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HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS

BILL #: HB 1627

RELATING TO: Non-ad Valorem Assessments

SPONSOR(S): Representative Evers

TIED BILL(S): None

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

(1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
(2) FISCAL POLICY & RESOURCES (FRC)
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 1627 authorizes a county that is located in a rural area of critical economic concern, is a rural county at the statutory 10-mill ad valorem tax cap, or has previously levied an assessment, to levy and collect special assessments to fund capital improvements and municipal or county services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. The governing body of such a county is authorized to apportion costs of such special assessments based on the front or square footage of each parcel of land, or an alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land. Once a county has qualified to levy an assessment under this act, it retains its qualification for the period that the assessment is levied under this act.

This bill also amends statutory provisions relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments. The bill defines "levied for the first time," prescribes requirements relating to the circumstances under which a local government must adopt a non-ad valorem assessment roll at a public hearing and to the contents of the notice that must be given before the hearing is held. Under the provisions of this bill, the local government may increase or decrease the rate of assessment without providing taxpayers with actual or constructive notice and without holding public meetings on the change in the assessment rate.

The bill has no fiscal impact on state government. The bill provides new statutory authority for certain counties to levy special assessments for specified purposes. The bill may reduce the costs incurred by local governments in administering non-ad valorem assessments.

The bill sponsor has filed a strike-everything amendment to the bill that is explained in the "Amendments or Committee Substitute Changes" section of the analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No [X]	N/A []
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

Lower Taxes: The bill provides new statutory authority for certain counties to levy special assessments for specified purposes.

B. PRESENT SITUATION:

Constitutional Preemption of Forms of Taxation to the State

Under the Florida Constitution, all taxes other than ad valorem taxes are preempted to the state except as authorized by general law.

Article VII, section 1(a), Florida Constitution, provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

Article VII, section 9(a), Florida Constitution, provides:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

All local government revenue sources are not taxes that require general law authorization. Valid special assessment and fees are homerule revenue sources that do not require general law authorization. However, if a county or municipal ordinance enacting a special assessment or fee does not meet the legal sufficiency test for a valid special assessment or fee, it is considered a tax requiring general law authorization. [Collier County v. State, 773 So. 2d 1012 (Fla. 1999)]

Special Assessments (Background)

Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. The greatest challenge to a valid special assessment is its classification as a tax by the courts.

The courts have defined the differences between a special assessment and a tax. Taxes are levied for the general benefit of residents and property rather than for a specific benefit to property. As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax. [See City of Boca Rotan v. State, 595 So. 2d 25 (FLA. 1992)

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use and physical characteristics of the parcel.

Another important distinction in relevant descriptions of local government revenues is between special assessments and user or service charges. While special assessments and service charges are similar in many respects, a key difference is that a special assessment is an enforceable levy while a service charge or fee is voluntary.

A special assessment may provide funding for capital expenditures or the operational costs of services provided that the property, which is subject to the assessment, derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, stormwater management services, and water and sewer line extensions.

Eligibility Requirements

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments; for counties, Section 125.01, Florida Statutes, and for municipalities, Chapter 170, Florida Statutes. Special districts must derive their authority to levy special assessments through general law or special act.

County governments are authorized, pursuant to s. 125.01(1), F.S., to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county for the purpose of providing a number of municipal-type services. Such services can be funded, in whole or in part, from special assessments. The boundaries of the taxing or benefit unit may include all or part of the boundaries of a municipality subject to the consent by ordinance of the governing body of the affected municipality. Counties may also levy special assessments for county purposes.

Pursuant to s. 125.01(5), F.S., county governments may create special districts to include both the incorporated and unincorporated areas, subject to the approval of the governing bodies of the affected municipalities. Such districts are authorized to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.

Municipalities also have the authority, pursuant to Chapter 170, Florida Statutes, to make local municipal improvements and provide for the payment of all or any part of the costs of such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. Such decision by the governing body to make any authorized public improvement and to defray all or part of the associated expenses of such improvement must be so declared by resolution.

Authorized Uses

Section 125.01(1)(q), F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by county governments, via the municipal service taxing or benefit units. These may include fire protection, law enforcement, beach erosion control, recreation service and facilities, water, alternative water supplies, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services and other essential facilities and municipal services.

Section 170.01, F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by municipal governments. The authorized uses are too numerous to list here. In addition, s. 171.201, F.S., authorizes the governing body of a municipality to levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. Under the section, the governing body of a municipality is authorized to apportion costs of such special assessments based on:

- The front or square footage of each parcel of land; or
- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

Litigation

In a recent appeals case [SMM Properties, Inc. v. City of North Lauderdale, 760So.2d 998 (Fla. 4th DCA 2000)], the Fourth District Court of Appeals considered the validity of a municipal special assessment used to fund the cost of an integrated fire rescue EMS program. Following the trial court's summary judgment on behalf of the city finding that the special assessment conferred a special benefit to property, property owners appealed arguing that the assessment for emergency medical services is an invalid ad valorem tax clothed as a special assessment. The court held that it could separately analyze each of the services funded within the integrated fire services budget to insure that each component survived the required special benefits test for valid special assessments. The court found that emergency medical services provided by the city did not confer a special benefit on property, and thus the assessment for those services was an invalid ad valorem tax clothed as a special assessment.

Regarding s. 170.201, F.S., the court rejected the city's argument that this statute requires that the assessment in the case be validated. Viewing the statutory section as being designed to offer guidance to municipalities in the exercise of their authority to levy and collect assessments "against property benefited," the court noted that it read the provisions of chapter 170, F.S., as whole as applying only to services which benefit the burdened property. The court concluded that s. 170.201, F.S., may not be properly applied to salvage the assessment for EMS services in this case because without a showing of special benefit to property, the assessment amounts to an improper tax.

Administrative Procedures

Three methods are generally enlisted for the collection of special assessments. The first method is termed the uniform collection method and uses the ad valorem tax bill. The second method is the traditional collection method that uses a separate bill. The third method is the monthly utility bill. The

method chosen by a local government depends on the type of program to be funded, service or capital, and the funding source.

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as only those assessments that are not based on millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution. Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon. . ."

Section 197.3631, F.S., authorizes local governments to collect non-ad valorem assessments by one of two methods -- either the uniform method set forth in ss. 197.3632 and 197.3635, F.S., or "any alternative method which is authorized by law." Section 197.3632(3), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need for the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

Paragraph (a) of s.197.3632(4), F.S., requires a local government adopt a non-ad valorem assessment roll at a public hearing held between June 1 and September 15 if:

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Paragraph (b) of s. 197.3632(4), F.S., requires that at least 20 days prior to the public hearing, the local government must notice the hearing by mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice must be sent to each person owning property subject to the assessment and must include, in part, the following information:

- the total amount to be levied against each parcel;
- the number of such units contained within each parcel; and
- the total revenue the local government will collect by the assessment.

However, notice by mail is not required if notice by mail is otherwise required by general or special law governing the taxing authority and the notice is served at least 30 days prior to the authority's public hearing. The published notice must contain at least the following information:

- the name of the local governing board;
- a geographic depiction of the property subject to the assessment;

- the proposed schedule of the assessment;
- the fact that the assessment will be collected by the tax collector; and
- a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Subsection (6) requires that if the non-ad valorem assessment is to be collected for a period of more than 1 year or is to be amortized over a number of years, the local governing board must so specify and is not required to annually adopt the non-ad valorem assessment roll.

Litigation

In 1999, the 4th DCA ruled that the City of Port St. Lucie failed to comply with the provisions in s. 197.3632(4), F.S., when it increased the assessment and changed the formula for determining the storm-water utility assessment against property in its jurisdiction. Atlantic Gulf Communities v. City of Port St. Lucie, 764 So.2d 14 (Fla. App. 4 Dist. 1999) While proper notice and public hearing were made in the initial year of the assessment, increases and changes in subsequent years were not noticed and considered in public hearings. The court ruled that each time the stormwater fee was increased or the rate was modified, such new assessment was “levied for the first time” within the meaning of s. 197.3632(4)(a), F.S., thereby triggering the notice and hearing provisions of the statute. Furthermore, the court stated that the contents of the notice of public hearing required by s. 197.3632(4)(b), F.S., support this reading of the statute.

