

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 919 Special Assessment for Law Enforcement Services

SPONSOR(S): Pilon and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 780

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	16 Y, 1 N, As CS	Dugan	Langston
2) Rulemaking Oversight & Repeal Subcommittee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Current law permits local governments to use special assessments as a revenue source to fund certain services and maintain capital facilities, as long as the assessment directly benefits the property on which it is levied and it is apportioned fairly and reasonably amongst the beneficiaries of the service. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services. However, based on Florida case law and Attorney General opinion, municipalities generally do not have the authority to levy assessments for general law enforcement services, even if the assessment provides a special benefit to the property.

The bill grants municipalities explicit authorization to levy special assessments for law enforcement services so long as the municipality:

- apportions the costs among parcels proportionately;
- levies ad valorem taxes in the fiscal year immediately preceding the fiscal year in which the special assessment is first collected;
- reduces the municipal ad valorem taxes for the first year in which the municipality levies the special assessment by an amount sufficient to offset the additional revenues from the assessment;
- levies and collects the special assessment pursuant to the statutory procedure in s. 197.3632; and
- does not adopt an ad valorem millage rate in the future that exceeds the rate set in the initial year of the assessment.

The assessment must appear on notices of proposed ad valorem taxes and non-ad valorem assessments required by current law.

The Department of Revenue (DOR) may adopt rules and forms necessary to implement the provisions of the bill.

The Revenue Estimating Conference has not evaluated the bill. The bill will have an indeterminate impact on municipal revenues because levy of the authorized assessment is optional. By design, the bill is expected to have minimal net revenue impacts on any municipality that chooses to levy the new assessment.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ad Valorem Taxes

Article VII, s. 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 Millages

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

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 to be levied for no more than two years 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 property appraiser.⁴ 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.⁵ The DOR 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.⁶

¹ FLA. CONST. art. VII, s. 9.

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

³ The Florida Legislature's Office of Economic and Demographic Research, 2014 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 4 (Dec. 2014), *referencing* s. 200.001(1), F.S.

⁴ See ss. 193.023 and 200.065, F.S.

⁵ See s. 200.065(1)(a)1., F.S.

⁶ s. 200.065(2), F.S.

Special Assessments⁷

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, sewer improvements, fire protection, and rescue services.⁸ 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 property assessed must derive a special benefit from the service provided, and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.⁹

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.¹⁰ 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 article X, section 4 of the Florida Constitution.¹¹

Section 197.3632 Procedure to Create a Non-Ad Valorem Assessment

A municipality which elects to levy the special assessment may do so through the adoption of a resolution at a public hearing pursuant to the requirements in s. 197.3632. The municipality must publish notice of its intent to use the uniform method for collecting such assessment weekly in a newspaper of general circulation within that county for four consecutive weeks preceding the hearing.¹² If the resolution is adopted, the local governing board shall send a copy of it by United States mail to the property appraiser, the tax collector, and the DOR.¹³

In addition, s. 197.3632(4)(a) requires a municipality levying a non-ad valorem assessment for the first time to adopt the non-ad valorem assessment roll at a public hearing between January 1 and September 15. At least 20 days prior to the public hearing, the municipality shall notice the hearing by first-class United States mail and by publication in a newspaper generally circulated within that county.¹⁴ The notice by mail shall be sent to each person owning property subject to the assessment.¹⁵ At the public hearing, the local governing board shall receive the written objections and shall hear testimony from all interested persons.¹⁶ If the local governing board adopts the non-ad valorem assessment roll, it shall specify the unit of measurement for the assessment and the amount of the assessment.¹⁷ By September 15 of each year, the chair of the local governing board shall certify the non-ad valorem assessment roll to the tax collector.¹⁸

⁷ The Florida Legislature’s Office of Economic and Demographic Research, 2014 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Dec. 2014).

⁸ 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).

⁹ *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

¹⁰ Nabors, Giblin and Nickerson, *Primer on Home Rule & Local Government Revenue Sources*, at 35 (June 2008).

¹¹ 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 ...”

¹² s. 197.3632(3)(a), F.S.

¹³ s. 197.3632(3)(a), F.S.

¹⁴ s. 197.3632(4)(b), F.S.

