

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SPB 7090

INTRODUCER: Community Affairs Committee

SUBJECT: Local Government Capital Recovery

DATE: April 14, 2015

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stearns	Yeatman		<b>CA Submitted as Committee Bill</b>

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## I. Summary:

SPB 7090 requires any municipality meeting certain requirements regarding delinquent fines or charges to issue a procurement request seeking bids from licensed collection agencies offering a one-time up-front cash payment to the municipality in exchange for the right to collect all of the municipality's delinquent designated revenues as of the date of the invitation to bid.

If the municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. The municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law.

All municipalities must include a discussion of the municipality's delinquent designated revenues and the efforts undertaken by the municipality to collect these revenues as part of the management letter submitted with the annual financial audit report.

## II. Present Situation:

### **Municipal Code Enforcement and Other Fees and Fines**

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.<sup>1</sup> However, the Florida Constitution grants local governments broad home rule authority. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>2</sup> Local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue

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<sup>1</sup> FLA. CONST. art VII, s. 1(a) and 9(a).

<sup>2</sup> FLA. CONST. art VIII, 2(b). See also s. 166.021, F.S.

sources. While local governments may have independent, home-rule authority to levy these fees or assessments, there are also Florida Statutes that authorize specific types of fees.

Code enforcement fees are one example of a specific local fee authorized by state statute. Chapter 162, F.S., outlines a process by which local governments may appoint code enforcement boards to assess fines against property owners as a way to enforce county or municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.<sup>3</sup> Any such fine, including any repair costs incurred to bring the property into compliance with code, may also constitute a lien against the owner of the property and any other real property owned by such owner.<sup>4</sup> However, the statute states that local governments are not prevented by statute from enforcing codes and ordinances by any other means.<sup>5</sup>

### **Municipally-owned Utilities**

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."<sup>6</sup> Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.<sup>7</sup> With respect to public works projects, including water and sewer utility services,<sup>8</sup> municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of ch. 180, F.S.<sup>9</sup> Current law requires municipalities providing telecommunication services to abide by certain requirements.<sup>10</sup> Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).<sup>11</sup> PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.<sup>12</sup> PSC regulation of municipal natural gas utilities is limited to territorial

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<sup>3</sup> Section 162.21, F.S.

<sup>4</sup> Section 162.09, F.S.

<sup>5</sup> Section. 162.21, F.S.

<sup>6</sup> Art. VII, s. 10(d), Fla. Const. See ss. 361.10-361.18, F.S.

<sup>7</sup> Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies"; "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes"; and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

<sup>8</sup> Section 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

<sup>9</sup> Section 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. Section 180.19, F.S.

<sup>10</sup> See s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

<sup>11</sup> See s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

<sup>12</sup> Section 366.04(2), (5), and (6), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction, *available at* <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited April 9, 2015).

issues.<sup>13</sup> Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.<sup>14</sup>

### **Uncollected Fees and Fines**

Many fees and fines imposed by municipalities are difficult to collect in a timely manner. However, because municipalities have the authority to file liens against the property as part of code and ordinance enforcement activities, collection rates over the long run are very high as most properties are likely to be sold at some point in time. Consequently, at any given time, a municipality can have a large balance of uncollected fees and fines.

In a survey of large cities in Florida performed by a private company in 2013, seven cities reported a total of \$421,885,684 in uncollected utility charges and code enforcement, abatement, administrative and other fines backed by property liens. Municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.<sup>15</sup> When done on a contingency basis, fees paid to the collection agency may not exceed 40 percent of the amount originally owed to the municipality.

### **Collection Agencies**

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.<sup>16</sup> As of January 2014, there were 1,344 registered collection agencies in Florida.<sup>17</sup>

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act<sup>18</sup> and the Florida Consumer Collection Practices Act.<sup>19</sup> Both acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney’s fees and costs.

### **Annual Financial Audit Report**

Section 218.32, F.S., requires that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, F.S., submit to the Florida Department of Financial

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<sup>13</sup> Section 366.04(3), F.S. According to the PSC’s most recent “Facts and Figures of the Florida Utility Industry” (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction, available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited April 9, 2015).

