HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 789 Local Government Finance
SPONSOR(S): Finance and Tax Committee; Pilon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	14 Y, 0 N, As CS	Dugan	Langston
2) State Affairs Committee		Moore, R.	Camechis

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, which allows them to 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 sources. In addition, the constitution authorizes local governments to impose ad valorem and other taxes if authorized by general law.

The bill creates s. 166.225, F.S., to grant municipalities the explicit authorization to levy special assessments for law enforcement services if the municipality:

- Apportions the costs of law enforcement services among parcels of real property in reasonable proportion to the benefit received by each parcel;
- Reduces the municipal ad valorem taxes for the first year of the special assessment levy to offset the additional revenues from the assessment;
- Levies and collects the special assessment pursuant to the statutory procedure in s. 197.3632, F.S.; and
- Does not adopt an ad valorem millage rate in the future that exceeds the rate set in the first year of the assessment.

While the bill refers to the new levy as a "special assessment," the bill explicitly states that the levy of the law enforcement services special assessment must be construed as being authorized by general law under ss. 1 and 9, Art. VII, of the State Constitution. Those constitutional provisions authorize local governments to levy ad valorem and other taxes if authorized by general law enacted by the Legislature. Therefore, the "special assessment" authorized by this bill must be considered a new tax authorized by general law, rather than a special assessment.

The bill also creates s. 166.30, F.S., to create an enforcement process for municipalities to recover delinquent revenue sources. The bill provides that, beginning October 1, 2016, any municipality that has designated delinquent revenues that meet at least one the following criteria must issue a procurement request to a collection agency within 30 days of first meeting the criterion. The criteria are:

- Total designated revenues are more than 90 days delinquent and at least $10,000,000;
- Total designated revenues are more than 180 days delinquent and at least $5,000,000; or
- Total designated revenues are more than 270 days delinquent and at least $1,000,000.

A municipality must issue an additional procurement request if it still meets the above criterion one year after issuing a procurement request, exclusive of any amount turned over to a collection agency in response to the first procurement request. However, if a municipality's delinquent designated revenues make up less than 20 percent of its total designated revenues billed during the previous year it is not required to issue a procurement request. Additionally, a 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.

The Revenue Estimating Conference has not reviewed this bill. The bill may require some additional local government expenditures related to issuance of procurement requests, but that provision might improve certain local government revenue collections. The law enforcement special assessment provision will likely 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Government Finance Background

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.[1] 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.[2] Non-charter county governments are granted powers of self-government pursuant to general or special law,[3] and charter counties are granted all powers of self-government that do not conflict with general or special law.[4] 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 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.[5]

Law Enforcement Special Assessment (Section 1 of the bill)

Current Situation

Special Assessments – Generally

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 to real property. Examples of special assessments include fees for garbage disposal,[6] sewer improvements,[7] fire protection services,[8] and stormwater management services,[9] but do not include emergency medical services,[10] general law enforcement activities, the provision of courts, or indigent health care.[11] Counties and municipalities have the authority to levy special assessments based on their home rule powers.[12] 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 (the special benefit test), and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit (the apportionment test).[13]

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[1] Fla. Const. art. VII, §§ 1(a) and 9(a).
[2] Fla. Const. art. VIII, §2(b). *See also* s. 166.021, F.S.
[3] Fla. Const. art. VIII, §1(f). *See also* ch. 125, F.S.
[4] Fla. Const. art. VIII, §1(g).
[5] The Florida Legislature's Office of Economic and Demographic Research, 2014 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Dec. 2014).
[6] *Harris v. Wilson*, 693 So.2d 945 (Fla. 1997); *Lake County v. Water Oak Mgt. Corp.,* 695 So.2d 667 (Fla. 1997).
[7] *City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 4th DCA 1970).
[8] *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002); *Lake County v. Water Oak Mgt. Corp.,* 695 So.2d 667 (Fla. 1997); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So.2d 380 (Fla. 1973); *Fire Dist. No. 1 v. Jenkins*, 221 So.2d 740 (Fla. 1969).
[9] *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So.2d 180 (Fla. 1996).
[10] *City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002); s. 401.107(3), F.S., defines "emergency medical services" as the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.
[11] *Lake County v. Water Oak Mgt. Corp.,* 695 So.2d 667 (Fla. 1997).
[12] *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).
[13] *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla. 1992); *Lake County v. Water Oak Mgt. Corp.,* 695 So.2d 667 (Fla. 1997).

