

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1998

INTRODUCER: Senator Smith

SUBJECT: Special Assessment for Law Enforcement Services

DATE: March 19, 2010

REVISED: 3/23/10

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------------|
| 1. | Wolfgang | Yeatman | CA | Fav/1 amendment |
| 2. | | | CJ | |
| 3. | | | FT | |
| 4. | | | WPSC | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill gives municipalities explicit authorization to levy special assessments for law enforcement services so long as the municipality (1) apportions the costs among parcels proportionately and (2) reduces the municipal ad valorem taxes for the fiscal year in which the municipality implements the special assessment and retains that reduction for at least one year.

This bill creates section 166.212 of the Florida Statutes.

II. Present Situation:

Ad Valorem Taxes¹

The Florida Constitution reserves all revenue from ad valorem taxes (taxes based on property value) for local governments, which is their largest source of funding. Specifically, the Florida Constitution states:

¹ See also FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfi09.pdf>.

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

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.²

Municipal government millages are composed of four categories of millage rates:³

1. General millage is the nonvoted millage rate set by the municipality's governing body.
2. Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Section 12, Art. VII, State Constitution.
3. Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Section 9(b), Art. VII, State Constitution.
4. Municipal dependent special district millage is added to the municipality's millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.

Each taxing authority must compute a proposed millage rate necessary to fund the tentative budget other than the portion of the budget to be funded from sources other than ad valorem taxes.⁴ The county property appraiser must certify to the county budget officer his or her estimate of the total valuations against which taxes may be levied in the entire county and in each district in the county in which taxes are authorized by law to be levied by the board of county commissioners for funds under its control.⁵ In preparing the budget, the figure will be used as the basis for estimating the millage rate required to be levied and will be noted on each tentative budget and each official budget. The property appraiser will provide instructions to each taxing authority describing the proper method of computing a millage rate that, exclusive of new increases in the value of property and property added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year. That millage rate is known as the "rolled-back rate."⁶

² Section 9, Art. VII, State Constitution.

³ Section 200.001(2), F.S.

⁴ Section 200.065(2)(a)(1), F.S.

⁵ *Id.*

⁶ *Id.*

Special Assessments⁷

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution.⁸ In addition, statutes authorize explicitly the levy of special assessments for county and municipal governments.⁹ Special districts derive their authority to levy special assessments through general law or special act. For special assessments to be valid under a local government's home rule authority the special assessment must: (1) provide a special benefit for the property owner from the improvement or service provided and (2) be fairly and reasonably apportioned among the properties that receive the special benefit.¹⁰ If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax, which is levied for the general benefit of residents and property rather than for a specific benefit to property.

There is an attorney general opinion stating that a special assessment for law enforcement services is probably not permissible.¹¹ The opinion relied on *Water Oak Management Corp. v. Lake County*, which stated that services such as police services do not provide a special benefit to property.¹² Therefore, the municipality probably does not have authority under their home rule power. The statute explicitly allowing special assessments for various purposes does not list law enforcement services, although it is not an exclusive list.¹³ However, a subsequent case from the First District Court of Appeal held that assessments for law enforcement benefited leaseholds and thus were valid.¹⁴ Therefore, the current state of the law probably allows municipalities to enact special assessments for law enforcement activities. However, it seems the stage may be set for conflict among the districts.

County governments are authorized to establish municipal service taxing or benefit units for any part or all of the county's unincorporated area for the purpose of providing a number of municipal-type services.¹⁵ 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 affected municipality's governing body. Counties may also levy special assessments for county purposes.

County governments may create special districts to include both the incorporated and unincorporated areas, subject to the approval of the affected municipality's governing body.¹⁶ Such districts are authorized to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.

⁷ This section taken from: FLORIDA LEGISLATIVE COMMITTEE ON INTERGOVERNMENTAL RELATIONS, 2009 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK (Aug. 2009), available at <http://www.floridalcir.gov/UserContent/docs/File/reports/lgfi09.pdf>.

⁸ Sections 1-2, Art. VIII, State Constitution.

⁹ For county governments, Section 125.01(1)(r), F.S.; and municipal governments, Chapter 170, F.S.

¹⁰ *Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

¹¹ Fla. Att'y Gen. Op. 98-57 (Sept. 18, 1998).

¹² 673 So.2d 135 (Fla. 5th DCA 1996).

¹³ Section 170.201, F.S.

¹⁴ *Quietwater Entertainment, Inc. v. Escambia County*, 890 So.2d 525 (Fla. 5th DCA 2005).

¹⁵ Section 125.01(1)(q), F.S.

¹⁶ Section 125.01(5), F.S.

Municipalities have the authority 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.¹⁷ The governing body's decision to make any authorized public improvement and to defray all or part of the associated expenses of such improvement shall be so declared by resolution.¹⁸

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 166.212, F.S., to allow a municipality to impose a special assessment to fund law enforcement services. The municipality must:

- Adopt an ordinance that apportions funds in proportion to the benefit received by each parcel. This is determined by considering the following factors:
 - the size, location, and use of the parcel;
 - the amount of police time the property is expected to require;
 - the value of the real property (may not be the sole criteria used);
 - any other factor that may reasonably be used to determine the benefit of law enforcement services to a parcel of property.
- reduces its ad valorem millage as follows:
 - reduce the ad valorem millage by the amount equal to the revenue that would be projected to be collected from the special assessment; however a municipality is not required to reduce its millage
 - by more than 75 percent, or
 - by more than 50 percent if the resolution imposing the special assessment is approved by a two-thirds vote of the governing body of the municipality.

The year after the rolled-back ad valorem rate is implemented along with the special assessment, the millage will be the same except it must be adjusted for the change in per capita personal income.

Section 2 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ Section 170.01, F.S.

¹⁸ Section 170.03, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 151032 by Community Affairs Committee on March 23, 2010:

Clarifies how the assessment can be increased over time and clarifies that this is a grant of authority under general law for constitutional purposes.