

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1797 (PCB LGV 03-03) Ground Rents for Leased Governmental Property
SPONSOR(S): Local Government & Veterans' Affairs and Sorenson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	<u>17 Y, 0 N</u>	<u>Highsmith-Smith</u>	<u>Highsmith-Smith</u>
2) <u>Finance and Tax</u>	<u></u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill provides a method by which governmental entities may undertake the collection of ground rent from landowners through the levy of maintenance special assessments pursuant to general law.

This bill has no effect on the state budget.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Currently, if a governmental entity leases land to a private individual or company, they have the same remedies available to them to collect unpaid rent as are available to any other land holder. Under this bill, the governmental entity would be able to use a community development district's taxation power to enforce the payment of the rent.

This would result in more governmental agencies being involved in the collection of the rent and more complex procedures being engendered in order to collect and enforce these rents.

Because the rents would be added to the property tax bill, this measure would both increase the individual taxpayer's perception of the amount of taxes they are paying and it would force a taxpayer to pay these contractually determined rents or face the possibility of having their property or homestead sold out from under them in the same manner as is used for non-payment of other taxes.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law authorizes community development districts and the governing boards of such districts to exercise various powers. Among them, the power to determine, order, levy, impose, collect, and enforce special assessments pursuant to chapter 190, F. S., and chapter 170, F.S. Such special assessments may, in the discretion of the district, be collected and enforced pursuant to the provisions of ss. 197.3631, 197.3632, and 197.3635, or chapter 170, F.S. Districts are also authorized:

to hold, control, and acquire by donation, purchase, or condemnation, or dispose of, any public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act and to make use of such easements, dedications, or reservations for any of the purposes authorized by this act.

Section 190.021, F.S., provides that maintenance special assessments entered by the property appraiser on the county tax rolls are collected and enforced by the tax collector in the same manner as county taxes. However district boards may, in their discretion, use other collection methods authorized by law. Maintenance special assessments become a lien on the property and are enforceable as are county taxes.

Section 197.3631, F. S., contains general provisions regarding the collection of non-ad valorem assessments. This section states that such a collection may be made by any method authorized by law including the uniform collection method described in s. 197.3632, F.S.

Section 197.3632, F. S., outlines the uniform method for the levy, collection and enforcement of non-ad valorem assessments. Under this method a local government may enter into a written agreement with

the tax collector and the property appraiser. The agreement then provides that the special assessment will appear on the property owner's regular tax bill. Under this method, the special assessment is collected using the same method as the ad valorem property tax and non-payment of the special assessment is subject to the same collection provisions as the ad valorem property tax.

Chapter 170, F. S., authorizes special assessments against property deemed to be benefited by local improvements, as provided by s. 170.02, F.S., to be assessed upon the property specially benefiting by the improvements in proportion to the benefits derived. The special benefits are to be determined and prorated according to the foot frontage of the respective properties specially benefiting from the improvement or by other method(s) prescribed by the governing body.

Landowner, by definition contained in s. 190.003(13), F.S., means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years.

Proposed Changes

This bill provides a method by which governmental entities, with a contract between the landowners and the governmental entity, may undertake the collection of ground rent from landowners through the levy of maintenance special assessments pursuant to general law. The bill authorizes the boards of community development districts to include amounts due governmental entities for leased ground, pursuant to a contract, as part of the maintenance special assessment. As such, people renting from a governmental entity that has entered into such an agreement will be subject to enforcement mechanisms which could not be used by any other lessor.

C. SECTION DIRECTORY:

Section 1 – Amends s. 190.011 (7), F. S., to authorize the collection of ground rent due a governmental entity, through maintenance special assessments pursuant to s. 190.021 (3), F.S., when a contract with governmental entity exists.

Section 2 – Amends s. 190.021 (3), F. S., to allow boards of community development districts to include in the maintenance special assessment, pursuant to a contract with a governmental entity, the amounts of ground rent due each year by the district on behalf of the governmental entity; and allows discretion of board to use other authorized method of collection.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Governmental entities having contracts with community development district(s) for ground rent due the governmental entity, may experience more predictable, cost-effective and efficient collections of those rents.

2. Expenditures:

Under the uniform method for the levy, collection, and enforcement of non-ad valorem assessments prescribed by s. 197.3632, F.S., the tax collector at his or her option must be compensated for the collection of non-ad valorem assessments based on the actual cost of collection, whichever is greater. However, a municipal or county government shall only compensate the tax collector for the actual cost of collecting non-ad valorem assessments.

Pursuant to s. 192.091, F.S., property appraisers and tax collectors are entitled to payments for services, the amount of which are dependent on the officer providing the service and/or the amounts of special assessments collected and remitted.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who reside upon or otherwise occupy land which is located within a Community Development District and which is leased from a governmental entity would be affected by this bill, if the governmental entity contracted with the Community Development District to collect the rental payments. These rental payments would become maintenance special assessments on the property tax bill issued to the lessee. Since maintenance special assessments become a lien on the property when unpaid, instead of simply having a lien filed against their property for back rent, the tenant could lose their property through the sale and foreclosure of a tax certificate.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

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

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

3. Other:

Under Section 4, Article X of the Florida Constitution, a homestead is "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, obligations contracted for the purchase, improvement and repair thereof, or obligations contracted for house, field or other labor performed on the realty". This bill takes rental payments due to a local government and collects them as non-ad valorem assessments. As such, this bill may result in homesteaded property being sold for payment of the rent on the underlying land in violation of this provision of the Constitution.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

On April 10, 2003, Ken van Assenderp, who represents the Florida Tax Collectors Association, sent a letter expressing the tax collectors' opposition to this bill. In addition to citing the Constitutional problem discussed above, Mr. van Assenderp pointed out the following issues:

- No local government should be in the position of using its powers of taxation to collect rent for another landowner, even if that landowner is another local government
- While non-ad valorem and ad valorem assessments constitute first liens on property, rent on a ground lease is not a first lien. By mixing first liens and liens that are not first liens on the tax bill, enforcement of the tax bill may become problematic.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.