

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 1210

INTRODUCER: Senator Norman

SUBJECT: Counties and Municipalities

DATE: March 10, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill explicitly authorizes cities and counties to engage in certain debt collections practices. The bill allows these local governments to hire attorneys or collection agencies to collect fees, service charges, fines, or costs to which it is entitled and which remain unpaid for 90 days or more. Fees of up to 40 percent of the amount owed may be charged in addition to the original debt.

This bill creates the following sections of the Florida Statutes: 125.01052 and 166.0498.

II. Present Situation:

Local Government Powers

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law. Those powers include the provision

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

of fire protection, ambulance services, parks and recreation, libraries, museums, and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Section 166.021, F.S., gives municipalities home rule powers with the following exceptions: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitution or law.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.⁴ Special assessments,⁵ impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.⁶ In addition, local governments may issue fines for violation of local ordinances.⁷

Whether local governments can use their home rule powers to employ the services of private attorneys or collection agents for recovering debts owed to the local government is uncertain. One attorney general opinion concluded that a “municipality may enter into an agreement with a collection agency to compromise code enforcement liens and pursue collection through litigation” by using its home rule authority.⁸ However, there are numerous statutes that deal with the collection of taxes,⁹ assessments,¹⁰ fines, fees, and costs.¹¹ When a statute specifies the procedures and costs a local government can collect, it is less likely that the local government will be found to have the authority to deviate from or expand upon the statutory framework.¹² One attorney general opinion determined that the process delineated in ch. 197, F.S., provides the sole method for enforcing liens for non-ad valorem assessments within a specified jurisdiction based on the premise that “[i]t is a rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way.”¹³

⁴ The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution prevents them from doing so. *See* FLA. CONST. art. VIII, s. 1. However, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.

⁵ *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (stating that local governments do have home rule authority to levy special assessments).

⁶ For a catalogue of such revenue sources, see the most recent editions of the Legislative Committee on Governmental Relations *Local Government Financial Information Handbook* and the *Florida Tax Handbook* published jointly by the Florida Senate Finance and Taxation Committee, the House of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.

⁷ *See* County or Municipal Code Enforcement, ch. 162, F.S.

⁸ Op. Att’y Gen. Fla. 99-03 (1999).

⁹ *See* Tax Collections, Sales, and Liens, ch. 197, F.S.

¹⁰ *See* Supplemental and Alternative Method of Making Local Municipal Improvements, ch. 170, F.S.

¹¹ *See* County or Municipal Code Enforcement, ch. 162, F.S.

¹² *See* Op. Att’y Gen. Fla. 99-31 (1999) (determining that ch. 197, F.S., provides the sole method for enforcing liens within a specified jurisdiction based on the premise that “[i]t is a rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way.”); *see also* Op. Att’y Gen. Fla. 2002-41 (2002) (stating that adoption of the uniform method of levy, collection, and enforcement precludes use of alternative methods of enforcement).

¹³ Op. Att’y Gen. Fla. 99-31 (1999); Op. Att’y Gen. Fla. 92-11 (1992) (citing Op. Att’y Gen. Fla. 86-32 and 85-90); *City of Miami v. Brinker*, 342 So. 2d 115 (Fla. 3d DCA 1977) (municipality has no inherent power to levy assessments); Ops. Att’y Gen. Fla. 82-9 and 80-87; *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982); *Grapeland Heights Civic Association v. City of Miami*, 267 So. 2d 321 (Fla. 1972); *Advisory Opinion to Governor*, 22 So. 2d 398 (Fla. 1945)); *but see City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (stating that local governments do have home rule authority to levy special assessments).

Attorney's Fees

The general rule in Florida is that attorney's fees are awarded only when permitted by statute or contract.¹⁴ Even when a statute awards a local government the right to "recover all costs incurred," when prosecuting a case to recover fines owed for the violation of a local ordinance, the term "costs" has been interpreted to exclude attorney's fees.¹⁵

Tax Collectors

The county tax collector is the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.¹⁶ Tax collectors may appoint deputies to act on their behalf to carry out the duties prescribed by law.¹⁷

Pursuant to ch. 197, F.S., tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. Taxes are due and payable on November 1 of each year or as soon as the certified tax rolls are received by the tax collector.¹⁸ Taxes become delinquent on April 1 of the following year in which they are assessed, or 60 days from the mailing of the original notice, whichever is later.¹⁹ If the delinquency date for ad valorem taxes is later than April 1 of the year following the assessment on which taxes are due, all dates or time periods regarding the collection of, or administrative procedures regarding the collection of, delinquent taxes shall be extended a like number of days.²⁰ If taxes become delinquent, the tax collector may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include the publication of notices and reasonable attorney's fees and court costs in proceedings to recover delinquent taxes.²¹

Section 197.413, F.S., provides that before May 1 of each year following the assessment, the tax collector prepares a roll of all unpaid personal property taxes. Prior to April 30 of the next year, the tax collector is required to prepare warrants against the delinquent taxpayers. The warrants allow for the levy upon, and seizure of, tangible personal property. Within 30 days after preparing the warrants, the tax collector files a petition in the circuit court for the county in which he or she serves. The petition describes the levies and nonpayment of taxes, the issuance of warrants, proof of publication of notices, and the names and addresses of all taxpayers who failed to pay taxes. There is one petition naming multiple delinquent taxpayers. The petition pays for an order ratifying and confirming the warrants, and directing the tax collector to levy upon and seize the personal property of all delinquent taxpayers to satisfy payment of unpaid taxes.²²

Upon filing a petition with the court, the tax collector must request the earliest time for a hearing, and the clerk of court shall notify each delinquent taxpayer listed in the petition that a petition is

¹⁴ See, e.g., *Dade County v. Pena*, 664 So. 2d. 959 (Fla. 1995).

