

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 1234

INTRODUCER: Senator Smith

SUBJECT: Special Assessment for Law Enforcement Services

DATE: March 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill grants municipalities explicit authorization to levy special assessments for law enforcement services so long as the municipality (1) adopts an ordinance that 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 substantially creates section 166.212, of the Florida Statutes.

II. Present Situation:

Ad Valorem Taxes

Article VII, section 9, of the Florida Constitution, provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage rate fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by the voters for special districts.

- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).¹

The statutory authority for local governments and schools to assess millage is provided in s. 200.001, F.S. The statutory authority and the maximum rate at which water management districts may assess millage is provided in s. 373.503, F.S.²

Municipal Millages³— County government millages are composed of four categories of millage rates:

1. General millage is the non-voted 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 Article VII, section 12, of the Florida Constitution.
3. Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, section 9(b), of the Florida Constitution.
4. Dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., and added to the municipal millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.

Method of Fixing Millage— Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.⁴ The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

Special Assessments⁵

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities. Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal,

¹ FLA. CONST. art. VII, s. 9.

² See ss. 200.001 and 373.503, F.S., for more information.

³ The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 5 (Oct. 2010) (on file with Senate Committee on Community Affairs) *referencing* s. 200.001(1), F.S.

⁴ Section 200.065, F.S.

⁵ The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Oct. 2010) (on file with Senate Committee on Community Affairs).

sewer improvements, fire protection, and rescue services.⁶ Counties and municipalities have the authority to levy special assessments based on their home rule powers. Special districts derive their authority to levy these assessments through general law or special act.

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment:

- 1) The assessment must directly benefit the property, and
- 2) The assessment must be apportioned fairly and reasonably amongst the beneficiaries of the service.⁷

These special assessments are generally collected on the annual ad valorem tax bills, characterized as a “non-ad valorem assessment” under the statutory procedures in ch. 197, F.S.⁸ Section 197.3632(1)(d), F.S., defines a non-ad valorem assessment as “those assessments that 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.”⁹

Supplemental Method of Making Local Improvements—Independent of a municipality’s authority to impose special assessments under its home rule powers, chapter 170, F. S., provides a supplemental and alternative method for making municipal improvements. Specifically, s. 170.201(1), F.S., provides that:

The governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement and parking facilities. The governing body of a municipality may apportion costs of such special assessment on:

- a) The front or square footage of each parcel of land; or
- b) An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

Although subsection (1) of s. 170.201, F.S., does not explicitly list law enforcement services, the language “including, but not limited to” provides that this is not an exclusive list.

Chapter 125, F.S. allows counties to establish municipal service taxing or benefit units (MSTU’s) for any part or all of the county’s unincorporated area in order to provide a number of county or municipal services. Such services can be funded, in whole or in part, from special

⁶ See *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).

⁷ *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

⁸ *Primer on Home Rule & Local Government Revenue Sources* at 35 (June 2008).

⁹ Article X, section 4(a), of the Florida Constitution, provides, in pertinent part that “[t]here shall be 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 ...”

assessments.¹⁰ To the extent not inconsistent with general or special law, counties may also create special districts to include both incorporated and unincorporated areas, upon the approval of the affected municipality's governing body, which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.¹¹

Special Assessments for Law Enforcement Services— In 1998, the Attorney General's Office issued Opinion 98-57, stating that "the imposition of special assessments to fund general law enforcement would not appear to be permissible in light of the" Florida Supreme Court decision, *Lake County v. Water Oak Management*.¹² In *Lake County*, the Fifth District Court of Appeal struck down a special assessment for fire protection services provided by the county on the grounds that there was no special benefit to the properties on which the fire protection special assessment was imposed.

On appeal, the Florida Supreme Court stated that the "test is not whether the services confer a 'unique' benefit or are different in type or degree . . . rather the test is whether there is a logical relationship between services provided and the benefit to real property."¹³ In support of a previous 1969 Supreme Court decision, the court held that "fire protection services do, at a minimum, specifically benefit real property by providing for lower insurance premiums and enhancing the value of the property."¹⁴ The Court further stated that the assessment still must meet the second prong of the test and be properly apportioned to the benefit received. Absent the proper apportionment, the assessment becomes an unauthorized tax.