Chapter 125, F.S., allows counties to establish municipal service taxing or benefit units 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.[14] 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.[15]

Section 197.3632, F.S., Procedure to Create a Non-Ad Valorem Assessment

Special assessments are commonly collected on the annual ad valorem tax bills, characterized as a "non-ad valorem assessments" under the statutory procedures in ch. 197, F.S.[16] 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.[17]

A municipality that is authorized to impose a non-ad valorem assessment and elects to use the uniform method of collecting the assessment for the first time as authorized by s. 197.3632, F.S.,[18] must adopt a resolution at a public hearing prior to January 1 or, if the property appraiser, tax collector, and local government agree, March 1.[19] The resolution must clearly state its intent to use the uniform method of collecting the assessment.[20] 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.[21] The resolution must state the need for the levy[22] and a legal description of the boundaries of the real property subject to the levy.[23] If the resolution is adopted, the local governing board must send a copy of it by United States mail to the property appraiser, the tax collector, and the Department of Revenue (DOR) by January 10 or, if the property appraiser, tax collector, and local government agree, March 10.[24]

In addition, s. 197.3632(4)(a), F.S., requires a municipality levying a non-ad valorem assessment for the first time to adopt the non-ad valorem assessment roll[25] at a public hearing between January 1 and September 15. At least 20 days prior to the public hearing, the municipality must notice the hearing by first-class United States mail and by publication in a newspaper generally circulated within that county.[26] The notice by mail must be sent to each person owning property subject to the assessment.[27] However, notice by mail is not required if notice by mail is otherwise required by general or special law governing a taxing authority and such notice is served at least 30 days before the hearing on adoption of the new non-ad valorem assessment roll.[28] At the public hearing, the local governing board must receive the written objections and hear testimony from all interested persons.[29] If the local governing board adopts the non-ad valorem assessment roll, it must specify the unit of measurement for the assessment and the amount of

[14] s. 125.01(1)(q)-(r), F.S.
[15] s. 125.01(5), F.S.
[16] Nabors, Giblin and Nickerson, *Primer on Home Rule & Local Government Revenue Sources*, at 35 (June 2008).
[17] 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 …"
[18] s. 197.3632, F.S., provides for the uniform method for the levy, collection, and enforcement on non-ad valorem assessments.
[19] s. 197.3632(3)(a), F.S.
[20] *Id.*
[21] *Id.*
[22] s. 197.3632(1)(a), F.S., defines "levy" as the imposition of a non-ad valorem assessment, stated in terms of rates, against all appropriately located property by a governmental body authorized to impose non-ad valorem assessments.
[23] *Id.*
[24] *Id.*
[25] s. 197.3632(1)(e), F.S., defines "non-ad valorem assessment roll" as the roll prepared by a local government and certified by the tax collector for collection.
[26] s. 197.3632(4)(b), F.S.
[27] *Id.*
[28] *Id.*
[29] s. 197.3632(4)(c), F.S.

the assessment.[30] By September 15 of each year, the chair of the local governing board must certify the non-ad valorem assessment roll to the tax collector.[31]

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,[32] garbage disposal, sewer improvement, street improvement and parking facilities. The governing body of a municipality may apportion costs of the 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.[33]

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.[34]

Special Assessments for Law Enforcement Services

However, 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 decision of the Supreme Court of Florida in *Lake County v. Water Oak Management Corporation*."[35] 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, therefore, failed the special benefit test.

