

STORAGE NAME: h0739.ca
DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 739
RELATING TO: Ad Valorem Taxation
SPONSOR(S): Representative A. Green
COMPANION BILL(S): CS/SB 320 (s)

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

- (1) COMMUNITY AFFAIRS
- (2) REAL PROPERTY & PROBATE
- (3) FINANCE & TAXATION
- (4) EDUCATION APPROPRIATIONS
- (5)

I. SUMMARY:

This bill allows cities, counties, and school districts to levy an interim improvement surcharge on improvements to real property within their respective jurisdictions.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article VII, Section 9 of the State Constitution, authorizes counties, school districts and municipalities, pursuant to general law, to levy ad valorem taxes for their respective purposes. Article VII, Section 4(c) of the State Constitution requires that the assessment of homestead property be charged annually on January 1 of each year. Section 192.042, F.S., requires real property which is substantially complete and tangible personal property which is substantially complete or acquired to be assessed for ad valorem tax purposes on January 1 of each year. Property substantially complete or acquired after January 1 is not placed on the property tax rolls until January 1 of the subsequent year. There is no provision in general law to assess property on a date other than January 1.

Section 192.042, F.S., declares that "substantially complete" means that the improvement or some self-sufficient unit within it, can be used for the purpose for which it was constructed.

Article VII, Section 12 of the State Constitution requires local governments to obtain voter approval when pledging ad valorem tax revenues against bonds, certificates of indebtedness, or any form of tax anticipation certificates maturing more than twelve months after issuance.

Section 197.3632, F.S., establishes the uniform method of levy, collection, and enforcement of non-ad valorem assessments. Subsection (5) requires that the local government levying the assessment certify a non-ad valorem assessment roll to the tax collector by September 15 of each year. This roll must list the assessment for each parcel on the roll and must be on an electronic medium compatible with the system used by the tax collector's office. Subsection (2) requires the local government to enter into a written agreement with the property appraiser and tax collector to provide for "reimbursement of necessary administrative costs incurred under this section."

It is estimated that 16 cities currently levy an "interim proprietary services fee" on new construction. This fee is designed to fund a local government's service or operational expenses resulting from new development. The authority to levy fees stems from home rule powers reserved for counties and cities by the State Constitution. In contrast, taxes must be authorized by general law.

The City of Oakland Park's interim proprietary services fee ordinance was ruled invalid because the court found the fee was actually an unauthorized tax. *City of Oakland Park v. Oakland Forest Corporation Center*, 515 So.2d 1055 (Fla. 4th DCA 1987). While the Oakland Park fees were based on the value of new construction, research indicates that sixteen cities that currently levy the fee have rate structures based on set amounts per unit or per square foot, pro rated monthly.

In March 1998, Collier County adopted an ordinance imposing an Interim Government Services fee on recently improved property, pledging the fee revenues against a bond for capital improvements. The imposition of the fee was challenged in court and the trial judge denied the county's request for validation on the grounds that the fee funded general government services, and therefore did not meet the standard for special assessments. (*Collier County v. State*, Case No. 98-1703-CA) The case was appealed by Collier County and the Florida Supreme Court heard oral arguments on the case March 5, 1999. The court has not yet rendered an opinion.

B. EFFECT OF PROPOSED CHANGES:

This bill allows cities, counties, and school districts to levy an interim improvement surcharge on improvements to real property within their respective jurisdictions.

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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

This issue would have to be decided by the Florida Supreme Court to determine if the surcharge is valid or is if it is considered a tax not authorized by the Florida Constitution.

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

- 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?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates a new section 192.205, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that counties, school districts and municipalities may, within their respective jurisdictions, levy an interim improvement surcharge on improvements to real property which were not substantially completed before January 1 of the preceding year but which were substantially completed, as defined in s. 192.042, F.S., before January 1 of the current year.

The surcharge is computed by multiplying the taxable value of the improvement by the ad valorem millage rate levied by the county, school district, or municipality, as appropriate, in the previous year and by a time factor. The time factor is a fraction of which the numerator equals the number of days of the year during which the improvement was substantially completed and the denominator is the number of days in that year. The amount of the surcharge may be limited by ordinance.

Notice of imposition of the surcharge must be made by first class mail by the governing body levying the surcharge. The governing body must also annually prepare a surcharge assessment roll in accordance with the procedures specified for non-ad valorem assessment rolls in s. 197.3632(5), F.S. The surcharge must be included in the TRIM notice in the year after the year the improvement becomes substantially complete. Surcharge early payments, prepayments, deferred payments, delinquent payments, and issuance and sale of tax certificates and tax deeds for nonpayments are subject to the collection provisions of chapter 197, F.S.

Surcharge proceeds may be used for "any public purpose" and may be pledged against bonds.

Section 2: Provides that the act takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Local governments levying the surcharge, and their respective county tax collectors and property appraisers, will incur administrative costs to implement the surcharge. The bill requires the local government levying the surcharge to prepare the assessment roll. The bill does not specifically require the property appraiser or tax collector to participate in the necessary data or revenue collection process. Subsection 197.3632(2), F.S., requires the local governing board to enter into written agreements with the county property appraiser and tax collector "for reimbursement of necessary administrative costs incurred under this section." However, it does not require the property appraiser or tax collector to enter into the agreement.

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Property owners whose property is substantially completed after January 1 of any year would be assessed a surcharge for those months that the property was substantially complete, whereas under current law that property would not be taxed.

2. Direct Private Sector Benefits:

N/A

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

N/A

D. **FISCAL COMMENTS:**

This bill authorizes counties, school districts, and municipalities to levy an interim improvement surcharge against real property substantially completed in the previous year.

It is estimated, by the revenue impact conference, that a partial-year assessment on new construction for FY 2000-2001 by all taxing authorities would generate \$130 million statewide. If no fee limit is imposed, counties and school districts would generate an estimated \$ 51.15m and \$61.69m respectively in FY 2000/1 from the interim improvement surcharge. Potential revenues for cities would be less than \$17m in FY 2000-2001.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce counties or municipalities revenue raising authority.

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

The bill does not result in a reduction of state tax revenue shared with counties and municipalities.

V. **COMMENTS:**

This bill creates an "interim improvement surcharge," a new general revenue source for local governments. The surcharge would be imposed by levying a millage rate against the value of an improvement to real property. This is the same means by which ad valorem taxes are levied.

If it is determined that this surcharge is an ad valorem tax, it is vulnerable to the same constitutional challenges confronted by Partial-Year assessments, which has been presented to the Legislature in various forms over the past decade. The constitutional challenges include issues related to the taxation of tangible personal property, authorizing partial year assessments as a local option, compatibility of the "Save Our Homes" constitutional provision, administration of tax liens, the basis for determining if property is substantially complete, and the application of exemptions. [See *REPORT-IN-BRIEF -- Ad Valorem Partial Year Assessments: Relevant Issues and Information*, January, 1995, by the Advisory Council on Intergovernmental Relations.] In addition, bonding of ad valorem tax revenue for more than one year is subject to voter approval, pursuant to Article VII, Section 12 of the State Constitution.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

None.

VII. **SIGNATURES:**

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Lisa C. Cervenka

Joan Highsmith-Smith