In conclusion the court held that:

Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property.¹⁵

In 2005, the First District Court of Appeal held that special assessments for law enforcement services in a MSTU that benefited leaseholds were a valid special assessment.¹⁶ In that case, the leaseholds subject to the special assessment were located on an island with "unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property." For these reasons, the court held that the "unique nature and needs of the subject leaseholds" made the special assessments valid.

Based on these court decisions and the 1998 Attorney General Opinion, it would appear that a municipality currently does not have the authority to levy assessments for general law

¹⁰ Section 125.01(1)(q)-(r), F.S.

¹¹ Section 125.01(5), F.S.

¹² Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998) citing 695 So. 2d 667 (Fla. 1997).

¹³ *Lake County* 695 So. 2d at 669.

¹⁴ *Id.* citing *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969).

¹⁵ *Id.* at 670.

¹⁶ *Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005).

enforcement services if the assessment does not provide a special benefit to the property at interest that is properly apportioned to such benefit.

III. Effect of Proposed Changes:

Section 1 creates s. 166.212, F.S., to allow a municipality to levy a special assessment to fund the costs of providing law enforcement services. The municipality must do the following:

- Apportionment Methodology Adopt an ordinance that apportions funds in reasonable proportion to the benefit received by each parcel. The apportionment is considered using the following factors:
 - The size of structures on the parcel.
 - The location and use of the parcel.
 - The projected amount of time that the municipal law enforcement agency will spend protecting the property, grouped by neighborhood, zone, or category of use.
 - The value of the property (however this factor may not be a sole or major factor).
 - Any other factor that may reasonably be used to determine the benefit of law enforcement services to a parcel of property.
- Reduction in Ad Valorem Millage Reduce its ad valorem millage as follows:
 - For the initial fiscal year the municipality implements the special assessment, reduce the ad valorem millage by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment.
 - After the initial fiscal year of implementation, the assessment may only be increased in the same manner prescribed for the increase of ad valorem revenue in s. 200.065, F.S.
 - However, excluding millage approved by a vote of the electors and millage pledged to repay bonds, 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.

Future Ad Valorem Millage Increases The rolled-back rate for the fiscal year immediately after the initial year of implementation is the millage imposed for the year that the special assessment is implemented, adjusted for the change in per capita personal income.

Construction The authorization provided in this Act shall be construed to be general law authorizing a municipality to levy taxes under Article VII, sections 1 and 9, of the Florida Constitution.

Section 2 states that this act shall take effect upon becoming law.

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:

Municipalities will be permitted to levy special assessments for law enforcement services so long as they meet the provisions of this Act.

B. Private Sector Impact:

Individuals that reside in municipalities that levy special assessments for law enforcement services as provided in this Act may be required to pay such special assessments for the law enforcement services they receive.

C. Government Sector Impact:

See Tax/Fee Issues above.

The Department of Revenue has indicated that the current effective date would cause a very small window of opportunity for a municipality to adopt an ordinance to implement this assessment for 2011 tax year and that the Department would need to be granted emergency rule-making authority to prescribe and create the new forms in order for the levy to apply in the 2012 tax year.¹⁷

VI. Technical Deficiencies:

The Department of Revenue has recommended the following amendments:

- On page 3, line 72 of the bill, specifically reference s. 200.065 (5), F.S.
- Change the effective date from “upon becoming law” to January 1, 2013.¹⁸

The Department has further noted that subsection (5) of the newly created s.166.212, F.S., provides that “the authorization provided herein shall be construed to be general law authorizing a municipality to levy taxes under Article VII, sections 1 and 9, of the Florida Constitution.” The Department states that these constitutional provisions provide for the levy of taxes and do not reference the levy of special assessments, which is a term used for levies made under a municipality’s home rule power and not under the power of taxation. The Department states that the term “special assessment” as it is used in this bill will cause confusion and therefore suggests

¹⁷ Department of Revenue, *SB 1234 Fiscal Analysis*, at 3-4 (March 9, 2011) (on file with the Senate Committee on Community Affairs).

¹⁸ *Id.*

removing all references to the term “special assessment” made in the bill.¹⁹ However, the provision of the bill referenced by the Department (lines 77-80) does state “the authorization provided in this section . . .”

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁹ *Id.*