¹⁵ s. 197.3632(4)(b), F.S.

¹⁶ s. 197.3632(4)(c), F.S.

¹⁷ s. 197.3632(4)(c), F.S.

¹⁸ s. 197.3632(5)(a), F.S.

Supplemental Method of Making Local Improvements

In addition to 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:

- 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 (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.¹⁹ 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.²⁰

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*.²¹ 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."²² 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."²³ 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.²⁴

¹⁹ s. 125.01(1)(q)-(r), F.S.

²⁰ s. 125.01(5), F.S.

²¹ Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998) citing 695 So. 2d 667 (Fla. 1997).

²² *Lake County* 695 So. 2d at 669.

²³ *Lake County* 695 So. 2d at 669 (citing *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969)).

²⁴ *Lake County* 695 So. 2d at 670.

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.²⁵ 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.

Proposed Changes

The bill authorizes a municipality to levy a special assessment to fund the costs of providing law enforcement services so long as the municipality:

- apportions the costs among parcels proportionately;
- levies ad valorem taxes in the fiscal year immediately preceding the fiscal year in which the special assessment is first collected;
- reduces the municipal ad valorem taxes for the first year in which the municipality levies the special assessment by an amount sufficient to offset the additional revenues from the assessment;
- levies and collects the special assessment pursuant to the statutory procedure in s. 197.3632; and
- does not adopt an ad valorem millage rate in the future that exceeds the rate set in the initial year of the assessment.

Apportionment Methodology

The bill also provides that the municipality must have an apportionment methodology which allocates the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit each parcel receives. The apportionment may consider 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 (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.

Ad Valorem Reduction Requirements

Further, the bill provides that the municipality must reduce its ad valorem millage as follows:

- In the first year the municipality levies the special assessment, the municipality must reduce its 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.
- The special assessment revenues cannot be greater than an amount that would result in a proposed millage rate of zero for the first year of the assessment

²⁵ *Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005).

- When preparing notice of proposed property taxes²⁶ in the first year of the assessment, the governing body of the municipality calculates the rolled-back millage rate²⁷ and determines the preliminary proposed millage rate as if there were no law enforcement services assessment. The preliminary proposed millage rate shall 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.
- However, a municipality's authority to levy the special assessment is terminated beginning in any fiscal year for which the municipality's final adopted millage rate exceeds the proposed millage rate for the first year of the assessment.

The bill requires the property appraiser to list the special assessment on the notice of proposed property taxes pursuant to ss. 200.065 and 200.069, Florida Statutes.

The bill provides authorization for the DOR to adopt rules and forms necessary to administer this section.

The bill provides that the levy of the law enforcement services special assessment is to be construed as being authorized by general law under article VII, sections 1 and 9 of the Florida Constitution, relating to local government authority to levy taxes.

B. SECTION DIRECTORY:

Section 1. Creates s. 166.212, F.S., to establish the law enforcement services special assessment that a municipality may levy to fund costs of providing law enforcement services if the municipality meets certain requirements; authorizes the DOR to adopt rules and forms necessary to implement this bill;

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not evaluated the bill. The bill will have an indeterminate impact on municipal revenues because levy of the authorized assessment is optional. By design, the bill is expected to have minimal net revenue impacts on any municipality that chooses to levy the new assessment.

2. Expenditures:

²⁶ Pursuant to s. 200.069, F.S.

²⁷ Pursuant to s. 200.065(5), F.S.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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, which may or may not be fully offset by property tax reductions required by the bill, depending on each taxpayer's ad valorem tax circumstances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DOR may adopt rules and forms necessary to implement the provisions of the bill.

DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 31, 2015, the Finance & Tax Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- expanded the requirements a municipality must meet in order to collect the law enforcement special assessment, including levying and collecting the assessment pursuant to s. 197.3632, F.S. (lines 28-34); and
- removed the specific percentage limitations on the reduction of property tax (lines 86-92), and replaced them with the two limitation:
 - the special assessment revenues shall not be greater than an amount that would result in a proposed millage rate of zero for the first year of the assessment; and
 - a municipality's authority to levy the special assessment is terminated beginning in any fiscal year for which the municipality's final adopted millage rate exceeds the proposed millage rate for the first year of the assessment.

The analysis is written to the bill as amended.