¹⁵ Op. Att'y Gen. Fla. 2009-07 (2009).

¹⁶ Section 192.001(4), F.S.; FLA. CONST. art. VIII, s. 1(d).

¹⁷ Section 192.103, F.S.

¹⁸ Section 197.333, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 197.332, F.S.

²² Section 197.413(2), F.S.

filed and, if ratified, warrants will be issued and their property will be seized and sold to pay unpaid taxes, plus costs, interest, attorney's fees, and other charges.²³ The tax collector is entitled to a fee of \$2 from each delinquent taxpayer at the time delinquent taxes are collected, and an additional \$8 for each warrant issued.²⁴

The tax collector is authorized to employ counsel to conduct such suits.²⁵ They may agree upon counsel's compensation, which may come out of the general office expense fund and be included in their budget.²⁶ These fees are allowed to be collected from delinquent taxpayers by adding them to the unpaid taxes.

Collection Practices under Chapter 559 of the Florida Statutes

Parts V and VI of chapter 559, F.S., regulate commercial and consumer collection practices. To the extent that they conflict with the federal bankruptcy code, the bankruptcy code prevails.²⁷ Collection agencies must register with the Office of Financial Regulation with the following exceptions:

- Any financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate;
- Any licensed real estate broker;
- Any consumer finance company and any wholly owned subsidiary and affiliate;
- Any person licensed pursuant to chapter 520, F.S. (relating to retail installment sales);
- Any out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state;
- Any FDIC-insured institution or subsidiary or affiliate thereof;
- Any original creditors (for consumer collections only);
- Any insurance company (restricted to title insurance companies for commercial collections); or
- Any member of the Florida Bar (except those members primarily engaged in the collection of commercial claims).

Chapter 559, F.S., requires registration, bonding for commercial collections, and criminal penalties for violations of certain provisions. Section 559.72, F.S., prohibits consumer protection agencies from engaging in a range of intimidating or harassing tactics.

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (Act) regulates the practices of "debt collectors."²⁸ The purpose of the Act is to eliminate abusive debt-collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt-collection practices are not

²³ Sections 197.413(4), (5), F.S.

²⁴ Section 197.413(10), F.S.

²⁵ Section 197.413(3), F.S.; Op. Att'y Gen. Fla. 76-173 (1976) ("The tax collector fee officer may employ counsel if it becomes necessary to engage an attorney to bring or defend actions or proceedings in carrying out his statutory duties or functions and to compensate such attorney as a necessary expense of operating his office.").

²⁶ Section 197.413(3), F.S.

²⁷ *Williams v. Asset Acceptance, LLC*, 392 B.R. 882 (M.D. Fla. 2008).

²⁸ 173 A.L.R. Fed. 223 (2001); *see also* 15 U.S.C.A. s. 1692a et seq.

competitively disadvantaged, and to promote consistent state action to protect consumers against debt-collection abuses.²⁹ The Act expressly excludes any officer or employee of the United States or any state to the extent that collection is in the performance of official duties.³⁰ However, collection agents or attorneys hired for the purpose of collecting debts owed to the government are subject to the provisions of the Act.³¹

III. Effect of Proposed Changes:

Section 1 creates s. 125.01052, F.S., to explicitly authorize the board of county commissioners to engage in certain debt collections practices. The board of county commissioners may pursue the collection of any fees, service charges, fines, or costs to which it is entitled and which remain unpaid for 90 days or more. The counties may refer the account to a private attorney who is a member in good standing of The Florida Bar or a collection agent who is registered and in good standing pursuant to chapter 559, F.S. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent may be added to the balance owed at the time the account is referred to the attorney or agent for collection and may not exceed 40 percent of the amount owed at the time the account is referred for collection.

Section 2 creates s. 166.0498, F.S., the same authorization as section 1 but for municipalities.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ 15 U.S.C.A. s. 1692(e).

³⁰ 15 U.S.C.A s. 1692a (6)(C).

³¹ See *Richardson v. Baker*, 663 F. Supp. 651 (S.D.N.Y. 1987) (holding that a private firm under contract with the Department of Education to collect funds was not an exempt "debt collector" under the Fair Debt Collection Practices Act); *Jones v. Intuition, Inc.*, 12 F. Supp. 2d 775 (W.D. Tenn. 1998) (holding that a private, nonprofit firm that serviced a federal student loan program was not exempt under the Fair Debt Collection Practices Act as a state actor).

B. Private Sector Impact:

Individuals who are delinquent may be assessed additional fines for collection. Private attorneys and collection agents will receive additional revenues by fees they receive from collecting moneys owed to local governments.

C. Government Sector Impact:

Local governments may hire attorneys or collection agents to assist in collecting on delinquent accounts. Local governments may pay the attorneys or collection agents themselves or add the fees to the amount owed on the delinquent account.

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:

None.