

STORAGE NAME: h0603a.ca
DATE: March 27, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 603

RELATING TO: Municipal Special Assessments

SPONSOR(S): Representative Ritter and others

STATUTE(S) AFFECTED: Section 170.201, Florida Statutes, 1996 Supplement

COMPANION BILL(S): SB 676 (i) and HB 525 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 5 NAYS 0
- (2) FINANCE & TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

This bill exempts property owned or occupied by a religious institution or by a public or private elementary, middle, or high school from any special assessment levied by a municipality to fund emergency medical services. "Religious institution" is defined to mean 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 will have a negative, but indeterminate, fiscal impact on municipalities.

Article VII, Section 18(b) of the Florida Constitution, requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenue in the aggregate. However, laws having an insignificant impact (\$1.4 million) are exempt from this requirement. This bill would reduce the revenue raising authority of municipalities by an indeterminate amount.

Amendment 2, which was adopted by the Committee on Community Affairs and is traveling with the bill, authorizes but does not require municipalities to exempt properties addressed by the bill. As amended, the bill would not reduce the revenue raising authority of municipalities. (See section IV of this analysis.)

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Definition of Special Assessments

Special assessments are not taxes, but are “charges levied against the property of some particular locality because that property derives some special benefit from the expenditure of the money.” Atlantic Coast Line R. Co. v. City of Gaineville, 91 So. 118 (Fla. 1922). A special assessment may be used to fund either capital expenditures or the operational costs of services, provided the property that is subject to the assessment derives some special benefit from the improvement or service. Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994). The Florida Supreme Court has stated that the two requirements for the imposition of a valid special assessment are: 1) the property assessed must derive a special benefit from the service provided; and 2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992). As the Court noted, a special assessment is distinguished from a tax because of its special benefit and fair apportionment. There is no requirement that taxes provide a special benefit to the property assessed; taxes may be levied for the general benefit of the local jurisdiction.

Municipal Authority to Levy Special Assessments

In City of Boca Raton v. State, *supra.*, the Florida Supreme Court recognized a municipality’s broad home rule power to impose special assessments except where expressly prohibited by law. In addition to this home rule authority, the Legislature has explicitly authorized municipal special assessments in Chapter 170, Florida Statutes, titled “Supplemental and Alternative Method of Making Local Municipal Improvements.” Section 170.01(k), Florida Statutes, enumerates purposes for which a municipality may levy special assessments. Section 170.02, Florida Statutes, requires assessments to be assessed upon the property specially benefited by the improvement in proportion to the benefits derived therefrom. The chapter also requires a municipality to adopt a resolution to impose special assessments, provides for publication of the resolution, and provides methods for hearing complaints and adjusting assessments, as well as procedures for enforcing payment of assessments.

In addition to those purposes listed in section 170.01, Florida Statutes, section 170.201, Florida Statutes, 1996 Supplement, created by chapter 96-324, Laws of Florida, authorizes the governing bodies of municipalities to levy and collect special assessments to fund capital improvements and for municipal services including fire protection, *emergency medical services*, garbage disposal, sewer improvement, street improvement, and parking facilities. The section requires that these assessments be based on square footage of land parcels or an alternative methodology, so long as the amount of the assessment does not exceed the proportional benefits as compared to other assessments.

Sarasota County v. Sarasota Church of Christ, Inc.

In Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), the Florida Supreme Court upheld a special assessment levied to fund stormwater treatment

services. Since church property is exempt from taxation but was subject to assessments under the special assessment program, several churches objected and filed a class action suit against the County. The churches challenged the assessment program on two grounds: (1) it provided no special benefit to their property, and (2) the cost of funding stormwater utility was not fairly and reasonably apportioned among the assessed properties. On the first ground, the Court found that developed property, including that owned by the churches, received the special benefit of the treatment of stormwater runoff caused primarily by improvements on the property. In reaching this decision, the Court stated: "Although a special assessment is typically imposed for a specific purpose designed to benefit a specific area or class of property owners, this does not mean that the costs of services can never be levied throughout a community as a whole." *Id.* at 183. On the second ground, the Court found that the method of apportionment used by the county was proper because it apportioned the costs of the services based on the relative stormwater contributions of different types of developed property.

