HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1467 w/CS Southern Manatee Fire & Rescue District
SPONSOR(S): Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government & Veterans' Affairs	16 Y, 0 N w/CS	Smith-Boggis	Highsmith-Smith
2) Finance & Tax			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill with committee substitute revises the Southern Manatee Fire Control District's charter in several ways. The bill allows non-ad valorem assessments rates to be determined by several methods. The bill with committee substitute also amends the impact fees schedule and eliminates the current schedule.

This bill with committee substitute acknowledges referendum approval of the increase of impact fees on new construction and acknowledges voter approval authorizing ad valorem tax to the same level as authorized by general law relating to fire control districts. The bill with committee substitute also provides certain owners of certain structures a maximum fire assessment rate.

No fiscal impacts are anticipated for either fiscal year 2003-04 or 2004-05 according to the Economic Impact Statement. [See III. COMMENTS, C. DRAFTING ISSUES OR OTHER COMMENTS, Other Comments.]

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[X]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

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

This bill with committee substitute allows increased impact fees, creates several alternative methods for establishing non-ad valorem assessments and acknowledges voter approval authorizing ad valorem tax not to exceed 3.75 mills as provided by general law relating to fire control districts.

B. EFFECT OF PROPOSED CHANGES:

This bill with committee substitute acknowledges referendum approval of the increase of impact fees on new construction and acknowledges voter approval authorizing ad valorem tax to the same level as authorized by general law relating to fire control districts. The bill with committee substitute authorizes non-ad valorem assessments through several alternative methods and ratifies the district's current rate.

This bill with committee substitute provides that whenever one industrial complex, within the District boundaries, under single ownership has in excess of 1.5 million square feet of structures on a site of contiguous parcels or a site of parcels that would be contiguous except that they are dissected by one or more transportation rights of way, the maximum fire tax assessment shall not exceed 32.5 percent of the adopted fire tax rate for that tax year for factory industrial use. The 32.5 percent rate shall be applied to ownerships that maintain full fire protection and suppression systems, monitoring, on-site emergency responses, and 24-hour security of the premises, designed to limit the response of the fire department to minor accidents and false alarms. The rate will be applied to all structural square footage in the complex regardless of actual use or use classification.

Chapter 191, Florida Statutes, Provisions

Section 191.009, F.S., relating to taxes; non-ad valorem assessments; impact fees and user charges.--

(1) AD VALOREM TAXES.--An elected board may levy and assess ad valorem taxes on all taxable property in the district to construct, operate, and maintain district facilities and services, to pay the principal of, and interest on, general obligation bonds of the district, and to provide for any sinking or other funds established in connection with such bonds. An ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and this act. The ballot question on such referendum shall state the currently authorized millage rate and the year of its approval by referendum. The levy of ad valorem taxes pursuant to this section must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. Nothing in this act shall require a referendum on the levy of ad valorem taxes in an amount previously authorized by special act, general law of local application, or county ordinance approved by referendum. Such tax shall be assessed, levied, and collected in the same manner as county taxes. The levy of ad valorem taxes approved by referendum shall be reported within 60 days after the vote to the Department of Community Affairs.

(2) NON-AD VALOREM ASSESSMENTS.--A district may levy non-ad valorem assessments as defined in s. 197.3632 to construct, operate, and maintain district facilities and services. The rate of such assessments must be fixed by resolution of the board pursuant to the procedures contained in s. 191.011. Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous 5 years. Non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition. Proposed non-ad valorem assessment increases which exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last 5 years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum of the electors of the district. The referendum on the first-time levy of an assessment shall include a notice of the future non-ad valorem assessment rate increases permitted by this act without a referendum. Non-ad valorem assessments shall be imposed, collected, and enforced pursuant to s. 191.011.

(3) USER CHARGES.--

(a) The board may provide a reasonable schedule of charges for special emergency services, including firefighting occurring in or to structures outside the district, motor vehicles, marine vessels, aircraft, or rail cars, or as a result of the operation of such motor vehicles or marine vessels, to which the district is called to render such emergency service, and may charge a fee for the services rendered in accordance with the schedule.

(b) The board may provide a reasonable schedule of charges for fighting fires occurring in or at refuse dumps or as a result of an illegal burn, which fire, dump, or burn is not authorized by general or special law, rule, regulation, order, or ordinance and which the district is called upon to fight or extinguish.

