

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1120

SPONSOR: Finance and Taxation Committee and Senator Rossin

SUBJECT: Non-ad valorem assessments

DATE: February 13, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Fav/1 amendment
2.	Fournier	Johansen	FT	Favorable/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This committee substitute amends provisions in s. 197.3632, F.S., relating to the uniform method for the levy, collection, and enforcement of non-ad valorem assessments. It prescribes requirements relating to the circumstances in which a local government must adopt a non-ad valorem roll at a public hearing and to the contents of the notice that must be given before the hearing is held.

It also makes provisions in chapters 191 and 192, F.S., consistent with the changes made in s. 197.3632. Specifically, it amends s. 191.011, F.S., to redefine the term "levied for the first time" to mean imposed for the first time by an independent fire control district resolution, but the term does not include a change in the assessment rate alone. Also, the amendment clarifies 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. It also amends s. 192.0105, F.S., the Florida Taxpayer's Bill of Rights, to clarify the property owners have the right to be noticed of hearings affecting special assessments to be levied "during the initial assessment year."

This bill amends sections 191.011, 192.0105 and 197.3632 of the Florida Statutes.

## II. 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 of 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 4<sup>th</sup> 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.

Section 191.011, F.S., provides procedures for the levy and collection of non-ad valorem assessments by independent special fire control districts. If the board of such a district adopts a non-ad valorem assessment it must follow the procedures contained in s. 197.3632. F.S., or in s. 191.011, F.S., if:

- the non-ad valorem assessment is levied for the first time,
- the assessment is increased beyond the maximum rate authorized by general law or special act when it was initially imposed,
- the district’s boundaries have changed (unless all newly affected property owners have provided written consent for such assessment), or
- there is a change in the use of revenue generated by the assessment.

Section 192.0105, F.S., creates the Florida Taxpayer’s Bill of Rights for property taxes and assessments. It provides that taxpayers have the right to be sent notice by first-class mail of a non-ad valorem assessment hearing at least 20 days before the hearing with pertinent information, including the total amount to be levied against each parcel.

### III. Effect of Proposed Changes:

**Section 1** amends s.197.3632, F.S., 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.

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 the local governing board is not required to “provide or publish the annual notice that would otherwise be required by subsection (4) of this section.

**Section 2** amends s. 191.011, F.S., to conform the procedures by which an independent special fire control district may levy and collect non-ad valorem assessments to the changes made in s. 197.3632, F.S.

**Section 3** amends s. 192.0105, F.S., to clarify the Florida Taxpayer’s Bill of Rights for property taxes and non-ad valorem assessments and make it consistent with s. 197.3632, as amended in section 1 of the bill. The notice of a non-ad valorem assessment must include the total amount to be levied against each parcel during the initial assessment year.

**Section 4** provides that the act will take effect July 1, 2002.

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

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

None.

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

None.

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

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

This bill amends provisions relating to the uniform method for the levy, collection, and enforcement of non-ad valorem assessments.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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