal firefighter retirement plan as provided for in ch. 175, F.S.

The bill may also have a positive fiscal impact on special independent fire control districts. These districts may be able to increase revenues by entering interlocal agreements and providing services outside the specific geographic boundaries established in a district charter.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.032, 175.041, 175.071, 175.101, 175.111, 175.121, 175.122, 175.351, 175.381, 175.411, 191.006, and 633.422.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on February 3, 2020:

The committee substitute adds provisions allowing municipalities that provide fire protection services to a municipal services taxing unit (MSTU) through an interlocal agreement to receive insurance premium taxes collected within the boundaries of an MSTU in order to provide pension benefits to the municipality's firefighters serving the MSTU.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶⁵ *Id.*