

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1053 CS

St. Lucie County

SPONSOR(S): Harrell

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>6 Y, 0 N, w/CS</u>	<u>Camechis</u>	<u>Hamby</u>
2) <u>Economic Development, Trade & Banking Committee</u>	<u></u>	<u>Sheheane</u>	<u>Carlson</u>
3) <u>Finance & Tax Committee</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 creates a new county-wide independent special district, the St. Lucie Research and Education Authority (Authority), for the purpose of promoting and stimulating economic development and employment opportunities in St. Lucie County. The bill empowers the Authority to levy a "Research and Educational Facilities benefit assessment" upon certain transfers of real property within the county to implement adopted research and education plans or programs and to fund administration of the Authority and its purposes.

The bill includes legislative findings that: the creation of new research and educational facilities and the attraction and maintenance of a high- technology, strong, high-paying job base in the county especially benefit the value of real property in the county by helping to maintain its value and stimulate growth in value over time as the property is sold or resold; and it is appropriate and equitable for the purchaser or seller of benefited real property whose value is enhanced by the creation of research and educational facilities and maintenance of a strong job base in St. Lucie County to pay a Research and Educational Facilities benefit assessment at the time of property transfer that is proportional to and not in excess of the benefit received from the referenced facilities. The amount of the assessment depends upon the current use of the property as follows:

AMOUNT OF ASSESSMENT	TYPE OF PROPERTY TRANSFERRED
\$250 per dwelling	New single-family residential units, multifamily residential units, or manufactured (mobile) homes.
\$125 per dwelling	Existing single-family residential units, multifamily residential units, or manufactured (mobile) homes.
\$150 per 1,000 square feet	New commercial/industrial structures.
\$75 per 1,000 square feet	Commercial/industrial resale.
\$150 per dwelling unit authorized by city or county zoning and comprehensive plan provisions.	Vacant residential land.
\$75 per each 1,000 square feet of development authorized by city or county zoning and comprehensive plan provisions	Vacant commercial/industrial property.
\$100 plus \$10 per acre for every acre over 1 acre	Vacant agricultural property.

According to the attached Economic Impact Statement, "[t]he Authority's revenues are unknown but estimated to be \$5 million annually based upon the current rate of property transfers in St. Lucie County".

The bill is effective if approved by a majority vote of qualified electors voting in a referendum held on or before November 7, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1053b.EDTB.doc

DATE: 4/12/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government and provide lower taxes: This bill creates a new county-wide independent special district, the St. Lucie Research and Education Authority, and empowers the Authority to levy a “research and educational facilities benefit assessment” upon certain transfers of real property within the county. The amount of the assessment depends upon the current use of the property. The various assessment rates are specified in section 7 of the bill.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Independent Special Districts Generally

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter. See *State ex re. City of Gainesville v. St. Johns River Water Management District*, 408 So.2d 1067 (Fla. 1st DCA 1982). A search of the Department of Community Affairs database of special districts did not reveal an existing special district with powers similar to those granted to the Authority by this bill.

Chapter 189, F.S., is the “Uniform Special District Accountability Act” (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404, F.S., prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s.189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and
- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district; the authority of the proposed district; and an explanation of why the district is the best alternative. In addition, that section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and board selection procedures.

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

State Documentary Stamp Tax Generally

A documentary stamp tax, commonly known as the “doc stamp tax”, is levied pursuant to ch. 201, F.S., on certain types of documents at the rates specified below:

Type of Document	Tax Rate
Documents that transfer an interest in real property.	\$.70 per \$100 (or portion thereof) of the total consideration paid, or to be paid, for the transfer.
Bonds, debentures, and certificates of indebtedness issued in this state.	\$.35 per \$100 (or portion thereof) of the face value.
Promissory notes, written obligations to pay money, nonnegotiable notes, assignments of wages or other compensation.	\$.35 per \$100 (or portion thereof) of the obligation evidenced by the document. The maximum amount of documentary stamp tax due on unsecured notes or other written obligations is \$2,450.
Mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state.	\$.35 per \$100 (or portion thereof) of the indebtedness or obligation evidenced thereby.

Documentary stamp tax is generally payable by any of the parties to a taxable transaction. If one party is exempt, the tax must be paid by the nonexempt party. Agencies of the United States government, agencies of the State of Florida, counties, municipalities, and political subdivisions are exempt from documentary stamp tax.

