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DATE: January 9, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: CS/HB 263

RELATING TO: Special Assessments

SPONSOR(S): Committee on Local Government & Veterans Affairs and Representative Trovillion

TIED BILL(S): None.

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 7 NAYS 0
 - (2) FISCAL POLICY & RESOURCES (FRC)
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

This bill provides that recreational vehicle parks regulated under Chapter 513, F.S., shall be assessed by counties and cities in the same manner as a hotel, motel, or other similar facility.

The bill has no fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>*Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>*Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Less Government --- This bill does not affect government regulations, the size of government, or entitlements. The bill does reduce local government's flexibility in the administration of their special assessments.

Lower Taxes -- While this bill does not reduce the amounts local governments will charge in the form of special assessments, it may result in a shift in the costs from some property owners to others.

B. PRESENT SITUATION:

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.

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.

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.

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.

Chapter 513, Florida Statutes

Chapter 513, F.S., provides for the Department of Health to administer and enforce, with respect to mobile home parks, lodging parks, recreational vehicle parks, and recreational camps, laws and rules relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and the general health of the people of the state.

Special Assessments Levied on Facilities Regulated Under Chapter 513, Florida Statutes

During the 2000 Legislative Session, the Legislature enacted chapter 2000-355, L.O.F., which creates a new section 189.420, F.S., to provide that facilities regulated under Chapter 513, F.S., (mobile home or recreational vehicle park facilities) shall be assessed by independent or dependent special districts in the same manner as a hotel, motel, or other similar facility.

Florida Law provides no explicit direction on the manner counties and municipalities are to assess facilities regulated under Chapter 513, F.S., (mobile home or recreational vehicle park facilities). In at least some instances, counties and cities are assessing the lots on such properties as residential units and the business offices as commercial property.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that recreational vehicle parks regulated under Chapter 513, F.S., shall be assessed by counties and cities in the same manner as a hotel, motel, or other similar facility.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. A new section 125.0168, F.S., is created to provide that counties shall assess recreational vehicle parks regulated under chapter 513, F.S., in the same manner as a hotel, motel, or other similar facility. The section provides that such a special assessment shall not be based on the assertion that the facility is comprised of residential units.

Section 2. A new section 166.223, F.S., is created to provide that municipalities shall assess recreational vehicle parks regulated under chapter 513, F.S., in the same manner as a hotel, motel, or other similar facility. The section provides that such a special assessment shall not be based on the assertion that the facility is comprised of residential units.

Section 3. An effective date of upon becoming a law 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:

Although this bill may shift the burden of county and city special assessments from one type of property owner to another, it will not result in a reduction in the amounts collected through special assessments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may shift the burden of county and city special assessments from one type of property owner to another. The actual impact on different property owners will depend on whether local governments revise their assessment rate structures to reflect the bill's requirements. If local governments do not revise their special assessment rate structures in response to the bill, mobile home and recreational vehicle park facilities would be assessed using the rates currently applied to hotels and motels. Any loss in revenue resulting from decreases in assessments for such properties would be replaced with increased assessments for owners of other types of property. If local governments do revise their rate structures, the effect on special assessment bills for mobile home or recreational vehicle park facilities, as well as residential property owners and motel and hotel owners, will depend on the results of these changes.

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 counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

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C. OTHER COMMENTS:

The Florida Department of Revenue submitted an analysis of HB 263. The department expressed the concern that the bill does not explicitly state that it pertains to special assessments, as opposed to ad valorem assessments, and recommended amending the bill to clarify that it governs special assessments.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its January 8, 2002, meeting, the Committee on Local Government & Veterans Affairs adopted a strike-everything amendment to HB 263 and passed the bill as a committee substitute. The strike-everything amendment clarified that the bill governs special assessments and not ad valorem assessments and limited the bill's application to recreational vehicle parks.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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