Rural Economic Development Initiative.--

Section 288.0656, F.S., establishes the Rural Economic Development Initiative, known as "REDI," within the Office of Tourism, Trade, and Economic Development. The section authorizes REDI to recommend to the Governor up to three rural areas of critical economic concern. A rural area of critical economic concern must be a rural community, or a region composed of such, that has been adversely affected by an extraordinary economic event or a natural disaster or that presents a unique economic development opportunity of regional impact that will create more than 1,000 jobs over a 5-year period. The Governor may by executive order designate up to three rural areas of critical economic concern.

The section provides the following definitions:

"Economic distress" means conditions affecting the fiscal and economic viability of a rural community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low weekly earned wages compared to the state average, low housing values compared to the state average, high percentages of the population receiving public assistance, high poverty levels compared to the state average, and a lack of year-round stable employment opportunities.

"Rural community" means:

- A county with a population of 75,000 or less.
- A county with a population of 100,000 or less that is contiguous to a county with a population of 75,000 or less.
- A municipality within a county described in subparagraph 1. or subparagraph 2.

- An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (a) and verified by the Office of Tourism, Trade, and Economic Development.

C. EFFECT OF PROPOSED CHANGES:

This bill authorizes a county that is located in a rural area of critical economic concern, is a rural county at the statutory 10-mill ad valorem tax cap, or has previously levied an assessment, to levy and collect special assessments to fund capital improvements and municipal or county services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. The governing body of such a county is authorized to apportion costs of such special assessments based on:

- The front or square footage of each parcel of land; or

- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

The bill declares that once a county has qualified to levy an assessment under this act, it retains its qualification for the period that the assessment is levied under this act.

This bill also amends statutory provisions relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments. The bill defines "levied for the first time," prescribes requirements relating to the circumstances under which a local government must adopt a non-ad valorem assessment roll at a public hearing and to the contents of the notice that must be given before the hearing is held. Under the provisions of this bill, the local government may increase or decrease the rate of assessment without providing taxpayers with actual or constructive notice and without holding public meetings on the change in the assessment rate.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (1) of s. 170.201, F.S., is amended to authorize a county that is located in a rural area of critical economic concern, is a rural county at the statutory 10-mill ad valorem tax cap, or has previously levied an assessment, to levy and collect special assessments to fund capital improvements and municipal or county services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. The governing body of such a county is authorized to apportion costs of such special assessments based on:

- The front or square footage of each parcel of land; or

- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

The subsection is furthered amended to declare that once a county has qualified to levy an assessment under this subsection, it retains its qualification for the period that the assessment is levied under this subsection.

Section 2. Section 197.3632, F.S., is amended to change provisions relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments.

Subparagraph 1. of s.197.3632(4)(a), F.S., is amended to specify that the term "levied for the first time" means "imposed for the first time by county or municipal ordinance or special district resolution, but the term does not include a change in the assessment rate alone." Subparagraph 4. is amended to provide that a public hearing is required when there is a "substantial" change in the purpose for such assessment or "a material change" in the use of the revenue generated by such assessment.

Paragraph (b) of s. 197.3632(4), F.S., is amended to clarify that notices sent prior to the public hearing adopting a non-ad valorem assessment roll be sent to each person "as shown on the current tax roll, who owns" property subject to the assessment. In addition, the information required to be included in the notice is changed. The requirements that the notice contain the number of such units contained within each parcel and the total revenue the local government will collect by the assessment are deleted. The notice is expanded to include the following:

- Whether the assessment will be levied for more than 1 year;
- The length of time for which the assessment will be levied; and
- Whether the assessment may be increased in the future.

The notice by mail exemption in paragraph (b) is expanded to allow the TRIM notice provided for in s. 200.069, F.S., to suffice as proper notice.

The published notice requirements in paragraph (b) are amended to delete the requirement for a geographic depiction of the property subject to the assessment.

Subsection (6) is amended to require that if the non-ad valorem assessment is to be collected for a period of more than 1 year or is to be amortized over a number of years, the local governing board must so specify "in the initial notice" and is not required to "provide or publish the annual notice that would otherwise be required by subsection (4) or" annually adopt the non-ad valorem assessment roll.