Section 201.02, F.S., contains several exemptions from the documentary stamp tax on transfers of interest in real property, including:

- Transfers of real property from certain nonprofit organizations to the Board of Trustees of the Internal Improvement Trust Fund, to any state agency, to any water management district, or to any local government.
- Transfers between spouses or former spouses pursuant to an action for dissolution of marriage where the real property is the marital home or an interest therein.
- Contracts to see the residence of an employee relocating at his or her employer’s direction or to documents related to the contract.

Effect of Proposed Changes

This bill creates a new county-wide independent special district, the St. Lucie Research and Education Authority (Authority), for the purpose of promoting and stimulating economic development and employment opportunities in St. Lucie County. It appears that the Authority is created in accordance with the requirements set forth in ch. 189, F.S., more specifically described above.

Legislative Findings and Intent

The bill provides that the purposes of the act are to:

- Create an independent research and education authority within St. Lucie County to promote and stimulate economic development and employment opportunities within St. Lucie County and throughout the Treasure Coast.
- Provide a dedicated funding source to be utilized by the St. Lucie County Research and Education Authority to fund education and research initiatives in St. Lucie County, including enhancement of existing facilities and programs and development of new facilities and programs to provide a sound basis for economic development and employment in St. Lucie County.
- Provide a funding incentive for public-private partnerships to develop research and education facilities and programs within St. Lucie County and the Treasure Coast.
- Determine that the creation and operation of the St. Lucie County Research and Education Authority is in the public interest.

The bill also includes the following legislative findings and statements of legislative intent:

- The creation of research and educational facilities will attract high-technology businesses and related research enterprises to St. Lucie County and provide and maintain a job base of highly compensated scientists, technicians, and administrators to the county.
- The creation of new research and educational facilities and the attraction and maintenance of a high- technology, strong, high-paying job base in the county especially benefit the value of real property in the county by helping to maintain its value and stimulate growth in value over time as the property is sold or resold.
- It is appropriate and equitable for the purchaser or seller of benefited real property whose value is enhanced by the creation of research and educational facilities and maintenance of a strong job base in St. Lucie County to pay a research and educational facilities benefit assessment at the time of property transfer that is proportional to and not in excess of the benefit received from the referenced facilities.
- The Legislature hereby intends to create an independent special district and grant to it the authority contained in this act to receive and spend research and educational facilities benefit assessments collected pursuant to this act specifically for the creation of research and educational facilities that will stimulate the growth of high- technology businesses and employment in St. Lucie County and protect and enhance real property value in the county.

Creation, Boundary, and Definitions

The bill creates the St. Lucie County Research and Education Authority (Authority) as an independent special district pursuant to ch. 189, F.S., and establishes the boundaries of the Authority as coterminous with the boundaries of St. Lucie County.

The bill also includes definitions applicable to the act, defining the term "Research and educational facilities benefit assessment" as "a non-ad valorem assessment as defined in section 197.3632, Florida Statutes." Section 197.3632(1)(d), F.S., defines "Non-ad valorem assessment" as "only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution."

Governing Board and Board Administration

The bill creates a seven member governing board of the Authority composed of the following members:

- Two members elected by and from the Board of County Commissioners of St. Lucie County who serve two year terms;
- Two members elected by and from the City Commission of the City of Fort Pierce who serve two year terms;
- Two members elected by and from the City Council of the City of Port St. Lucie who serve two year terms; and
- One member appointed by the Governor who serves a two year term or until a successor is appointed.

The bill requires election or appointment of members within 90 days after the effective date of the bill and provides provisions regarding the general administration of the board, including provisions pertaining to oaths of office, vacancies, recordkeeping, and open government requirements.

Members of the board serve without pay but may be reimbursed per diem and travel expenses.

General powers of the Authority

The board is authorized to exercise, by majority vote, the following powers:

- To sue and be sued in the name of the authority, to adopt and use a seal and authorize the use of a facsimile thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To provide for a pension or retirement plan for its employees. In accordance with s. 215.425, F.S., the board may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.
- To contract for the services of consultants to perform planning, engineering, legal, or other professional services.
- To borrow money and accept gifts; to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any purposes of the authority and enter into agreements required in connection therewith; and to hold, use, sell, and dispose of such moneys or property for any authority purpose in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the authority; the conduct of the business of the authority; the maintenance of records; and the form of other documents and records of the authority.
- To maintain an office at places it designates within St. Lucie County and appoint an agent of record.
- To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate therein for any purpose authorized by the act and to trade, sell, or otherwise dispose of surplus real or personal property. The board may purchase equipment by an installment sales contract if funds are available to pay the current year's installments on the equipment and to pay the amounts due that year on all other installments and indebtedness.
- To hold, control, and acquire by donation or purchase any public easement, dedication to public use, platted reservation for public purposes, or reservation for those purposes authorized by the act and to use such easement, dedication, or reservation for any purpose authorized by the act consistent with applicable adopted local government comprehensive plans and land development regulations.
- To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any facility or property of any nature for the use of the Authority when necessary to carry out the Authority's powers and duties under the act.
- To borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, and assessments, warrants, notes, or other evidence of indebtedness, when necessary to carry out the Authority's powers and duties under the act.
- To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act.
- To develop and adopt research and education plans and programs for the support and enhancement of existing research and education facilities and programs in St. Lucie County.
- To implement approved research and education plans including financial support to improve existing facilities and programs; the purchase, lease, or construction and development of new research or education facilities; and initiation of new research or education programs including joint ventures with public or private partners.
- To utilize a research and educational facilities benefit assessment as defined in the act to implement adopted research and education plans or programs and to pay for administration of the Authority and the purposes of the Authority.
- To select as a depository for its funds any qualified public depository in accordance with general law as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.

- To provide adequate insurance on all real and personal property, equipment, employees, and other personnel.

Bonds

The Authority is authorized to issues bonds for a period up to 30 years beginning in 2007, and for the life of the bond issue, the first \$500,000 in assessment revenue collected annually must be pledged and utilized for the issuance of revenue bonds. The bonds must be used exclusively for the purchase of real property to provide an incentive for the location or development of research or educational facilities in St. Lucie County. Upon satisfaction of the bonded indebtedness incurred, this provision is repealed unless reenacted by a subsequent legislature.

The issuance of bonds does not constitute a pledge of the full faith and credit of the Authority pursuant to s. 12, Art. VII of the State Constitution. Bonds issued by the Authority may only be secured by research and educational facilities benefit assessment revenues collected by the Authority and no other source of revenue.

Benefit Assessment

In addition to the tax on deeds and other instruments relating to real property required pursuant to s. 201.02, F.S., any transfer or conveyance of real property as defined by the act after the effective date of the act requires simultaneous payment to the clerk of the circuit court of a research and educational facilities benefit assessment in an amount prescribed by the following schedule:

AMOUNT OF ASSESSMENT	TYPE OF PROPERTY TRANSFERRED
\$250 per dwelling	New single-family residential units, multifamily residential units, or manufactured (mobile) homes.
\$125 per dwelling	Existing single-family residential units, multifamily residential units, or manufactured (mobile) homes.
\$150 per 1,000 square feet	New commercial/industrial structures.
\$75 per 1,000 square feet	Commercial/industrial resale.
\$150 per dwelling unit authorized by city or county zoning and comprehensive plan provisions.	Vacant residential land.
\$75 per each 1,000 square feet of development authorized by city or county zoning and comprehensive plan provisions	Vacant commercial/industrial property.
\$100 plus \$10 per acre for every acre over 1 acre	Vacant agricultural property.

The assessment collected by the clerk of the circuit court must be transferred to an account designated by the Authority within 30 days after collection.

The following transfers of real property are exempt from payment of the assessment:

- Transfers of property, including government owned property, currently exempt from taxation under s. 201.01, F.S.;
- Transfers of bona fide, commercial agricultural land that include a deed restriction or covenant requiring the land to remain in agricultural use for a minimum of 10 years;
- Residential transfers of housing financed by the Florida Housing Finance Corporation;
- Existing research and education facilities; and
- Commercial facilities and research or educational projects financed in whole or in part by the authority.

[Please see "Constitutional Issues" on p. 7 of this analysis for additional information.]