<sup>14</sup> Section 367.022(2), F.S.

<sup>15</sup> Section 938.35, F.S.

<sup>16</sup> Section 559.555, F.S.

<sup>17</sup> E-mail from the OFR (received January 9, 2014), on file with the House Insurance & Banking Subcommittee staff.

<sup>18</sup> 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

<sup>19</sup> Part VI of Chapter 559, F.S.

Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.<sup>20</sup> The AFR must include any component units, as defined by generally accepted accounting principles, and each component unit must provide the local governmental entity, within a reasonable time period, financial information necessary to comply with the AFR reporting requirements. Some entities, including municipalities, are required to provide a financial audit report along with its AFR, and must do so within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year.<sup>21</sup> AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and are useful for detailed financial analysis.

### III. Effect of Proposed Changes:

**Section 1** creates s. 166.30, F.S., relating to municipal capital recovery. The bill provides a specified list of local government revenue sources, including:

- “Abatement fines,” which are amounts billed to an owner of real property by a municipality to recover funds expended by the municipality to bring the property into compliance with municipal ordinance by taking some action at the property.
- “Administrative fines,” which are amounts billed to an individual for the violation of a municipal ordinance or code unrelated to real property.
- “Property fines,” which are amounts other than abatement fines which are billed to a property owner due to the property being out of compliance with city ordinance or code, regardless of whether a lien was attached to the property related to such fine.
- “Utility charges,” which are amounts billed to a customer, other than a governmental entity, by a municipally-owned utility for providing utility service.

These revenue sources are collectively referred to as “designated revenues” by the bill. The bill defines a “procurement request” as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a municipality’s procurement policy.

The bill provides that, after October 1, 2015, any municipality that meets at least one of the following criteria must issue a procurement request within 30 days of first meeting the criterion. The criteria are:

- The sum of the municipality’s designated revenues which are more than 90 days delinquent is at least \$10,000,000;
- The sum of the municipality’s designated revenues which are more than 180 days delinquent is at least \$5,000,000; or
- The sum of the municipality’s designated revenues which are more than 270 days delinquent is at least \$1,000,000.

The municipality must seek bids from licensed collection agencies offering an up-front cash payment to the municipality in addition to any portion of the bid based on contingency fees in exchange for the right to collect all of the municipality’s delinquent designated revenues as of

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<sup>20</sup> Pursuant to s. 218.32(1)(c), F.S., regional planning councils; local government finance commissions, boards, or councils; and municipal power corporations created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), F.S., are also required to submit an AFR and audit report to DFS.

<sup>21</sup> Sections 218.32(1)(d)-(e), F.S.

the date the procurement request is issued. However, the municipality is not required to enter into a contractual relationship with any company responding to the procurement request.

If the municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous 12 months, the municipality is not required to issue a procurement request.

If a municipality meets at least one of the above described criteria 1 year after it issues a procurement request, it must issue an additional procurement request. When calculating whether the municipality meets one of the criteria, any amount turned over to a collection agency pursuant to the original procurement request shall be excluded from the calculation.

Any municipality issuing a procurement request pursuant to this section is required to file a copy of all responses to the procurement request with the DFS, which must maintain a copy of all such bids for a period of at least 5 years.

**Section 2** amends s. 218.39, F.S., to require all municipalities to include, as part of the management letter submitted with the AFR, a discussion of the municipality's delinquent designated revenues and the efforts undertaken by the municipality to collect these revenues.

**Section 3** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Cities may suffer some adverse financial impact as a result of the bill's new reporting requirements and the bill's requirement to issue invitations to bid, however those impacts are expected to be insignificant and likely to be absorbed as part of the cities' daily operations.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill may, in certain circumstances, require an insignificant expenditure of funds by a municipality to issue an invitation to bid.

DFS may need to procure additional computer storage space for the electronic files. Cost of this storage is indeterminate because the DFS is not certain how the bids need to be stored or how many will be received.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 218.39 of the Florida Statutes.

This bill creates section 166.28 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.