(c) The board may provide a reasonable schedule of charges for responding to or assisting or mitigating emergencies that either threaten or could threaten the health and safety of persons, property, or the environment, to which the district has been called, including a charge for responding to false alarms.

(d) The board may provide a reasonable schedule of charges for inspecting structures, plans, and equipment to determine compliance with firesafety codes and standards.

(e) The district shall have a lien upon any real property, motor vehicle, marine vessel, aircraft, or rail car for any charge assessed under this subsection.

(4) IMPACT FEES.--If the general purpose local government has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries, and the Legislature has authorized independent special fire control districts to impose impact fees by special act or general law other than this act, the board may establish a schedule of impact fees in compliance with any standards set by general law for new construction to pay for the cost of new facilities and equipment, the need for which is in whole or in part the result of new construction. The impact fees collected by the district under this subsection shall be kept separate from other revenues of the district and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof needed to provide fire protection and emergency services to new construction. As used in this subsection, "new facilities" means land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles, radiotelemetry equipment, and other firefighting or rescue equipment. The board shall maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment. The board may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by such governments.

Section 191.011, F.S., relating to procedures for the levy and collection of non-ad valorem assessments.--

(1) A district may provide for the levy of non-ad valorem assessments under this act on the lands and real estate benefited by the exercise of the powers authorized by this act, or any part thereof, for all or any part of the cost thereof. Non-ad valorem assessments may be levied only on benefited real property at a rate of assessment based on the special benefit accruing to such property from such services or improvements. The district may use any assessment apportionment methodology that meets fair apportionment standards.

(2) The board may determine to exercise any power authorized by this act and defray the whole or any part of the expense thereof by non-ad valorem assessments. A district shall adopt a non-ad valorem assessment roll pursuant to the procedures contained in this section or in s. 197.3632 if:

(a) The non-ad valorem assessment is levied for the first time;

(b) The non-ad valorem assessment is increased beyond the maximum rate authorized by general law or special act at the time of initial imposition as defined in s. 191.009;

(c) The district's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the board; or

(d) There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

The board shall so declare by resolution stating the nature of the proposed service, the location of any capital facilities, personnel, and equipment needed to provide the service, and any other projected expense of providing the service or improvement, and the part or portion of the expense thereof to be paid by non-ad valorem assessments, the manner in which the assessments shall be made, when the assessments are to be paid, and what part, if any, shall be apportioned to be paid from other revenues or funds of the district. The resolution shall also designate the lands upon which the non-ad valorem assessments shall be levied. Such lands may be designated by an assessment plat. The resolution shall also state the total estimated costs of the service or improvement. The estimated cost may include the cost of operations, including personnel, equipment, construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, discount on the sale of assessment bonds, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of the construction or reconstruction, administrative expense, and such other expense as may be necessary or incident to the financing authorized by this act.

(3) At the time of the adoption of the resolution provided for in subsection (2), there shall be on file at the district's offices an assessment plat showing the area to be assessed, with construction and operational plans and specifications, and an estimate of the cost of the proposed service or improvement, which assessment plat, plans, and specifications and estimate shall be open to the inspection of the public.

(4) Upon adoption of the resolution provided for in subsection (2) or completion of the preliminary assessment roll provided for in subsection (5), whichever is later, the board shall publish notice of the resolution once in a newspaper of general circulation in each county in which the district is located. The notice shall state in brief and general terms a description of the proposed service or improvements and that the plans, specifications, and estimates are available to the public at the district's offices. The notice shall also state the date and time of the hearing to hear objections provided for in subsection (7),

which hearing shall be no earlier than 15 days after publication of the notice. The publication shall be verified by the affidavit of the publisher and filed with the secretary to the board.

(5) Upon the adoption of the resolution provided for in subsection (2), the board shall cause to be made a preliminary assessment roll in accordance with the method of assessment provided for in the resolution. The assessment roll shall show the lots and lands assessed and the amount of the benefit to and the assessment against each lot or parcel of land, and, if the assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon the assessment roll.

(6) Upon the completion of the preliminary assessment roll, the board shall by resolution fix a time and place at which the owners of the property to be assessed or any other persons interested therein may appear before the board and be heard as to the advisability of providing the service or making the improvements, as to the cost thereof, as to the manner of payment therefor, and as to the amount thereof to be assessed against each property so improved. Ten days' notice in writing of the time and place shall be given to the property owners. The notice shall include the amount of the assessment and shall be served by mailing a copy to each of the property owners at his or her last known address, the names and addresses of the property owners to be obtained from the records of the property appraiser, and proof of such mailing to be made by the affidavit of the secretary.