Exemption from Ad Valorem Taxation

The bill exempts all assets and properties of the Authority, including property acquired through the foreclosure of any lien, from all taxes imposed by the state or any political subdivision, agency, or instrumentality of the state. The bill states that the exemption is provided because the exercise of the powers conferred by the act constitute action by a political subdivision performing essential public functions, and because the property of the Authority constitutes public property used for public purposes. [Please see "Constitutional Issues" section on p. 9 of this Analysis for additional information.]

Referendum and Effective Date

The bill requires the Supervisor of Elections in St. Lucie County to conduct a referendum on or before November 7, 2006, on the question of the creation of the St. Lucie County Research and Education Authority. The referendum question must be posed as follows: "Shall the St. Lucie County Research and Education Authority be authorized and created by special act of the Legislature with authority to collect a research and educational facilities benefit assessment on real property transfers in St. Lucie County to finance research and education facilities?" The act takes effect only upon its approval by a majority vote of those qualified electors of St. Lucie County voting in the referendum in accordance with the provisions of law relating to elections currently in force.

Construction and Severability

The bill provides that the provisions of the act must be liberally construed in order to effectively carry out its purposes in the interest of the public health, welfare, and safety of the citizens served by the Authority, and declares that it is the intent of the Legislature that if any portion of the act is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion must be deemed a separate, distinct, and independent provision, and the court's holding may not affect the validity of the remaining portions.

C. SECTION DIRECTORY:

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|-------------|--|
| Section 1. | Provides legislative findings and intent. |
| Section 2. | Creates the Authority and delineates its boundaries. |
| Section 3. | Provides definitions of terms. |
| Section 4. | Creates a governing board and provides for its administration. |
| Section 5. | Specifies the Authority's general powers. |
| Section 6. | Provides for the issuance of bonds. |
| Section 7. | Provides for levy of a research and educational facilities benefit assessment on transfers of property and specifies exemptions. |
| Section 8. | Provides the Authority with an exemption from ad valorem taxation. |
| Section 9. | Provides minimum charter requirements. |
| Section 10. | Requires a voter referendum. |
| Section 11. | Provides for liberal construction. |
| Section 12. | Provides for severability. |
| Section 13. | Provides an effective date. |

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☐ No ☒

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

IF YES, WHEN? On or before November 7, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Benefit Assessment

An independent special district is created by the Legislature in a special act, commonly referred to as a "local bill". A "special law" is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal. *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 (Fla. 2003).

A special act may authorize a special district, such as the Authority, to impose "special assessments" or non-ad valorem tax assessments, user fees, and impact fees against property within the district's boundaries. A special act may also authorize a special district to impose ad valorem taxes on taxable property within the district's boundaries if approved by a referendum of the voters in accordance with Art. VII, s. 9(b) of the State Constitution. However, Art. VII, ss. 1(a) and 9(a) of the State Constitution preempts to the state all forms of taxation, other than ad valorem taxation, except as provided by *general law*. Therefore, a special act may not authorize a special district to impose or levy any other type of tax. *City of Miami v. McGrath*, 824 So.2d 143 (Fla. 2002).

If a special act authorizes a special district to impose a special assessment such as that authorized by this bill, and the assessment is challenged in court, the judicial inquiry will be whether the special assessment meets the judicially defined legal sufficiency test for a valid assessment. If the assessment is not legally sufficient, the assessment may be considered an invalidly imposed tax that should have been authorized by general law, rather than by special act. It does not appear that the courts have considered a benefit assessment similar to the assessment authorized in this bill.

Section 7 of this bill authorizes the Authority to impose a "Research and Educational Facilities Benefit Assessment" to be paid upon the transfer of certain residential, commercial, and vacant property in St. Lucie County in accordance with a rate schedule set forth in that section. Section (1)(2)(b) sets forth a legislative finding that "[t]he creation of new research and educational facilities and the attraction and maintenance of a high-technology, strong, high-paying job base in the county especially benefit the value of real property in the county by helping to maintain its value and stimulate growth in value over time as the property is sold or resold...It is appropriate and equitable for the purchaser or seller of benefited real property whose value is enhanced by the creation of research and educational facilities and maintenance of a strong job base in St. Lucie County to pay a research and educational facilities benefit assessment at the time of property transfer that is proportional to and not in excess of the benefit received from the referenced facilities."