The Court also clarified the standard to be applied when a court is determining whether legislative conclusions regarding benefits and apportionment should be sustained. The Court stated: "the legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary. *Id.* at 183.

Use of Special Assessments to Fund Fire and Rescue Services

The use of special assessments to fund fire and rescue services has been repeatedly upheld by Florida courts. See Fire Dist. No. 1 of Polk county v. Jenkins, 221 So.2d 740 (Fla. 1969); South Trail fire Control Dist., Sarasota County v. State, 273 So.2d 380 (Fla. 1973); and Sarasota County v. Sarasota Church of Christ, 641 So.2d 900 (Fla. 2d DCA 1994), rev'd on other grounds, 667 So2d 180 (Fla. 1995).

In a recent decision, the Fifth District Court of Appeal appears to depart from previous decisions upholding fire and rescue assessments. In Water Oak Management Corp. v. Lake County, 673 So2d 135 (Fla. App. 5th DCA 1996), the county had adopted an ordinance consolidating several individual fire control districts into a single unit and authorized the collection of special assessments to fund those services. Based on prior case law, the court held that the fire protection services provide a benefit for the properties assessed. However, in applying the special benefit analysis from Sarasota County v. Sarasota Church of Christ, Inc., *supra*, the court failed to find any special benefit conferred by the assessment to any property assessed. The court reasoned "[t]he 'special assessment' merely funds an undifferentiated service for the county in general and is designed to reduce costs of this service that would otherwise come from general revenue funded by ad valorem taxes. Finally, the court labeled as "arbitrary" the county's determination that all assessed properties "benefited" from receiving fire services. Water Oak Management Corp. v. Lake County, *supra*, at 135.

The court in Water Oak Management Corp. v. Lake County, *supra.*, certified to the Supreme Court the validity of the fire and rescue services assessment at issue in the case. An opinion from the high court is not expected before the end of the 1997 Legislative Session.

Municipalities Levying Special Assessments for Emergency Medical Services

The number and identity of municipalities currently levying special assessments to fund emergency medical services is unknown. Following passage of chapter 96-324, Laws of Florida, creating section 170.201, Florida Statutes, 1996 Supplement, several municipalities in Broward County adopted special assessment programs to fund emergency medical services. These municipalities included: Dania, North Lauderdale, Pembroke Pines, Hollywood, Town of Davie, Margate, Sunrise, and Tamarac.

Exemptions From Special Assessments

Neither the Florida Constitution nor general law provide for exemptions from municipal or county special assessments. The question of how exemptions affect the validity of a special assessment program has not been directly addressed by a Florida appellate court. Appellants in Water Oak Management Corp. v. Lake County, supra., had challenged in circuit court Lake County's special assessment for solid waste disposal in addition to fire and rescue. The circuit court entered summary judgement upholding these assessments. On appeal, the Fifth District Court opinion mentions the assessment excluding tax exempt properties, but briefly dispenses with the solid waste assessment challenge by finding no error. Water Oak Management Corp. v. Lake County, supra., at 136.

In particular special assessment programs adopted by municipalities, types of properties not benefited or receiving much less benefit than other types properties have been excluded from paying special assessments. In addition, most of the municipalities in Broward County noted above have exempted specific types of tax exempt properties from paying special assessments for emergency medical services. In instances where exempted properties receive substantial benefits, the municipality may not apportion the cost of benefits enjoyed by the exempted properties to other properties without being vulnerable to a challenge of violating the second requirement for a valid special assessment established by the Supreme Court in City of Boca Raton v. State, supra:

The assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

Rather, revenues not collected through the special assessment programs may need to be used to fund the costs that would have been apportioned to the exempted properties. This was the approach taken by the municipalities in Broward County that exempted tax exempt properties.

B. EFFECT OF PROPOSED CHANGES:

This bill exempts property owned or occupied by a religious institution or by a public or private elementary, middle, or high school from any special assessment levied by a municipality to fund emergency medical services. "Religious institution" is defined to mean any church, synagogue, or other established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 170.201, Florida Statutes, 1996 Supplement, is amended to exempt property owned or occupied by a religious institution or by a public or private elementary, middle, or high school from any special assessment levied by a municipality to fund emergency medical services. "Religious institution" is defined to mean any church, synagogue, or other established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on.