Section 3. An effective date of July 1, 2002, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill provides new statutory authority for certain counties to levy special assessments for specified purposes.

2. Expenditures:

This bill may reduce the costs incurred by local governments in administering non-ad valorem assessments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill provides new statutory authority for certain counties to levy special assessments for specified purposes. As a result, property owners may be required to pay such special assessments.

D. FISCAL COMMENTS:

N/A

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of countries and municipalities to raise total aggregate revenues.

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

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Veto of SB 1020

The 2001 Legislature passed SB 1020, which includes some provisions similar to those included in HB 1627. The Governor vetoed the bill. The following is taken from the Governor's veto message:

> Senate Bill 1020 significantly broadens the taxing authority of counties and cities by transforming a statute relating to special assessments into a statute that gives general law authorization for taxes. While the fiscal impacts of such a change are uncertain, Senate Bill 1020 would clearly expand the ability of counties and cities to generate tax revenues beyond current constitutional limitations for property taxes. This specific language was added to the bill on the Senate floor without going through a committee and without public debate raising concerns over the awareness of the implications of this change. While I remain sensitive to the financial needs of rural counties, this legislation is not narrowly crafted address those needs. It should also be noted that even in the absence of this legislation, rural counties still have other revenue-raising methods, such as municipal service taxing units, available to them to help address these needs.
>
> Senate Bill 1020 also reduces government accountability to taxpayers by easing the requirements or conditions under which taxpayers must be notified of increases in special assessment rates. If this bill becomes law, there could be many instances in which taxpayers would not be informed of special assessment rate increases until the change appears on their annual tax bills.
>
> For these reasons I am withholding my approval of Senate Bill 1020, and do hereby veto the same.

Although, as noted, HB 1627 includes some provisions similar to those included in SB 1020, there are important differences. First, SB 1020 included language stating that the levy of special assessments under subsection (1) of s. 170.201, F.S., is made pursuant to ss. 1 and 9, Art. VII of the State Constitution. In essence, this provision attempted to authorize the assessment by both counties and cities, as a tax, as required by the referenced constitutional provisions. This provision is not included in HB 1627. HB 1627 includes a more limited authorization -- a special assessment authorization for a county that is located in a rural area of critical economic concern, is a rural county at the statutory 10-mill ad valorem tax cap, or has previously levied an assessment.

Effect of HB 1627

The bill sponsor indicates that HB 1627 is intended to safeguard small, rural counties' ability to provide emergency medical services with a source other than property taxes which has been put in jeopardy by a recent court decision. As currently drafted, it is not clear if the bill achieves this purpose. Section 1 of HB 1627 authorizes certain counties to collect special assessments to fund capital improvements and municipal or county services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. While this authorization may confirm such counties' authority to use special assessments to fund such services, it does not directly confront the issues raised by SMM Properties, Inc. v. City of North Lauderdale, 760 So.2d 998 (Fla. 4th DCA 2000) -- whether emergency medical services confer a special benefit to property and may be funded through special assessments. This case is discussed in the "Present Situation" section of the analysis. As discussed below, the bill sponsor has filed a strike-everything amendment to address this concern.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill sponsor has requested a strike-everything amendment to HB 1627. The proposed amendment deletes all provisions from the original bill relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments. The strike-everything amendment creates a new section of law limited in scope to authorizing certain counties to fund the costs of emergency medical services through a special assessment that apportions the cost among the property based on a reasonable methodology which charges a parcel in proportion to its benefits. The amendment includes

language, not included in the filed bill, providing that the authorization provided in the new section shall be construed to be general law authorization pursuant to ss. 1 and 9 of Art. VII, of the State Constitution -- a tax authorized by general law. The authorization is limited to counties within a rural area of critical economic concern, a small county with a population of 750,000 or less on the effective date of this act that has levied at least 10 mills of ad valorem tax for the previous fiscal year, or a county which had adopted an ordinance authorizing the imposition of an assessment for EMS prior to January 1, 2002. The amendment also includes language ratifying special assessments for EMS levied by a county as authorized by the act prior to the effective date of the act.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:	Staff Director:
Thomas L. Hamby, Jr.	Joan Highsmith-Smith