

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides 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:

Present Situation – Community Development Districts

Chapter 190, Florida Statutes, 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 are currently 381 active CDDs in Florida.²

Among the general powers granted to a CDD: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, 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

In addition, CDDs also can be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural, and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.⁵

HB 381 relates only to those CDDs that are providing "fire prevention and control" with the consent of the local government⁶ ("Fire CDDs"). Information on how many Fire CDDs exist is not available from the Department of Management Services, the Special District Information Program of the Department of Community Affairs, or the State Fire Marshal. Thus, the number of Fire CDDs is unknown. It is estimated that only a small percentage of Fire CDDs exist.⁷ The pay and benefits, including the type of pension plan, of any firefighter working for a Fire CDDs currently are determined by the Fire CDD.

¹ Fla. Stat. § 190.002 (2005).

² Fla. Dep't of Comm'y Aff., Div. of Hous. and Comm'y Dev., Special Dist. Info. Program, *Create Your Own List of Special Districts* (search "community development" under "Functions to Include")(visited Mar. 14, 2005) <<http://www.floridaspecialdistricts.org/OfficialList/criteria.asp>>.

³ Fla. Stat. § 190.011 (2005).

⁴ Fla. Stat. § 190.012(1) (2005).

⁵ Fla. Stat. § 190.012(2) (2005).

⁶ Fla. Stat. § 190.012(2)(b) (2005).

⁷ Conversations and e-mails with attorneys representing CDDs (Jan. and Feb. 2005).

Present Situation – 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,⁸ 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,⁹ have pension plans pursuant to chapter 175, Florida Statutes.

Chapter 175, Florida Statutes, is the Marvin B. Clayton Firefighters Pension Trust Fund Act (“FPTFA”).¹⁰ The FPTFA sets forth the minimum benefits and minimum standards for municipal and special district firefighter pension plans. There currently are 20 special fire control districts and 159 municipalities that have established plans pursuant to the FPTFA.¹¹ These plans had revenues of approximately \$66,319,992 in 2004; \$5,096,380 of those revenues were generated by special fire control districts.¹²

Section 175.032, Florida Statutes, provides the definitions for the FPTFA, 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 equipment¹³ will be bound by the FPTFA and must establish a special firefighters’ pension trust fund for the firefighters.¹⁴

The following sources provide funding for the firefighters’ pension trust fund:

- 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, Florida Statutes;
- 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 or income authorized by law for the augmentation of such firefighters' pension trust fund.¹⁵

The Fire CDD also must create a board of trustees for the firefighters pension trust fund consisting 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

⁸ Fla. Stat. § 175.041(1) (2005).

⁹ Fla. Stat. § 175.041(2) (2005).

¹⁰ Fla. Stat. § 175.025 (2005).

¹¹ Dep’t of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep’t).

¹² *Id.*

¹³ Fla. Stat. § 175.041(1) and (2) (2005).

¹⁴ Fla. Stat. § 175.041(1) (2005).

¹⁵ Fla. Stat. § 175.091 (2005).

of such plan; the fifth member must be chosen by a majority of the other four members.¹⁶ This board of trustees must meet quarterly¹⁷

Among the powers of the board of trustees: invest and reinvest the assets of the firefighter pension fund in certain authorized investments, issue drafts, keep required records, retain a qualified independent consultant every three years, and employ legal counsel, independent actuaries, and other advisors.

The FPTFA provides requirements for the retirement,¹⁸ disability,¹⁹ death,²⁰ and presumed injuries²¹ of Fire CDD firefighters under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter pension plan of a Fire CDD.²² Actuarial deficits are not, however, obligations of the State of Florida.²³

C. SECTION DIRECTORY:

Section 1 amends subsection (16) of section 175.032, Florida Statutes, to amend the definition of "special fire control district."

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on any state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on the local government revenues of counties, municipalities, or special districts. The bill may have a fiscal impact on the revenues of Fire CDDs.

¹⁶ Fla. Stat. § 175.061(1) (2005) (The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district.)

¹⁷ Fla. Stat. § 175.061(3) (2005).

¹⁸ Fla. Stat. § 175.162 (2005).

¹⁹ Fla. Stat. § 175.191 (2005).

²⁰ Fla. Stat. § 175.201 (2005).

²¹ Fla. Stat. § 175.231 (2005) (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal).

²² Fla. Stat. § 175.341 (2005).

²³ Fla. Stat. § 175.051 (2005).

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies are obligated to report and remit the excise tax on property insurance premiums pursuant to section 175.101, Florida Statutes. These insurance companies may be impacted by the addition of a new entity authorized to receive these taxes.

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 municipalities have to raise revenue.

2. Other:

Benefit changes to the state retirement system are governed by section 14 of article X of the Florida Constitution. Changes to chapter 175, Florida Statutes, 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:

Drafting Issue: Authority to Collect the Tax on Property Insurance Premiums

One of the funding mechanisms provided for firefighters pension trust funds is the premium tax authorized under section 175.101(1), Florida Statutes. The Department of Management Services has suggested that chapter 190, Florida Statutes, which governs CDDs, may need to be amended to give CDDs the authority to levy the premium tax.²⁴ Although the language which provides that a Fire CDD "may assess and impose" the premium tax seems sufficient, the sponsor may wish to consider an amendment to section 190.011, Florida Statutes:

(17) To assess and impose the state excise tax authorized under s. 175.101, if exercising the powers permitted under s. 190.12(2)(b).

Drafting Issue: Different Types of Districts

CDDs and special fire control districts are different types of independent special districts which are governed by two different chapters of the Florida Statutes: chapter 190 and chapter 191, respectively. This bill, however, includes certain CDDs in the definition of special fire control district for purposes of chapter 175. Given the different legal and statutory status of these two types of districts, it would be

²⁴ Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).

better to define and provide for CDDs throughout the chapter. Yet, given the unknown and expected low number of Fire CDDs, such considerable amendment to chapter 175, Florida Statutes, may not be warranted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.