Section 2. An effective date of upon becoming law is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

As discussed in the "Present Situation" section, several municipalities in Broward County have enacted ordinances to assess properties for emergency medical services since enactment of section 170.201, Florida Statutes, 1996 Supplement. Most of those ordinances implement combined special assessment programs for fire and emergency medical services, and most of the ordinances exempt tax-exempt properties. However, this bill would require the reevaluation of all emergency medical service special assessment programs that do not exempt all the properties exempted by the bill. In addition, municipalities with combined special assessment programs for fire and emergency medical services might be required to adjust these programs.

2. Recurring Effects:

Presumably, municipalities would be required to use general revenue funds to cover revenues not collected due to the exemptions created by this bill. The number of municipalities currently imposing emergency medical service special assessments on properties exempted by this bill is unknown, as is the loss in revenue that would result from this bill.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Owners of property exempted from paying emergency medical service special assessments would not be required to pay these assessments.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require expenditures by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will reduce the revenue raising authority of municipalities by an indeterminate amount. Article VII, Section 18(b) of the Florida Constitution provides:

(b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

As discussed in the "Present Situation" section, to avoid violating the second requirement for a valid special assessment established by the Supreme Court (the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit), municipalities would be required to use general revenue funds to cover revenues not collected due to the exemptions created by this bill. As a result, this bill reduces the revenue raising authority of municipalities.

Section 170.201, Florida Statutes, 1996 Supplement, created by chapter 96-324, Laws of Florida, explicitly authorizes the governing bodies of municipalities to levy and collect special assessments to fund capital improvements and for municipal services including emergency medical services. However, as discussed in the "Present Situation" section, in City of Boca Raton v. State, Supra, the Florida Supreme Court recognized a municipality's broad home rule power to impose special assessments except where expressly prohibited by law. This ruling was based on an analysis of Article VIII, section

2(b) of the Florida Constitution, relating to powers of municipalities, and the Municipal Home Rule Powers Act, created in 1973. On February 1, 1989, general law did not prohibit a municipality from imposing special assessments to fund emergency medical services. Accordingly, this analysis assumes that municipalities possessed the authority to impose special assessments to fund emergency medical services on February 1, 1989.

Subsection (d) of section 18 of Article VII of the State Constitution provides an exemption for laws having an insignificant impact (\$1.4 million). There are approximately 400 municipalities in the State of Florida. Each municipality has the authority to impose special assessments to fund emergency medical services. This bill would require every municipality to exempt property owned or occupied by a religious institution or by a public or private elementary, middle, or high school from their assessment program. The resulting potential loss in revenue is indeterminate.

Amendment 2, which was adopted by the Committee on Community Affairs and is travelling with the bill, authorizes but does not require municipalities to exempt properties addressed by the bill. Since the exemptions are not required, but are at the discretion of a municipality, the bill as amended would not reduce the revenue raising authority of municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

This bill's effect on future legal challenges to emergency medical service special assessment programs is difficult to predict. As discussed in the "Present Situation" section, the question of how exemptions affect the validity of a special assessment program has not been directly addressed by a Florida appellate court. However, any special assessment program must meet the following two requirements set forth by the Supreme Court in City of Boca Raton v. State, supra:

- 1) the property assessed must derive a special benefit from the service provided; and
- 2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

The standard to be applied when a court is determining whether legislative conclusions regarding benefits and apportionment should be sustained, as stated by the Supreme Court in Sarasota County v. Sarasota Church of Christ, Inc., supra, at 183., is :

"the legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary."

In applying the above two criteria and standard of review in Sarasota County v. Sarasota Church of Christ, Inc., supra, the Supreme Court found the assessment applies to the two classes of developed property that contribute most of the stormwater runoff requiring

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treatment and does not apply to undeveloped property because it actually contributes to stormwater management. It is uncertain if the Court would have reached the same conclusion if undeveloped as well as developed property exempted by this bill were exempted from the assessment.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 27, 1997, the Committee on Community Affairs passed HB 603 with two amendments.

Amendment 1:

This amendment requires that property owned by a religious institution be used as a place of worship or education to be exempt from assessment.

Amendment 2:

This amendment provides for the exemptions authorized by this bill to be at the discretion of the municipality, rather than mandatory.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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