(7) At the time and place named in the notice provided for in subsection (4), the board shall meet and hear testimony from affected property owners as to the advisability of providing the service or making the improvements and funding them with non-ad valorem assessments on property. Following the testimony, the board shall make a final decision on whether to levy the non-ad valorem assessments, adjusting assessments as may be warranted by information received at or prior to the hearing. If any property which may be chargeable under this section has been omitted from the preliminary roll or if the prima facie assessment has not been made against it, the board may place on the roll an apportionment to that property. The owners of any property so added to the assessment roll shall be mailed a copy of the notice provided for in subsection (6), and granted 15 days from the date of mailing to file any objections with the board. When so approved by resolution of the board, a final assessment roll shall be filed with the vice chair of the board, and the assessments shall stand confirmed and remain legal, valid, and binding first liens upon the property against which the assessments are made until paid. The assessment so made shall be final and conclusive as to each lot or parcel assessed unless proper steps are taken within 30 days after the filing of the final assessment roll in a court of competent jurisdiction to secure relief. If the assessment against any property is sustained or reduced or abated by the court, the vice chair shall note that fact on the assessment roll opposite the description of the property affected and notify the county property appraiser and the tax collector in writing. The amount of the non-ad valorem assessment against any lot or parcel which may be abated by the court, unless the assessment upon the entire district is abated, or the amount by which the assessment is so reduced, may by resolution of the board be made chargeable against the district at large, or, at the discretion of the board, a new assessment roll may be prepared and confirmed in the manner provided in this section for the preparation and confirmation of the original assessment roll. The board may by resolution grant a discount equal to all or a part of the payee's proportionate share of the cost of a capital project consisting of bond financing costs, such as capitalized interest, funded reserves, and bond discount included in the estimated cost of the project, upon payment in full of any assessment during the period prior to the time the financing costs are incurred as may be specified by the board.

(8) The non-ad valorem assessments:

(a) Shall be payable at the time and in the manner stipulated in the resolution providing for the improvement or services.

(b) Shall remain liens, coequal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid.

(c) Shall bear interest as provided by s. 170.09 or, if bonds have been issued, at a rate not to exceed 1 percent above the rate of interest at which the bonds authorized pursuant to this act and used for a capital improvement are sold, from the date of the acceptance of the improvement.

(d) May, by resolution and only for capital outlay projects, be made payable in equal installments over a period not to exceed 20 years, to which, if not paid when due, there shall be added a penalty at the rate of 1 percent per month, until paid.

However, the assessments may be paid without interest at any time within 30 days after the improvement is completed and a resolution accepting the same has been adopted by the board.

(9) The non-ad valorem assessments approved by the board may be levied, assessed, and collected pursuant to ss. 197.363-197.3635. The collection and enforcement of the non-ad valorem assessment levied by the district shall be at the same time and in like manner as county taxes.

(10) All assessments shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement of the same nature and to the same extent as the lien for general county, municipal, or district taxes falling due in the same year or years in which such assessments or installments thereof fall due, and any assessment or installment not paid when due shall be collected with such interest and with a reasonable attorney's fee and costs, but without penalties, by the district by proceedings in a court of equity to foreclose the lien of assessment as a lien for mortgages is or may be foreclosed under the laws of the state, provided any such proceedings to foreclose shall embrace all installments of principal remaining unpaid with accrued interest thereon, which installments shall, by virtue of the institution of such proceedings immediately become due and payable. If, prior to any sale of the property under decree of foreclosure in such proceedings, payment is made of the installment or installments which are shown to be due under the provisions of the resolution passed pursuant to subsection (9) and this subsection, and all costs including attorney's fees, the payment shall have the effect of restoring the remaining installments to their original maturities and the proceedings shall be dismissed. The district shall enforce the prompt collection of assessments by the means provided in this section and this duty may be enforced at the suit of any holder of bonds issued under this act in a court of competent jurisdiction by mandamus or other appropriate proceedings or action. Not later than 30 days after annual installments are due and payable, the board shall direct the attorney or attorneys whom the board shall designate to institute actions within 3 months after such direction to enforce the collection of all non-ad valorem assessments remaining due and unpaid at the time of such direction. Such action shall be prosecuted in the manner and under the conditions in and under which mortgages are foreclosed under the laws of the state. It is lawful to join in one action the collection of assessments against any or all property assessed by virtue of the same assessment roll unless the court deems such joiner prejudicial to the interest of any defendant. The court shall allow a reasonable attorney's fee for the attorney or attorneys of the district, and the fee shall be collectible as a part of or in addition to the costs of the action. At the sale pursuant to decree in any such action, the district may be a purchaser to the same extent as an individual person or corporation, except that the part of the purchase price represented by the assessments sued upon and the interest thereon need not be paid in cash. Property so acquired by the district may be sold or otherwise disposed of, the proceeds of such disposition to be placed in the fund provided for by subsection (11), provided no sale or other disposition thereof shall be made unless the notice calling for bids therefor to be received at a stated time and place was published in a newspaper of general circulation in the district once in each of 4 successive weeks prior to such disposition.