On appeal, the Florida Supreme Court stated that in determining whether a special benefit is conferred on real property by the services, "the test is not whether the services confer a 'unique' benefit or are different in type or degree from the benefit provided to the community as a whole; rather the test is whether there is a 'logical relationship' between the services provided and the benefit to real property."[36] The Court found that while fire protection services are generally available to the community as a whole, the greatest benefit is to owners of real property.[37] As previously concluded in a 1969 Florida Supreme Court decision, "fire protection services do, at a minimum, specifically benefit real property by providing for lower insurance premiums and enhancing the value of the property."[38] The Court further stated 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. Thus, such services cannot be the subject of a special assessment because there is no logical relationship between services provided and the benefit to real property.[39]

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[30] *Id.*

[31] s. 197.3632(5)(a), F.S.

[32] *But see City of North Lauderdale v. SMM Properties, Inc.*, 825 So.2d 343 (Fla. 2002) (the City's special assessment for an integrated fire rescue program for fire suppression and first-response medical aid was valid, but was not valid for emergency medical services).

[33] s. 170.201(1), F.S.

[34] *Argosy Ltd. v. Hennigan*, 404 F.2d 14 (5th Cir. 1968); Op. Atty. Gen. Fla. 84-45 (1984).

[35] Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998), available at http://www.myfloridalegal.com/ago.nsf/Opinions/AE443DFD94CCF97D85256683006867D2 (last visited Feb. 18, 2106); *citing Lake County v. Water Oak Mgt. Corp.,* 695 So.2d 667 (Fla. 1997).

[36] *Lake County v. Water Oak Mgt. Corp.*, 695 So.2d 667, 669 (*citing Whisnant v. Stringfellow*, 50 So.2d 885 (Fla. 1951); *Crowder v. Phillips*, 146 Fla. 440, 1 So.2d 629 (1941)).

[37] *Lake County*, 695 So.2d 669.

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

[39] *Lake County*, 695 So.2d 670; Similarly, the Court, in *City of North Lauderdale*, held that emergency medical services did not provide any special benefit to property, reasoning that "[a]lthough emergency medical services may provide a sense of security to individuals, neither the service nor the sense of security is provided to the property itself. *City of North Lauderdale*, 825 So.2d 350.

In 2005, the First District Court of Appeal held that special assessments for law enforcement services on certain leaseholds were a valid special assessment.[40] In that case, the leaseholds subject to the special assessment were not subject to ad valorem taxation, and 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."[41] For these reasons, the court held that the "unique nature and needs of the subject leaseholds" made the special assessments valid.[42]

Based on these court decisions, it would appear that, absent a unique benefit to real property provided by law enforcement services, local governments may not levy special assessments for general law enforcement services.

Proposed Changes

Section 1 of the bill authorizes a municipality to levy a law enforcement services special assessment to fund the costs of providing law enforcement services if the municipality:

- Apportions the costs of law enforcement services among parcels of real property in reasonable proportion to the benefit received by each parcel;
- 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 the municipality levies the special assessment by an amount sufficient to offset the additional revenues from the assessment;
- Levies and collects the special assessment under the uniform method for levying and collecting non-ad valorem assessments in s. 197.3632, F.S; and
- Does not adopt an ad valorem millage rate in the future that exceeds the rate set in the initial year of the assessment.

While the bill refers to the new levy as a "special assessment," the bill explicitly states that the levy of the law enforcement services special assessment must be construed as being authorized by general law under ss. 1 and 9, Art. VII, of the State Constitution. Those constitutional provisions authorize local governments to levy ad valorem and other taxes if authorized by general law enacted by the Legislature. Therefore, the "special assessment" authorized by this bill must be considered a new tax authorized by general law, rather than a special assessment.

<u>Apportionment Methodology</u>

Section 1 of the bill also provides that the municipality must have an apportionment methodology that 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 serving, and protecting the parcel, grouped by neighborhood, zone, or category of use, which may include the projected amount of time that will be spent responding to calls for law enforcement services and the projected amount of time law enforcement officers will spend patrolling or regulating traffic on the streets that provide access to the parcel; and
- Any other factor that reasonably may be used to determine the benefit of law enforcement services to a parcel of real property.