"Special assessments" are charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money. Special assessments are not taxes because they confer a special benefit on the land burdened by the assessment. *City of Gainesville v. State*, 863 So.2d 138 (Fla. 2003); *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla.1992). On the other hand, a "tax" is a burden imposed by sovereign right for support of government, administration of law, and to execute various functions the sovereign is called on to perform. *Collier County v. State*, 733 So.2d 1012 (Fla. 1999). The theory of a special assessment is that "the value of certain property is enhanced by an improvement of a public character, the property thus receiving an especial and peculiar benefit; and that upon such property a part or the whole of the cost of such public improvement is assessed to an amount not exceeding the amount of such benefits". *Atlantic Coast Line R.R. v. City of Gainesville*, 83 Fla. 275, 283-84, 91 So. 118, 121 (1922).

In *City of Boca Raton v. State*, 595 So.2d 25 (Fla.1992), the court explained the distinction between special assessments and taxes:

[A] legally imposed special assessment is not a tax. Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. On the other hand, special assessments must confer a specific benefit upon the land burdened by the assessment. ...

A tax is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. A special assessment is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax but it is inherently different and governed by entirely different principles. It is imposed upon the theory that that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity and may be determined legislatively or judicially.

Test for Validity of Special Assessments

A special assessment must satisfy the following judicially created test in order to be a valid assessment:

- (1) The property burdened by the assessment must derive a special benefit from the service provided by the assessment; and
- (2) The assessment for the services must be properly apportioned among the properties receiving the benefit.

City of Winter Springs v. State, 776 So.2d 255 (Fla. 2001); *Collier County v. State*, 733 So.2d 1012 (Fla. 1999); *Lake County v. Water Oak Management Corp.*, 695 So.2d 667, 669 (Fla.1997); *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

The determination that certain lands will benefit from an improvement may be made by the legislature or other legislative body itself, and may be implicit in the authorizing statute or other enactment. Alternatively, the power to make a determination of special benefit may be delegated, with discernable guidelines for determining the benefits conferred on each property. *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 (Fla. 2003).

When the power is exercised by the legislating body itself, it is well settled that the question of the existence and extent of special benefit is legislative rather than judicial in character, and the courts must give deference to the taxing authority's legislative determination. Accordingly, the determination of this question by the legislative body is conclusive both on property owners and on the courts, unless it is arbitrary. Moreover, a legislative determination of special benefit warranting a special assessment carries a presumption of correctness. *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 (Fla. 2003); *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla.2002); *City of Boca Raton v. State*, 595 So.2d 25, 30 (Fla.1992); *South Trail Fire Control Dist. v. State*, 273 So.2d 380, 383 (Fla.1973) (determination of special benefits is one of fact for legislative body and apportionment of the assessments is a legislative function).

"[T]he standard is the same for both prongs; that is, the legislative determination as to the existence of special benefits and as to the apportionment of costs of those benefits should be upheld unless the determination is arbitrary." *Sarasota County v. Sarasota Church of Christ*, 667 So.2d 180, 184 (Fla.1995). "If reasonable persons may differ as to whether the land assessed was benefitted by the local improvement the findings of the [legislative body] must be sustained." *City of Boca Raton v. State*, 595 So.2d 25, 30 (Fla.1992). However, a legislative body "cannot by its fiat make a local improvement of that which in its essence is not such an improvement, and it cannot by its fiat make a special benefit

to sustain a special assessment where there is no special benefit." *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla.2002); *South Trail Fire Control Dist. v. State*, 273 So.2d 380, 383 (Fla.1973) (quoting 48 Am.Jur., Special or Local Assessments, § 29, at 589 (1943)).

First Prong: Whether the services provide a special benefit to property

In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a "unique" benefit or are different in type or degree from the benefit provided to the community as a whole; rather the test is whether there is a "logical relationship" between the services provided and the benefit to real property. *Lake County*, 695 So.2d at 669 (footnote omitted); *Whisnant v. Stringfellow*, 50 So.2d 885 (Fla.1951); *Crowder v. Phillips*, 146 Fla. 440, 1 So.2d 629 (1941) (on rehearing).