(11) All assessments and charges made under the provisions of this section for the payment of all or any part of the cost of any improvements for which assessment bonds have been issued under the provisions of this act are hereby pledged to the payment of the principal of and the interest on the assessment bonds and shall, when collected, be placed in a separate fund, properly designated, which fund shall be used for no other purpose than the payment of such principal and interest.

C. SECTION DIRECTORY:

Section 1. Amends sections 6, 7, and 8 of section 3 of chapter 2000-402, L.O.F., to provide a schedule of non-ad valorem assessments; provides for referendum if proposed non-ad valorem assessment increases which exceed the rate set the previous fiscal year or the rate previously set by special act by more than the average annual growth rate in Florida personal income over the last 5 years; provides non-ad valorem assessments are imposed, collected, and enforced pursuant to s. 191.011, F.S.; provides when one complex in excess of 1.5 million square feet of parcels that would be contiguous except that they are dissected by one or more transportation rights of way, the maximum fire tax assessment shall not exceed 32.5% of the adopted fire tax rate for that tax year for factory industrial use; provides the 32.5% rate shall be applied to ownerships that maintain full fire protection and other services; removes current special assessment schedule.

Amends section 7 of chapter 2000-402, L.O.F., relating to impact fees, acknowledge the approved September 10, 2002, referendum authorizing the district to increase impact fees on new construction; increases the maximum impact fees.

Amends section 8 of chapter 2000-402, L.O.F., relating to other district powers, functions, and duties, to authorize the district to levy an ad valorem millage not to exceed 3.75 mills annually pursuant to referendum approval of the district's electors on September 10, 2002, as authorized by section 191.009(1), F.S.

Section 2. Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? February 2, 2003 and February 4, 2003

WHERE? Bradenton Herald, Bradenton, Manatee County, Florida and the Sarasota Herald Tribune, Sarasota, Sarasota County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: Not Applicable.

B. RULE-MAKING AUTHORITY: Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:

An amendment is needed to add directory language to the proposed bill, specifically to section 1 stating that sections 6, 7, and 8 of section 3 of chapter 2000-402 is needed.

Other Comments:

Mr. Michael H. Olenich, Esq. with Carlton Fields, representing Tropicana, submitted the following:

"An act relating to the Southern Manatee Fire and Rescue District."

This proposed legislation seeks to give the Southern Manatee Fire and Rescue District three distinct ways to drastically increase taxes and fees paid by property owners in the District. See below for the potential fiscal impact on Manatee Co. taxpayers.

Ad Valorem Tax (Bill would create new tax.)

The proposed bill would give the Southern Manatee Fire and Rescue District the authority to levy an ad valorem tax of up to 3.75 mills annually, in addition to taxes and fees currently being assessed.

At 3.75 mills, the District would collect over $10.5 million in new ad valorem taxes in 2003 alone, or an additional $562 for a home with a taxable value of $150,000. Over 10 years, that homeowner would pay at least $5,620 to the District, because as property values increase, so will those potential taxes.

Non-Ad Valorem Tax (Bill would increase existing tax.)

Existing law enacted in 2000 establishes maximum rates at which the District can assess non-ad valorem taxes, if needed, in addition to other taxes and fees. In 2002, the District levied over $4.7 million in non-ad valorem taxes.