<u>Ad Valorem Reduction Requirements</u>

Further, section 1 of 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, calculated as if there were no law enforcement services special assessment, by

[40] *Quietwater Entertainment, Inc. v. Escambia County*, 890 So.2d 525 (Fla. 1st DCA 2005).
[41] *Quietwater Entertainment, Inc.*, 890 So.2d 527.
[42] *Id.*

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 notice of proposed property taxes[43] in the first year of the assessment, the municipality must calculate the rolled-back millage rate[44] and determine the preliminary proposed millage rate as if there were no law enforcement services special assessment. The governing body must then adopt the proposed law enforcement services special assessment and determine the equivalent millage rate. The preliminary proposed millage rate must then be reduced by the amount of the law enforcement services assessment equivalent millage rate and the resulting millage rate reported to the property appraiser, together with the amount of the special assessment, pursuant to notice requirements of ss. 200.065, and 200.069, F.S.;
- The property appraiser must list the special assessment on the notice of proposed property taxes as a non-ad valorem 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, and must be based on the adopted millage rate from the previous year; and
- 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.

The bill provides that 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 authorizes DOR to adopt rules and forms necessary to administer s. 166.225, F.S.

Capital Recovery – Uncollected Municipal Revenue Sources (Sections 2 and 3 of the bill)

Current Situation

Municipal Code Enforcement & Other Fees & Fines
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 a municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.[45] 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.[46] However, local governments are not prevented by statute from enforcing codes and ordinances by any other means.[47]

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."[48] Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.[49] With respect to public works projects, including

[43] Pursuant to s. 200.069, F.S., notice of proposed property taxes and non-ad valorem assessments.
[44] Pursuant to s. 200.065(5), F.S., method of mixing millage.
[45] s. 162.21, F.S.
[46] s. 162.09, F.S.
[47] s. 162.21, F.S.
[48] Fla. Const. art. VII, s. 10(d). *See* ss. 361.10-361.18, F.S.
[49] 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.

water and sewer utility services,[50] 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.[51] Current law requires municipalities providing telecommunication services to abide by certain requirements.[52] Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).[53] PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.[54] PSC regulation of municipal natural gas utilities is limited to territorial issues.[55] Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.[56]

Uncollected Fees & Fines

Many fees and fines imposed by counties and 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.[57]

Collection Agencies

Municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.[58] 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.

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.[59] As of June 30, 2015, there were 1,365 registered collection agencies in Florida.[60]

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act[61] and the Florida Consumer Collection Practices Act.[62] 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.

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[50] s. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

[51] s. 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. See s. 180.19, F.S.

[52] *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).

[53] *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).

[54] ss. 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 02/5/2016).

[55] s. 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 02/5/2016).

[56] s. 367.022(2), F.S.

[57] On file with the State Affairs Committee.

[58] s. 938.35, F.S.

[59] s. 559.555, F.S.

[60] Telephone conversation with OFR (October 29, 2015).

[61] 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).

[62] Part VI of Chapter 559, F.S.

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 Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.[63] 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.[64] AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and is useful for detailed financial analysis.

Proposed Changes

Section 2 of the bill creates s. 166.30, F.S., relating to municipal capital recovery. The bill defines certain 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 a municipal ordinance by taking some action at the property, regardless of whether a lien was attached to the property related to the fine;
- Administrative fines, which are amounts, other than abatement or property fines, 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, that are billed to a property owner due to the property being out of compliance with an ordinance or code, regardless of whether a lien was attached to the property related to the fine; and
- Utility charges, which are amounts billed to a customer, other than a governmental entity,[65] by a municipally-owned utility for providing utility service.

These revenue sources are collectively defined as “designated revenues” by the bill. The bill defines “procurement request” as an invitation to bid, invitation to negotiate, or request for proposals issued pursuant to a municipality’s procurement policy. The bill defines “delinquent” as amounts unpaid after the due date listed on the original bill of designated revenues, regardless of whether the municipality has contracted with a collection agency pursuant to s. 938.35, F.S.[66] for collection.