Governmental functions such as general law enforcement activities, emergency medical care, and the general provision of government fail to bear a logical relationship to property and thus are required to be funded by taxes. Examples of services that possess a logical relationship to property and thus can be funded wholly or partially by special assessments include: solid waste collection and disposal, stormwater management, downtown redevelopment, mosquito control, parking facilities, sewer improvements, fire rescue, and street lighting.

Second prong: Whether the assessment is properly apportioned

The second prong of the special assessment test requires that the assessment be fairly and reasonably apportioned among the properties that receive the special benefit. Though a court may recognize valid alternative methods of apportionment, so long as the legislative determination is not arbitrary, a court should not substitute its judgment for that of the local legislative body. See *Sarasota Church of Christ, Inc.*, 667 So.2d at 184; See also *Harris v. Wilson*, 693 So.2d 945, 947 (Fla.1997); *State v. Sarasota County*, 693 So.2d 546, 548 (Fla.1997). In other words, a court may envision alternative apportionment schemes (e.g., based upon square footage of each particular home, or the proximity of a property in relation to each of the proposed improvements, or even based in some part upon studied usage of various roadways), yet the choice of apportioning assessments by one or another methodology is the legislative entity's responsibility in the first instance which must be upheld if not arbitrary. *City of Winter Springs v. State*, 776 So.2d 255 (Fla. 2001); See *Sarasota Church of Christ*, 667 So.2d at 184.

Moreover, a mere disagreement of experts as to the choice of methodology is legally inconsequential. *City of Winter Springs v. State*, 776 So.2d 255 (Fla. 2001); See *Rosche v. City of Hollywood*, 55 So.2d 909, 913 (Fla.1952) ("If the evidence as to benefits is conflicting and depends upon the judgment of witnesses, the findings of the City Commission will not be disturbed.").

Property Tax Exemption

Section 8 of the bill contains the following language, which may be construed as an effort to establish an exemption from ad valorem taxation for property owned by the Authority and leased to a private entity:

Because the exercise of the powers conferred by this act constitutes action by a political subdivision performing essential public functions, and because the property of the authority constitutes public property used for public purposes, all assets and properties of the authority, including property acquired through the foreclosure of any lien, are exempt from all taxes imposed by the state or any political subdivision, agency, or instrumentality of the state.

Property owned by governmental entities is subject to ad valorem taxation unless immune or exempt, and such exemptions are strictly construed against party claiming them. Immunity from taxation precludes the power to tax, while an exemption from taxation presupposes the existence of the power to tax but the power is limited by a constitutional or statutory provision. The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

Special districts are not immune from taxation. Therefore, property owed by special districts is taxable unless the Legislature enacts an exemption from taxation that is consistent with the Florida Constitution. Section 189.403(1), F.S., provides that special districts are treated as municipalities for purposes of s. 196.199(1), F.S., which exempts from ad valorem taxation property owned by a municipality and used for “governmental, municipal, or public purposes”. Thus, property owned by a special district may be entitled to exemption only if used for a governmental or public purpose.

If a private entity leases government owned property from an exempt governmental entity, such as a special district, the actual use of the property determines whether an exemption from ad valorem taxation continues to apply. If public property is leased to a private entity, but is not used for a “public purpose”, the fee interest in the property is taxable. The “public purpose” standard applicable in tax exemption cases is the “governmental-governmental” standard under which property leased to private entities for “governmental-proprietary” activities is not tax exempt. *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). Non-exempt “governmental-proprietary” use occurs when a nongovernmental lessee utilizes public property for proprietary and for-profit aims to promote the comfort, convenience, safety and happiness of citizens. Conversely, exempt “governmental-governmental” use occurs when a lease of public property concerns the administration of some phase of government. See *Capitol City Country Club v. Tucker*, 448 So.2d 613 (Fla. 1993).

B. RULE-MAKING AUTHORITY: Section 5(5) authorizes the Authority to adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the Authority; the conduct of the business of the Authority; the maintenance of records; and the form of other documents and records of the Authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears the strike-all amendment did not remove compensation for board members. Line 327 of the committee substitute for the bill allows a salary for board members.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Council on Local Government adopted a strike-all amendment to the bill that:

- Deleted unnecessary provisions regarding election of board members;
- Eliminated compensation for board members other than per diem and travel expenses; and
- Exempted property from payment of the assessment if the transfer of that property is otherwise exempt by statute from documentary stamp taxation.