

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 Committee on Community Affairs

BILL: CS/SB 264

INTRODUCER: Community Affairs Committee and Senator Smith

SUBJECT: Special Assessment for Law Enforcement Services

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.			FT	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 264 authorizes the governing body of a municipality to levy a special assessment for law enforcement services if the governing body of the municipality:

- Apportions the costs of the special assessment among parcels of real property in proportion to the benefit each parcel receives;
- Levies the special assessment at a rate of no more than \$200 per parcel; and
- For the first year of the special assessment levy, reduces the municipal ad valorem millage by an amount equal to the increased revenue that the governing body expects to collect from the special assessment.

The levy must be approved by a majority vote of the electors of the municipality voting in a referendum.

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).¹

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;
- 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.²

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.³ 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.⁴ 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.⁵ 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.⁶

Special Assessments

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.⁷ 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.

¹ Fla. Const. art. VII, s. 9.

² Office of Economic and Demographic Research, *2015 Local Government Financial Information Handbook*, p. 4 (Dec. 2015) available at <http://edr.state.fl.us/Content/local-government/reports/lgfi15.pdf> (last visited Feb. 11, 2016). See also s. 200.001(2), F.S.

³ Section 200.065(1), F.S.

⁴ Section 200.065(2)(a)1., F.S.

⁵ Section 20.21(2)(b), F.S.

⁶ Section 200.065(2)(c), F.S.

⁷ See *Harris v. Wilson*, 693 So.2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 4th DCA 1970); *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).

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

- The property assessed must derive a special benefit from the service provided; and
- The assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.⁸

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

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:

- The front or square footage of each parcel of land; or
- An alternative methodology, as 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.

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.⁹ 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.¹⁰

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 (Court) decision, *Lake County v. Water Oak Management*.¹¹ In *Lake County*, the Fifth District Court of Appeal struck down a special assessment for fire

⁸ *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla. 1992).

⁹ Section 125.01(1)(q)-(r), F.S.

¹⁰ Section 125.01(5), F.S.

¹¹ *Op. Atty. Gen. Fla. 98-57* (Sept. 18, 1998) *citing* 695 So.2d 667 (Fla. 1997).

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.”¹² 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.”¹³ 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.¹⁴

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.¹⁵ 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. 166.225, F.S., to authorize the governing body of a municipality to levy a special assessment to fund the costs of providing law enforcement services if the governing body of the municipality:

- Adopts an ordinance, conditioned to take effect only upon approval by a majority vote of the electors of the municipality voting in a referendum, levying the law enforcement services special assessment which apportions the costs among parcels of real property in the municipality in reasonable proportion to the benefit each parcel receives;
- Levies at a rate of no more than \$200 per parcel; and

¹² *Lake County* 695 So.2d at 669.

¹³ *Lake County* 695 So.2d at 669 (citing *Fire Dist. No. 1 v. Jenkins*, 221 So.2d 740, 741 (Fla. 1969)).

¹⁴ *Id.* at 670.

¹⁵ *Quietwater Entertainment, Inc. v. Escambia County*, 890 So.2d 525 (Fla. 1st DCA 2005).

- Reduces the municipal ad valorem taxes for the first year the governing body of the municipality levies the special assessment by an amount sufficient to offset the additional revenues it expects to receive from the assessment.

The bill also provides that the methodology used to determine the benefit that a parcel of real property receives from law enforcement services may be based on the following factors:

- The square footage of structures on the parcel.
- The location of the parcel.
- The use of the parcel.
- The projected amount of time that the municipal law enforcement agency will spend serving and protecting the property, grouped by neighborhood, zone, or category of use;
- The value of the real property served or protected, including the value of each structure on the parcel and the structure's contents. However, this factor may not be used as the sole factor or as a major factor in determining the benefit of law enforcement services to a parcel of real property.
- Any other factor that reasonably may be used to determine the benefit of law enforcement services to a parcel of property.

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 taxes¹⁶ in the first year of the assessment, the governing body of the municipality must calculate the rolled-back millage rate¹⁷ 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, 2016.

¹⁶ Pursuant to s. 200.069, F.S.

¹⁷ Pursuant to s. 200.065(5), F.S.

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.

B. Private Sector Impact:

Individuals that reside in municipalities that levy special assessments for law enforcement services may be required to pay special assessments for the law enforcement services in proportion to the benefit they receive. However, the cost may be offset by corresponding reductions in ad valorem property taxes, depending on the circumstances of the taxpayer.

C. Government Sector Impact:

Municipalities may levy special assessments for law enforcement services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue (DOR) 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.¹⁸ If a municipality passed a resolution during the later stages of the TRIM¹⁹ process, the collection of the assessment and adjustment to the millage rate could be problematic. Instead, a specific deadline could be established²⁰ 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

¹⁸ Department of Revenue, *Senate Bill 264 Legislative Bill Analysis at 4* (Sept. 30, 2015).

¹⁹ TRIM means Truth in Millage

²⁰ Department of Revenue suggests April 1 for the deadline. *Id* at 5.

their millage rate, the DOR advises that implementing any law enforcement assessments in 2016 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 substantially amends section 166.225 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on February 16, 2016:

Requires that the levy be approved by a majority vote of the electors of the municipality voting in a referendum before taking effect.

- B. **Amendments:**

None.