Section 2 of the bill also provides that, beginning October 1, 2016, any municipality that meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The municipality must seek bids from registered consumer collection agencies.[67] The criteria are:

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

[63] 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.
[64] ss. 218.32(1)(d)-(e), F.S.
[65] As defined in s. 768.295, F.S., which provides that a “governmental entity” or “government entity” means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.
[66] s. 938.35, F.S., provides for the collection of court-related financial obligations.
[67] The consumer collection agencies must be registered pursuant to s. 559.553, F.S.

If a municipality issues a procurement request, it must reevaluate the amount of its delinquent designated revenues one year after making the request, exclusive of any delinquent designated revenues that a collection agency has contracted to collect in response to the procurement request. If, at that time, the municipality continues to meet any of the three criteria, it must issue an additional procurement request.

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

A municipality is not required to enter into a contractual relationship with any consumer collection agency responding to a procurement request, and may continue to collect delinquent designated revenues by any method allowed by law.

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

Section 3 of the bill requires all municipalities to include, as part of the management letter submitted with the annual financial audit report, a discussion of the municipality's delinquent designated revenues and the efforts undertaken by the municipality to collect these revenues.

B. SECTION DIRECTORY:

Section 1. Creates section 166.225, F.S., to allow a municipal law enforcement special assessment.

Section 2. Creates section 166.30, F.S., specifying the requirements for municipal capital recovery.

Section 3. Amends section 218.39, F.S. to require a discussion of capital recovery as part of the management letter accompanying the annual financial auditing report.

Section 4. Provides an effective date of July 1, 2016.

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: See FISCAL COMMENTS below.

2. Expenditures: The bill may, in certain circumstances, require an expenditure of funds by a municipality to issue a procurement request.

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: The bill may result in improved revenue collections if it encourages additional local government revenue collection efforts.

The law enforcement special assessment provision will likely 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities, in some circumstances, to issue a procurement request, which may require the expenditure of funds; however, an exemption may apply, as the expenditure of funds to issue an invitation to bid is most likely insignificant.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill provides authorization for the DOR to adopt rules and forms necessary to administer provisions of this bill related to the law enforcement special assessment.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR Comments:

The bill does not provide a deadline for municipalities to pass a resolution to levy the law enforcement service assessment. The statutory deadlines in the bill would make it difficult to collect the assessment and make the proper adjustments to the millage rate if a municipality passed a resolution during the later stages of the Truth in Millage (TRIM) process. Implementing any law enforcement assessments in 2016 would be difficult because the annual TRIM process will be underway by the bill's July 1, 2016, effective date.

In addition, before a municipality could implement the assessment and change the millage rate, DOR will need to promulgate at least one new form and make changes to the eTRIM system's programming. The short deadline for programming information systems to include the new assessment, testing, etc., would compound these problems.

DOR suggests establishing a specific deadline, such as April 1, for a taxing authority to pass a non-ad valorem resolution to levy this assessment. The TRIM process begins June 1, with the property appraiser giving the taxing authority an estimate of value.

The bill does not state the consequences if the taxing authority does not calculate the rolled-back rate by reducing the amount of law enforcement services. Lines 75 through 80 are confusing because they state that the TRIM notice will show a rolled-back rate calculated under s. 200.065(5), F.S. That statute refers to calculating a rolled-back rate for maximum millage and the voting requirements the taxing authority's governing body must meet to levy a millage rate. Form DR-420 (Certification of Taxable Value) has the rolled-back rate that appears on the TRIM notice.

DOR further suggests that, because the taxing authorities would have severe difficulties in meeting the statutory deadlines that the bill creates if applied to the 2016 tax year, the changes should first be applied to the 2017 tax year.[68]

[68] DOR's analysis of HB 789 (2016), on file with the State Affairs Committee.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Finance & Tax Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute added sections 2 and 3 to the bill, regarding municipal capital recovery and reporting requirements.

This analysis is drafted to the committee substitute as approved by the Finance & Tax Committee.