The proposed bill will remove the cap on non-ad valorem taxes and replace it with a base rate set at the 2002 level, and the District will be allowed to exceed that base rate to keep pace with growth in Florida's average personal income, which has nothing to do with a fire district's need for revenue. So, the non-ad valorem tax would start at $4.7 million and could exceed by about five percent every year, in perpetuity, without approval by voters or the Legislature.

Impact Fees (Bill would increase existing fees.)

Impact fees were set in 2000 at levels declared by the Legislature to be "just, reasonable, and equitable." The proposed bill allows the District to drastically increase impact fees, in excess of those just, reasonable, and equitable levels, by at least 384%, as follows:

- New residential dwellings: Up 566% from $150 to $1,000.
- New commercial structures 5,000 sq ft or less: Up 384% from $310 to $1,500.
- New commercial structures over 5,000 sq ft: Up 384% from $310 to $1,500, plus an increase of 525% per square foot for area over 5,000 sq ft.
- New recreational or travel trailer park development: Up 650% from $40 to $300 per lot or permitted space.

Options for Amending the Southern Manatee Fire District Tax Bill

Ad Valorem Taxes

Yes, the voters approved a new ad valorem tax up to 3.75 mills. The Legislature can mitigate the harsh potential effects of that vote and still abide by the will of the voters.

- Amend the proposed bill to provide that the ad valorem tax must be assessed in the first year at no more than 0.5 mill and cannot be increased by more than 0.5 mil in any year, up to a maximum of 3.75 mills.

- Amend the bill to sunset the District's ad valorem taxing authority, or place a sunset on the 3.75 millage rate to be lowered to a more reasonable rate on a date certain.

Impact Fees

Yes, the voters approved an increase in impact fees, but the ballot language did not include any indication of how much the fees would be increased. The proposed bill would raise impact fees by no less than 384%.

- Amend the proposed bill to place a more reasonable increase on the impact fees.

Non-Ad Valorem Taxes

It's important to note that the voters did not approve an increase in the non-ad valorem taxes assessed by the Fire District, since this issue was not on the ballot at all. Given the potentially drastic increases in ad valorem taxes and impact fees, a reasonable argument can be made that:

- The non -ad valorem taxes are no longer necessary , or

- The District's existing authority to levy non-ad valorem taxes should not be increased.

Other Important Points

- The ad valorem referendum received a "Yes" vote from only 4,733 of the 32,738 registered voters in the District. (Source: Manatee County Supervisor of Elections)

- The impact fee referendum received a "Yes" vote from only 6,055 of the 32,738 registered voters in the District. (Source: Manatee County Supervisor of Elections)

- The referenda were held during a primary election, when voter participation is much lower, instead of a general election, when voter participation is much higher.

Mr. Terry E. Lewis, Esq. with Lewis, Longman & Walker, P.A.., representing the district, submitted a letter dated March 13, 2003, stating the following:

Re: Southern Manatee Fire Control District

On behalf of the Southern Manatee Fire Control District (District), we would like to take this opportunity to inform you that the District has one concern about the action taken during the March 4 Manatee County Delegation meeting. It is our understanding that the Delegation adopted an amendment to House Bill 1467 relating to the non-ad valorem assessment tax discount that Tropicana has previously received. The District proposed that the provision be revised to include a 15% tax discount based on Tropicana's internal safety crew; Tropicana proposed a 50% tax discount. It appears as though the Delegation split the difference between the two proposals and adopted an amendment that gives Tropicana a 32 1/2% tax discount. This amendment, if it becomes law, can potentially make the District vulnerable to potential lawsuits.

Unlike ad valorem taxes, non-ad valorem assessments are charged against property based on the property receiving a special benefit because of an improvement or service being provided by a local

government.[1] Non-ad valorem assessments may not be greater than the proportional value received from the improvement.[2] The benefit does not have to be a direct benefit; however, it must be substantial and capable of being realized.[3]

Although there is no single method for determining assessment rates, local governments should consider physical condition, nearness to or remoteness from residential and business districts, desirability for residential or commercial purposes, enhanced property value and other related issues.[4] In addition, any test must include an analysis of the improvement's cost compared to the special benefit derived from such improvement. If this type of an analysis did not occur, the local government would be open to litigation from property owners claiming that the benefit they receive is not equitable compared to the assessment they are paying.

