

STORAGE NAME: h1127a.frc.doc
DATE: April 24, 2001

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: HB 1127
RELATING TO: Non-Ad Valorem Assessments
SPONSOR(S): Representative Andrews
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
- (2) FISCAL POLICY AND RESOURCES YEAS 10 NAYS 0
- (3) FISCAL RESPONSIBILITY COUNCIL YEAS 19 NAYS 0
- (4)
- (5)

I. SUMMARY:

This bill amends statutory provisions relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments. The bill defines "levied for the first time," prescribes requirements relating to the circumstances under which a local government must adopt a non-ad valorem assessment roll at a public hearing and to the contents of the notice that must be given before the hearing is held. Under the provisions of this bill, the local government may increase or decrease the rate of assessment without providing taxpayers with actual or constructive notice and without holding public meetings on the change in the assessment rate.

The bill has no fiscal impact on state government. The bill may reduce the costs incurred by local governments in administering non-ad valorem assessments.

On April 5, 2001, the Committee on Local Government & Veterans Affairs considered HB 1127, adopted 1 amendment, and passed the bill. The amendment, which is traveling with the bill, is explained in this bill analysis. (See section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES".)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

In that this bill will make it easier for local governments to raise assessment rates, as they will no longer be required to provide taxpayers with actual or constructive notice or to hold public hearings, it is likely to increase the number of local governments which increase said rates.

B. PRESENT SITUATION:

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as only those assessments that are not based on millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution. Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There 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. . ."

Section 197.3631, F.S., authorizes local governments to collect non-ad valorem assessments by one of two methods -- either the uniform method set forth in ss. 197.3632 and 197.3635, F.S., or "any alternative method which is authorized by law." Section 197.3632(3), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need for the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

Paragraph (a) of s.197.3632(4), F.S., requires a local government adopt a non-ad valorem assessment roll at a public hearing held between June 1 and September 15 if:

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Paragraph (b) of s. 197.3632(4), F.S., requires that at least 20 days prior to the public hearing, the local government must notice the hearing by mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice must be sent to each person owning property subject to the assessment and must include, in part, the following information:

- the total amount to be levied against each parcel;
- the number of such units contained within each parcel; and
- the total revenue the local government will collect by the assessment.

However, notice by mail is not required if notice by mail is otherwise required by general or special law governing the taxing authority and the notice is served at least 30 days prior to the authority's public hearing. The published notice must contain at least the following information:

- the name of the local governing board;
- a geographic depiction of the property subject to the assessment;
- the proposed schedule of the assessment;
- the fact that the assessment will be collected by the tax collector; and
- a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Subsection (6) requires that if the non-ad valorem assessment is to be collected for a period of more than 1 year or is to be amortized over a number of years, the local governing board must so specify and is not required to annually adopt the non-ad valorem assessment roll.

In 1999, the 4th DCA ruled that the City of Port St. Lucie failed to comply with the provisions in s. 197.3632(4), F.S., when it increased the assessment and changed the formula for determining the storm-water utility assessment against property in its jurisdiction. *Atlantic Gulf Communities v. City of Port St. Lucie*, 764 So.2d 14 (Fla. App. 4 Dist. 1999) While proper notice and public hearing were made in the initial year of the assessment, increases and changes in subsequent years were not noticed and considered in public hearings. The court ruled that each time the stormwater fee was increased or the rate was modified, such new assessment was "levied for the first time" within the meaning of s. 197.3632(4)(a), F.S., thereby triggering the notice and hearing provisions of the statute. Furthermore, the court stated that the contents of the notice of public hearing required by s. 197.3632(4)(b), F.S., support this reading of the statute.

C. EFFECT OF PROPOSED CHANGES:

This bill amends statutory provisions relating to the uniform method for the levy, collection, and enforcement of non-ad valorem assessments to change provisions relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments. The bill defines "levied for the first time," prescribes requirements relating to the circumstances under which a local government must adopt a non-ad valorem assessment roll at a public hearing and to the contents of the notice that must be given before the hearing is held. Under the provisions of this bill, the local government may increase or decrease the rate of assessment without providing taxpayers with

actual or constructive notice and without holding public meetings on the change in the assessment rate.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 197.3632, F.S., is amended to change provisions relating to public hearing and notice requirements for local governments imposing non-ad valorem assessments.

Subparagraph 1. of s.197.3632(4)(a), F.S., is amended to specify that the term "levied for the first time" means "imposed for the first time by county or municipal ordinance or special district resolution, but the term does not include a change in the assessment rate alone." Subparagraph 4. is amended to clarify that a public hearing is required when there is a "substantial" change in the purpose for such assessment or "a material change" in the use of the revenue generated by such assessment.

Paragraph (b) of s. 197.3632(4), F.S., is amended to clarify that notices sent prior to the public hearing adopting a non-ad valorem assessment roll be sent to each person "as shown on the current tax roll" owning property subject to the assessment. In addition, the information required to be included in the notice is changed. The requirement that the notice contain the total amount to be levied against each parcel is expanded to qualify that the notice contain the total amount "during the initial assessment year." The requirements that the notice contain the number of such units contained within each parcel and the total revenue the local government will collect by the assessment are deleted. The notice is expanded to include the following:

- Whether the assessment will be levied for more than 1 year;
- The length of time for which the assessment will be levied; and
- Whether the assessment may be increased in the future.

The notice by mail exemption in paragraph (b) is expanded to allow the TRIM notice provided for in s. 200.069, F.S., to suffice as proper notice.

The published notice requirements in paragraph (b) are amended to delete the requirement for a geographic depiction of the property subject to the assessment, and to qualify that the proposed schedule of the assessment is a schedule of "any debt repayment relating to" the assessment.

Subsection (6) is amended to require that if the non-ad valorem assessment is to be collected for a period of more than 1 year or is to be amortized over a number of years, the local governing board must so specify "in the initial notice" and is not required to "provide or publish the annual notice that would otherwise be required by subsection (4) or" annually adopt the non-ad valorem assessment roll.

Section 2. An effective date of July 1, 2001, is provided.

III. 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:

None.

2. Expenditures:

This bill may reduce the costs incurred by local governments in administering non-ad valorem assessments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill has no direct fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of countries and municipalities to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 2001, the Committee on Local Government & Veterans Affairs considered HB 1099, adopted 1 amendment, and passed the bill. The amendment, which is traveling with the bill, deletes a change made in the bill that amends the notice requirement for imposition of special assessments. The proposed change qualified that the proposed schedule of assessment required in the notice was a schedule of "any debt repayment relating to" the assessment. On page 3, lines 7-8, the amendment deletes this proposed change from the bill.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT AND VETERAN AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

Staff Director:

Kama Monroe

Greg Turbeville

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Staff Director:

Joe McVaney

David Coburn