

**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 Fiscal Policy

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BILL: CS/SB 780

INTRODUCER: Fiscal Policy Committee and Senator Smith

SUBJECT: Special Assessment for Law Enforcement Services

DATE: April 22, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Favorable</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**I. Summary:**

CS/SB 780 authorizes municipalities to levy special assessments to fund law enforcement services. The bill requires a municipality that levies the special assessment to apportion the cost of law enforcement services among parcels in proportion to the benefits received by each parcel, but no more than \$200 per parcel of real property, and to reduce the municipal ad valorem taxes.

The Revenue Estimating Conference has not determined the fiscal impact of the bill.

**II. Present Situation:**

**Ad Valorem Tax**

The Florida Constitution provides that counties, municipalities, 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; and
- 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).<sup>1</sup>

***Municipal Millage***

Municipal millages are composed of four millage rates:

- General millage is the non-voted millage rate set by the municipality's governing body;

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<sup>1</sup> Section 9(a), Art. VII, Florida Constitution.

- Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Art. VII, s. 12 of the Florida Constitution;
- Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Art. VII, s. 9(b) of the Florida Constitution; and
- Dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., added to the municipal millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.<sup>2</sup>

### ***Method of Fixing Millage***

Upon the completion of the assessment of all property, the property appraiser certifies to each taxing authority the taxable value within each taxing authority's jurisdiction.<sup>3</sup> Each taxing authority prepares a tentative budget and proposes a millage rate necessary to fund the tentative budget. 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.<sup>4</sup> 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.<sup>5</sup> 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 the end of said hearing.<sup>6</sup>

### **Special Assessments**

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities.<sup>7</sup> Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services.<sup>8</sup> Counties and municipalities have the authority to levy special assessments based on their home rule powers.<sup>9</sup> 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:

- The assessed property must derive a special benefit from the service provided; and
- The assessment must be apportioned fairly and reasonably among the properties that receive the special benefit.<sup>10</sup>

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<sup>2</sup> Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook*, p. 4 (Dec. 2014) available at <http://edr.state.fl.us/Content/local-government/reports/lgfih14.pdf> (last visited April 15, 2015). See also s. 200.001(2), F.S.

<sup>3</sup> Section 200.065(1), F.S.

<sup>4</sup> Section 200.065(2)(a)1., F.S.

<sup>5</sup> Section 20.21(2)(b), F.S.

<sup>6</sup> Section 200.065(2)(c), F.S.

<sup>7</sup> *Supra* 2 note at 15.

<sup>8</sup> *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).

<sup>9</sup> Section 1 and 9, Art. VII, Florida Constitution. See also s. 125.271(2), F.S.

<sup>10</sup> *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

Local governments may collect these special assessments, or “non-ad valorem assessments,” on the annual ad valorem tax bills. Section 197.3632, F.S., provides procedures for including non-ad valorem assessments on annual ad valorem tax bills.

### ***Supplemental Method of Making Local Improvements***

Independent of a municipality’s authority to impose special assessments under its home rule powers, ch. 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:

- The front or square footage of each parcel of land; or
- 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” indicates that this is not an exclusive list.

### ***Municipal Service Taxing or Benefit Units***

Counties may establish municipal service taxing or benefit units (MSTUs) 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 assessments.<sup>11</sup> 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.<sup>12</sup>

### ***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*.<sup>13</sup>

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

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<sup>11</sup> Section 125.01(1)(q)-(r), F.S.

<sup>12</sup> Section 125.01(5), F.S.

<sup>13</sup> Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998) *citing* 695 So. 2d 667 (Fla. 1997).

relationship between services provided and the benefit to real property.”<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup>

In 2005, the First District Court of Appeal held that special assessments for law enforcement services in an MSTU that benefited leaseholds were a valid special assessment.<sup>17</sup> 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, absent a unique condition of the properties benefited, a municipality currently does not have the authority to levy assessments for general law enforcement services even if the assessment provides a special benefit to the property.

### 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. A municipality may adopt an ordinance levying a special assessment which apportions the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit each parcel receives, but no more than \$200 per parcel.

The municipality must develop an apportionment methodology and reduce its ad valorem millage. The apportionment may be based on the following factors:

- The square footage 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 (this factor may not be a sole or major factor); and
- Any other factor that reasonably may be used to determine the benefit of law enforcement services to a parcel of property.

<sup>14</sup> *Lake County* 695 So. 2d at 669.

<sup>15</sup> *Id.* citing *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969).

<sup>16</sup> *Id.* at 670.

<sup>17</sup> *Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005).

The municipality must reduce its ad valorem millage as follows:

- In the first year the municipality levies the special assessment, it must 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.
- When preparing the notice of proposed property taxes<sup>18</sup> in the first year of the assessment, the governing body of the municipality must calculate the rolled-back millage rate<sup>19</sup> and determine the preliminary proposed millage rate as if there were no law enforcement services assessment. The preliminary proposed millage rate must then be reduced by the amount of the law enforcement services assessment.
- After the first year of the assessment, the municipality's governing body will calculate the millage rate and rolled-back rate for the notice of proposed property taxes, based on the adopted millage rate from the previous year.
- A municipality is not required to reduce its millage, excluding millage approved by a vote of the electors and millage pledged to repay bonds:
  - 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 bill requires the property appraiser to list the special assessment on the notice of property taxes. The bill provides authorization for the Department of Revenue to adopt rules and forms necessary to administer this section.

The authorization provided in the bill is to be construed to be general law authorizing a municipality to levy taxes under Art. VII, ss. 1 and 9 of the Florida Constitution.

**Section 2** provides an effective date of July 1, 2015.

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

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

None.

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

None.

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

None.

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<sup>18</sup> Pursuant to s. 200.069, F.S.

<sup>19</sup> Pursuant to s. 200.065(5), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not determined the fiscal impact of this bill.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Revenue notes that complications may arise because the bill provides no deadline for a municipality to pass its resolution to levy the law enforcement service assessment.<sup>20</sup> If a municipality passed a resolution during the later stages of the TRIM<sup>21</sup> process, the collection of the assessment and adjustment to the millage rate could be problematic. Instead, a specific deadline could be established<sup>22</sup> for a taxing authority to pass a non-ad valorem resolution to levy this assessment. Because the DOR would need to promulgate new forms and make programming changes before municipalities could implement the assessment and change their millage rate, the DOR advises that implementing any law enforcement assessments in 2015 would be difficult.

Additionally, the DOR notes that no consequences are provided for a taxing authority not calculating the rolled-back rate by reducing the amount of law enforcement services.

The DOR is authorized to adopt rules and forms necessary to administer the bill.

**VIII. Statutes Affected:**

This bill creates section 166.212 of the Florida Statutes.

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<sup>20</sup> Department of Revenue, *Senate Bill 780 Legislative Bill Analysis at 6* (Mar. 3, 2015).

<sup>21</sup> TRIM means Truth in Millage

<sup>22</sup> Department of Revenue suggests April 1 for the deadline. *Id.*

**IX. Additional Information:**

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

**CS by Fiscal Policy on April 20, 2015:**

The committee substitute permits a municipality to adopt an ordinance levying a special assessment which apportions the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit received by each parcel, *but no more than \$200 per parcel of real property.*

- B. **Amendments:**

None.