In *South Trail Fire Control District* v. State, commercial landowners stated that the non-ad valorem assessments they were being charged was discriminatory when compared to other property owners because they were paying 17.2% of the total assessments charged, even though their property value comprised of only 10.8% of the district and they only received 6% of the district services.[5] The Court determined that the evidence showed that 34% of the structural fires in the district were at commercial structures and on average commercial structures resulted in 27% to 28% of the total fires in the district. In addition, the Court determined that a commercial fire demands more manpower and equipment due to the nature of commercial structures compared to residences. The Court concluded that "*the assessment must not be in excess of the proportional benefits as compared to other assessments on other lots and tracts affected by the improvements"*.[6] The assessment was upheld, as the assessment represented a fair proportional part of the total improvement cost.[7]

Just as a local government must perform a benefit versus cost analysis before they can charge an assessment, the same is true before a local government can decrease the amount of an assessment. If an assessment is decreased for one property owner and it results in the property receiving a benefit that exceeds its assessment, the remaining property owners can challenge the district's non-ad valorem assessments on the basis that the assessment they are paying is in excess to the proportional benefit that they are receiving. Just as there needs to be a legal justification to charge a non-ad valorem assessment, the same is true when decreasing the assessment rate. The law does not allow for arbitrary and capricious determination of rates.

When the District made its recommendation that Tropicana should receive a 15% tax discount, it did a cost benefit analysis for several different tax discounts. In 2002, Tropicana was assessed $290,838. Following is the impact of several proposed tax discounts:

TAX DISCOUNT PERCENTAGE	IMPACT
15%	$43,625
20%	$58,167
25%	$72,709
32.5%	$94,522

The District then had to determine how much the District benefits from Tropicana's internal safety crew. This safety crew answers their own false alarms, resulting in a decrease in the number of calls to which the District must respond. The District believes that on average, Tropicana's facilities generate 20 calls per month (240 calls per year) at 0.5 hours per call for a total of 120 hours. One engine at $150 per

[1] *South Trail Fire Control District v. State*, 273 So. 2d 380, 384 (Fla. 1973).
[2] *Id.*
[3] *Fire District No. 1 of Polk County v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969).
[4] *Meyer v. Oakland Park*, 219 So. 2d 417, 419 (Fla. 1969).
[5] 273 So. 2d at 382.
[6] *Id*.
[7] *Id*. At 384.

hour for 120 hours equates to $18,000 per year and three personnel at $15 per hour for 120 hours equates to $1,800. The total cost saved by the District because of Tropicana's internal safety crew is $19,800. This amount is less than 50% of the savings that Tropicana will receive with a 15% tax discount. Although we believe that we can justify a 15% tax discount in a legal challenge, Tropicana will be receiving a greater benefit from the tax discount than the District receives from its internal safety crew.

We hope that this letter will make the Delegation reconsider the amendment that was recently adopted. We ask, once again, that the tax discount granted to Tropicana be 15%. Anything over that, we do not feel that we can legally justify. If the 32 1/2% tax discount becomes law, the District may be liable to a challenge.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Local Government & Veterans' Affairs Committee adopted two amendments on April 2, 2003.

The first amendment adds directory language and corrects a reference cite.

The second amendment adds the following language, 'Whenever one industrial complex, within the District boundaries, under single ownership has in excess of 1.5 million square feet of structures on a site of contiguous parcels or a site of parcels that would be contiguous except that they are dissected by one or more transportation rights of way, the maximum fire tax assessment shall not exceed 32.5 percent of the adopted fire tax rate for that tax year for factory industrial use. The 32.5 percent rate shall be applied to ownerships that maintain full fire protection and suppression systems, monitoring, on-site emergency responses, and 24-hour security of the premises, designed to limit the response of the fire department to minor accidents and false alarms. Such rate shall be applied to all structural square footage in the complex regardless of actual use or use classification.' Mr. David Ramba, Esq., with the law firm of Lewis, Longman, & Walker, P.A., representing the district, opposed the second amendment. Mr. Michael H. Olenick, with the law firm of Carlton Fields, representing Tropicana, was a proponent of the second amendment.

An e-mail from the sponsor was sent to the Committee on April 4, 2003, stating 'an amendment to the committee substitute will be necessary because of an error in the original drafting of the amendment regarding the maximum fire tax assessment. The delegation agreed upon a 32.5 percent benefit; therefore, the maximum fire tax assessment should be 67.5 percent. The numbers were transposed in the amendment, and this problem will need to be addressed by an amendment to the committee substitute.'